

4782.

NOTES—BOARD OF EDUCATION ISSUED IN ANTICIPATION OF COLLECTION OF CURRENT REVENUES—SUM DEEMED APPROPRIATED REGARDLESS OF DELINQUENCIES IN TAX COLLECTIONS.

SYLLABUS:

When a board of education has borrowed money and issued notes under the provisions of Section 2293-4, General Code, in anticipation of the collection of current revenues, the sums so anticipated shall be deemed appropriated for the payment of such notes at maturity, notwithstanding any delinquency in tax collections.

COLUMBUS, OHIO, December 3, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio

GENTLEMEN:—This is to acknowledge your letter of recent date in which you request my opinion upon the following three questions:

“1st: Where a school board has issued notes after the first of the fiscal year in anticipation of tax collections and such tax collections are delinquent to the extent that it will require practically all of the collections to retire the notes, must these notes be paid out of such collection, leaving the school board without sufficient operating funds?

2nd: Can banks holding these notes legally continue to hold them and have them paid out of subsequent tax collections other than those collections made during the year in which they were issued?

3rd: If it is mandatory to pay these notes under Section 2293-4 of the General Code and they are not paid out of the tax collections for the fiscal year in which they are issued, what is the legal liability, if any, of the members of the school board and clerk of such board?”

Section 2293-4, General Code, being the section of the Uniform Bond Act under which the notes are issued, provides as follows:

“In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement.”

The provision of the foregoing section that “The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity” is clear and

unambiguous. The section contains no provision to the effect that in the event the entire one-half of the estimated revenue is borrowed, only one-half of the actual taxes received must be appropriated, but, on the contrary, provides that the sum so anticipated shall be appropriated for the payment of the notes. It is well established that when the legislature uses the word "shall", it shall be given a mandatory construction unless the context otherwise requires, and consequently in the event of a delinquency in the collection of taxes the amount anticipated shall nevertheless be deemed appropriated for the payment of the notes.

The question which you present is quite similar in its effect to one which was under consideration by the Supreme Court in the case of *Rabe vs. Board of Education*, 88 O. S. 403. In that case, the application of funds for the payment of interest and retirement of bonds meant that the board of education would be without sufficient operating funds. The language of the court on pp. 422 and 423 is as follows:

"At this time, under the amendment to the Constitution (Section 11, Article XII) which provides that no bonded indebtedness of the state or any political subdivision thereof shall be incurred or renewed, unless in the legislation under which such indebtedness is incurred or renewed provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds and provide for a sinking fund for their final redemption at maturity, it is of the utmost importance that at the time of the incurring of such indebtedness the other needs of the political subdivision proposing to issue the bonds should be taken into account, for this levy must continue during the term of the bonds in an amount sufficient to pay the interest and provide a sinking fund for their final redemption, even though the amount should exhaust the entire income available from taxation and without regard to the current expenses. In other words, under this provision of the constitution, the payment of interest and the retirement of bonds are to be provided for first, and the current expenses becomes a secondary consideration. This amendment, however, has no application to this case.

At best the situation presented by this record is an unfortunate one, but the law of this state, as it existed at the time this resolution was adopted, must be applied to the case at hand. The court recognizes the difficulties with which this board of education must contend in order to furnish the beneficence of education to the youth of that school district, but the court is no more the master of the situation than is the board of education itself. It can only interpret and apply the law given it by the legislature to the questions here presented."

These same principles were followed in the cases of *State, ex rel. vs. Zangerle*, 94 O. S. 447 and *State vs. Dean*, 95 O. S. 108.

In specific answer to your first question, it is my opinion that when a board of education has borrowed money and issued notes under the provisions of Section 2293-4, General Code, in anticipation of the collection of current revenues, the sums so anticipated shall be deemed appropriated for the payment of such notes at maturity notwithstanding any delinquency in subsequent tax collections.

With respect to your second question, in so far as the school district is concerned, there is no doubt but that in case the notes are not paid at maturity, the holder or holders thereof can compel their payment out of such tax collections other than those made during the year in which they were issued, provided, of

course, the notes were validly issued under section 2293-4, General Code, and are therefore valid obligations of the subdivision. Such notes would unquestionably constitute a debt charge and in the event of default a sufficient amount required for all debt charges must be included in the annual budget of the subdivision. Section 5625-21, General Code.

With respect to the power of a bank to hold past-due paper, this is a matter under the jurisdiction of the Superintendent of Banks. It has no bearing on the problems of the school district and I assume that you are not requesting an opinion thereon.

Coming now to your third question, I am not aware of any section of the General Code which specifically imposes any liability upon the members of the board of education or the clerk of such a board for diverting funds appropriated for the payment of notes to general school operating purposes. Your attention is, however, directed to the provisions of the Budget Law, as contained in Sections 5625-1 to 5625-39, both inclusive.

Section 5625-33, General Code, provides that "No subdivision or taxing unit shall make any expenditure of money unless it has been appropriated as provided in the Budget Law." Section 5625-37 of that law imposes a penalty upon any officer, employe or other person who expends any public funds contrary to the provisions of that act. Should the diversion of these funds result in the expenditure of money not appropriated as provided in Sections 5625-29, 5625-30 and 5625-32, then Section 5625-37 would be applicable. Otherwise, your inquiry must be answered in the negative.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4783.

APPROVAL, BONDS OF URBANCREST RURAL SCHOOL DISTRICT,
FRANKLIN COUNTY, OHIO—\$8,500.00.

COLUMBUS, OHIO, December 3, 1932.

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

4784.

PROBATE JUDGE—LIMITED TO \$10 IN FEES WHERE ASSETS OF AN
ESTATE ARE \$500 OR LESS.

SYLLABUS:

The ten dollar limitation contained in Section 10501-42, subsection 48, General Code, applies to the total amount of fees chargeable by a probate judge against an estate, the assets of which do not exceed \$500 in value, regardless of the nature or