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1. PLAYGROUNDS, SWIMMING POOLS AND INDOOR RECREATION CENTERS—MONEYS MAY BE TRANSFERRED FROM COUNTY GENERAL FUND, SECTIONS 5625-13a TO 5625-13g G. C. AND FROM COUNTY BOND RETIREMENT FUND, SECTION 5625-13 PARAGRAPH c, G. C. TO ACQUIRE LANDS AND BUILDINGS, SECTION 4065-1 ET SEQ., G. C.
2. QUESTION, BOND ISSUE—MAY BE SUBMITTED TO ELECTORS AT SPECIAL ELECTION AT ANY TIME PRIOR TO AUGUST 31, 1947 UNDER AMENDED SENATE BILL 296, 96 GENERAL ASSEMBLY.

SYLLABUS:

1. Moneys may be transferred from the county general fund pursuant to the provisions of Sections 5625-13a to 5625-13g, General Code, and from the county bond retirement fund pursuant to the provisions of paragraph c of Section 5625-13, General Code, for the purpose of acquiring lands and buildings under authority of Section 4065-1 et seq., for playgrounds, swimming pools and indoor recreation centers.

2. The question of issuing bonds for the purpose of acquiring lands and buildings to be used for playgrounds, swimming pools and indoor recreation centers under Section 4065-1 et seq., General Code, may be submitted to the electors at a special election at any time prior to August 31, 1947, under Amended Senate Bill No. 296 passed by the 96th General Assembly.

Columbus, Ohio, January 4, 1947

Hon. Harold K. Bostwick, Prosecuting Attorney, Geauga County
Chardon, Ohio

Dear Sir:

This will acknowledge receipt of your letter which reads as follows:

“The County Commissioners of Geauga County, Ohio have located in Geauga County a parcel of 500 and some acres on which there is a very large building and other small buildings and a large lake. They want to purchase this as a playground, swimming pool and for indoor recreation for the County under Section 4065-1, General Code.

Section 4065-6 gives them authority to issue bonds for this purchase, but they having a large surplus in the General Fund

and a large surplus in the Bond Retirement Fund want to know if they could use any part of these two surplus funds for the purpose of purchasing this property for cash. If not, Section 2293-22 states that the question of issuing bonds shall be submitted to a popular vote in a November election with certain exceptions. The only reason that they don't want to wait for a November election is that they are afraid that they can not get an option for that long and that some one else will buy the property. In other words, they feel that this is a chance in a lifetime to get this suitable property for Geauga County.

The next question they have asked me to get your opinion on is would their thought in the matter be sufficient to permit them to have a special or primary election. They will appreciate your opinion at your earliest convenience."

The moneys constituting the county general fund are primarily for the purpose of paying the current operating expenses of the county, and not for the acquisition of permanent improvements, such as lands and buildings. This is disclosed by the Uniform Tax Levy Law, particularly Sections 5625-1, paragraph (f), 5625-5 and 5625-10, General Code. But provision has been made in Section 5625-13, and also in Sections 5625-13a to 5625-13g, pursuant to which moneys may be transferred from the general fund to other funds of the same subdivision. While, under paragraph f of Section 5625-13, transfers may be made from the general fund to special funds, which have been established with the approval of the Bureau of Inspection and Supervision of Public Offices, I have been advised that no such fund has been established in your county for the purpose of acquiring the lands and buildings referred to in your letter, and for that reason it is unnecessary to consider any question that might arise as to the authority of the commissioners to make transfers solely under authority of that paragraph.

In addition to the transfers authorized by Section 5625-13, it is provided in the group of statutes designated as Sections 5625-13a to 5625-13g, that transfers may be made from one fund to another with the approval of the Board of Tax Appeals and Common Pleas Court, and under the procedure therein prescribed, and the only funds which in terms are excluded from their provisions, are the proceeds or balances of loans and bond issues and levies for the payment thereof, and the proceeds or balances of funds derived from excise tax levies and license fees imposed by law for specified purposes.

Section 5625-13a, General Code, reads as follows :

“In addition to the transfers authorized in Section 5625-13, the taxing authority of any political subdivision may, in the manner hereinafter provided, transfer from one fund to another any public funds under its supervision except the proceeds or balances of loans, bond issues, or special levies for the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes, and except the proceeds or balances of any license fees imposed by law for a specified purpose or purposes.”

You are therefore advised that moneys may be transferred from the county general fund, under and pursuant to the provisions of Sections 5625-13a to 5625-13g, for the purpose of acquiring the land and buildings referred to in your letter.

With respect to the use of the county bond retirement fund for the purpose of acquiring lands and buildings under Section 4065-1 et seq., General Code, your attention is directed to paragraph (c) of Section 5625-9, General Code, which expressly declares that this fund is established “for the retirement of serial bonds, or of notes or certificates of indebtedness.”

The moneys in and constituting the bond retirement fund in the main are the proceeds of taxes mandatorily required to be levied by Section 11 of Article XII, Ohio Constitution, and by Section 2293-26, General Code, of the Uniform Bond Act, and these levies are separate and distinct from the general fund levies.

Authority to transfer money from the bond retirement fund to another fund of the subdivision, is contained in paragraph c of Section 5625-13, General Code, and this authority is strictly confined to the unexpended balance that remains in that fund after all indebtedness and obligations against the fund have been paid. When all of those obligations have been paid it is then provided and required by paragraph c that the balance, if any, shall be transferred to the sinking fund, if the subdivision has such a fund, and the only exception to this requirement is contained in the proviso. Paragraph c of Section 5625-13, reads as follows :

“The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest and other obligations for the payment of which such fund exists, have

been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund and in the case of the bond retirement fund to the sinking fund; provided that if such transfer is impossible by reason of the non-existence of the fund herein designated to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county wherein such subdivision is located, may be transferred to any other fund of the subdivision."

You are therefore advised that the transfer of moneys from the bond retirement fund of the county to another fund for the purpose of acquiring land and buildings under Section 4065-1 et seq., General Code, is subject to the provisions of paragraph c of Section 5625-13, General Code.

With respect to the authority of the county commissioners to submit the question of issuing bonds to the electors at a special or primary election, your attention is directed to an Act passed by the 96th General Assembly, and known as Amended Senate Bill No. 296. A copy of this Act is enclosed for your information.

This Act provides that the bond issuing authority of any subdivision may, at any time prior to August 31, 1947, submit to the electors at a "general or special election" the question of issuing bonds "for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct," and also that the special election therein provided for may be held on the same day as a primary election. The Act further provided that the term "permanent improvement", as used therein, shall have the same meaning assigned to it by Section 2293-1, General Code, which is one of the sections of the Uniform Bond Act. Since the term "permanent improvement," as defined in Section 2293-1, includes not only land, but also any property, asset, or improvement with an estimated life or usefulness of five years or more, you are advised that the county commissioners may take advantage of Amended Senate Bill No. 296, and submit to the electors at a general or special election, the question of issuing bonds for the purpose of acquiring the lands and buildings referred to in your letter.

Respectfully,

HUGH S. JENKINS
Attorney General