

1692.

APPROVAL, BONDS OF PROSPECT VILLAGE SCHOOL DISTRICT,  
MARION COUNTY, OHIO—\$8,000.00.

COLUMBUS, OHIO, October 7, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1693.

APPROVAL, AGREEMENT BY AND BETWEEN THE STATE OF OHIO  
AND THE ERIE RAILROAD COMPANY COVERING THE RECON-  
STRUCTION OF THE CROSSING IN THE VILLAGE OF NORTH  
RANDALL, CUYAHOGA COUNTY, OHIO.

COLUMBUS, OHIO, October 7, 1933.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted an agreement by and between the State of Ohio and the Erie Railroad Company covering the matter of the reconstruction of the separated crossing over the tracks of the Erie Railroad Company on State Highway No. 16, located in the village of North Randall, Cuyahoga County, Ohio.

After examination, it is my opinion that the same is in proper legal form and when properly executed by the Director of Highways will constitute a valid and binding contract.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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1694.

APPROVAL, BONDS OF NIMISHILLEN TOWNSHIP RURAL SCHOOL  
DISTRICT, STARK COUNTY, OHIO—\$10,700.28.

COLUMBUS, OHIO, October 7, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1695.

BOND ISSUE—UNAUTHORIZED BY COUNTY FOR PURPOSE OF  
ERECTING COURTHOUSE OR OTHER COUNTY BUILDING, COST-  
ING MORE THAN \$25,000, WITHOUT CONSENT OF ELECTORS.

**SYLLABUS:**

*Bonds may not be issued by a county for the purpose of erecting a courthouse or other county building, which is to cost more than twenty-five thousand dollars,*

*under authority of and within the limitations contained in Amended Substitute Senate Bill No. 38, as enacted by the 90th General Assembly, special session, without authority of the electors in view of the provisions of Section 2333, General Code.*

COLUMBUS, OHIO, October 9, 1933.

HON. GEORGE W. SECREST, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a request for official opinion from your assistant, which reads as follows:

“A question has arisen in this county by the county commissioners regarding the construction of county buildings, the cost of which exceeds \$25,000.00, which buildings are to be built partly from the proceeds of bonds issued by the county and grants under the provisions of the National Industrial Recovery Act. The question to which I refer is whether or not a county constructing a building in excess of \$25,000 under the provisions of the National Industrial Recovery Act, must comply with Section 2333 of the General Code of Ohio, which provides as follows:

‘When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days thereafter, the county commissioners shall apply to the judge of a court of common pleas of the county who shall appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. Not more than two of such appointees shall be of the same political party.’

Amended Senate Bill No. 403, passed by the 90th General Assembly of Ohio on July 1, 1933, removes certain limitations on the issuance of bonds by political subdivisions in order that they may participate in federal aid provided for in the National Industrial Recovery Act.

The question on which we request your opinion is whether or not the two bills above referred to supersede the provisions of Section 2333 of the General Code of Ohio, especially as to the submission of the question of issuing bonds of the county to a vote of the electors.”

Amended Senate Bill No. 403, passed by the 90th General Assembly July 1, 1933, was amended by Amended Substitute Senate Bill No. 38, passed as an emergency measure September 20, 1933. Sec. 1 of this act provides:

“For the purpose of enabling municipal corporations and other subdivisions of Ohio to participate in federal aid provided by the ‘national industrial recovery act’ enacted by the seventy-third congress of the United States, and for that purpose only, the taxing authority of any municipal corporation or any other subdivision provided for in said act is hereby authorized to issue bonds, during the effective period of said act, subject to the provisions of sections 2293-1 to 2293-37, inclusive, of the General Code, except as hereinafter provided, and may be non-interest bearing for any number of consecutive years, beginning with the date of issue.”

Paragraph 1 of Sec. 1 of the act provides in so far as is pertinent to your inquiry as follows:

"If the tax commission of Ohio certifies that the municipal corporation or other subdivision of Ohio is unable to issue such bonds subject to the limitations prescribed by sections 2293-14, 2293-15, 2293-16, 2293-17, and 2293-18 of the General Code whether or not such bonds shall have been or may be voted, then such bonds may be issued to the extent required without the authority of an election and outside of the limitations prescribed by said sections of the General Code after exhausting the powers for the creation of indebtedness within such limitation".

There is clear authority in the foregoing act to issue bonds for the purposes, under the circumstances and within the limitations therein set forth, without authority of an election. Although the act is a temporary measure, in its scope it is general in so far as it applies to all subdivisions and, of course, includes counties. Standing alone, this act provides a means whereby counties may issue bonds for county buildings in an amount in excess of twenty-five thousand dollars, without an election, providing such issuance would not exceed the limitations of the act. The act specifically provides that bonds issued thereunder shall not be subject to the limitations as to the amount of unvoted or voted net indebtedness which may be incurred as set forth in the Uniform Bond Act.

Section 2333, General Code, quoted in your assistant's letter, is not referred to in the act under consideration. This section, though a permanent enactment, is special in so far as it applies only to counties and to the construction of county courthouses and other county buildings. It is not solely a limitation upon incurring unvoted net indebtedness, but is a limitation upon the power of the commissioners to construct a courthouse or other county buildings which are to cost in excess of twenty-five thousand dollars, without first giving the electors the opportunity to express themselves upon the policy of such an undertaking, when any bonds are to be issued therefor. The first two branches of the syllabus of an opinion in Opinions of the Attorney General for 1929, Vol. II, page 833, read as follows:

"1. Under the provisions of Section 2333, General Code, when county commissioners have determined to erect a new court house at a cost in excess of twenty-five thousand dollars, if bonds are to be issued for such purpose, the question of such issuance must be submitted to the electors irrespective of the amount of bonds to be issued.

2. The fact that available funds on hand would reduce the requirement of new funds below twenty-five thousand dollars would have no bearing upon the necessity of complying with the requirements of Section 2333, General Code, as to the submission of such question to a vote of the electors, when such new court house is to cost in excess of twenty-five thousand dollars."

There is little question as to the usual rules of statutory construction in the case of conflict between a special law, especially when enacted later in time, and a general law. Under such a situation, the rule is as set forth in the first paragraph of the syllabus of *State, ex rel. vs. Connor*, 123 O. S. 310:

"Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions."

An application of this well established principle of statutory construction to the instant case raises two questions. Are the two laws in conflict and which is special? While it may be argued that Amended Substitute Senate Bill No. 38 confers an authority which Section 2333 takes away in the case of a county and therefore there is a conflict, it is nevertheless true that the two laws may each be given effect and bonds issued under Amended Substitute Senate Bill 38 without an election in excess of debt limitations which otherwise could not be issued, subject only to the restriction of Section 2333 in the event the building is to cost more than twenty-five thousand dollars. As to which law is special, it might be contended that Amended Substitute Senate Bill, being temporary, an emergency law, passed as a relief measure to assist in meeting an economic crisis, is special in character. But it must also be borne in mind that it is general in its application to all subdivisions and to all construction purposes for which bonds may be issued, while Section 2333 is special in that it applies only to counties and only to certain projects.

As hereinabove indicated, it is possible to give effect to each law. Under these circumstances, the courts have established the principle that all laws must be given effect and harmonized when it is possible so to do. *Surety Co. vs. Slag Co.*, 117 O. S. 512; *Cincinnati St. Ry. Co. vs. Whitehead*, 39 O. A. 51.

To summarize, the following conclusions must be drawn: Amended Substitute Senate Bill No. 38 makes no reference to Section 2333, General Code; Section 2333, General Code, is special in character while Amended Substitute Senate Bill No. 38 is more general in its application; and further the two laws are not irreconcilable and in conflict.

It is my opinion, therefore, that bonds may not be issued by a county for the purpose of erecting a courthouse or other county building, which is to cost more than twenty-five thousand dollars, under authority of and within the limitations contained in Amended Substitute Senate Bill No. 38, as enacted by the 90th General Assembly, special session, without authority of the electors in view of the provisions of Section 2333, General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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1696.

HOUSING RELIEF WARRANTS—WHERE RECEIVED BY COUNTY TREASURER UNDER AM. S. B. NO. 200 COUNTY AUDITOR AUTHORIZED TO DEDUCT AMOUNT THEREOF FROM ALL GENERAL TAXES.

**SYLLABUS:**

1. *Where the county treasurer has received housing relief warrants, pursuant to the authority of the provisions of Amended Senate Bill No. 200 recently enacted, the county auditor is authorized to deduct the amount thereof from all general taxes,*