

It could not be said that Section 7663 was obsolete or unconstitutional, and no other conclusion can be reached than that the legislature considered it to be "unnecessary", thereby signifying that other sections of the Code extended ample authority to boards of education to do what Section 7663, General Code, specifically authorized them to do, and that the specific authority given by Section 7663, General Code, was unnecessary.

I am therefore of the opinion that the repeal of Section 7663, General Code, did not signify an intent on the part of the legislature to prohibit a board of education from establishing one or more high schools when the establishment of those schools was deemed to be in the educational interests of the district.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4829.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS RESIDENT DIVISION DEPUTY DIRECTOR—WAYNE C.
NEFF.

COLUMBUS, OHIO, December 20, 1932.

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

DEAR SIR:—You have submitted for my approval a bond upon which the name of Wayne C. Neff appears as principal and The Maryland Casualty Company of Baltimore, Maryland, appears as surety, in the penal sum of \$5,000.00, conditioned to cover the faithful performance of the duties of the principal as Resident Division Deputy Director for Division No. 4.

Finding said bond legal and proper as to form, I have endorsed my approval thereon and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4830.

ANTICIPATORY NOTES—MAY BE ISSUED UNDER AMENDED SEN-
ATE BILL NO. 4 AND RETIRED BY ISSUANCE OF BONDS.

SYLLABUS:

Anticipatory notes may be issued under the provisions of Amended Senate Bill No. 4, as enacted at the First Special Session of the 89th General Assembly, as amended by the Second Special Session of the 89th General Assembly, at any time during the year 1932, which notes may mature not later than two years from date, and when such notes are about to mature the same may be retired by the issuance of bonds subsequent to the year 1932 in accordance with the provisions of Section 2293-26 of the Uniform Bond Act.

COLUMBUS, OHIO, December 20, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The Board of Commissioners of Seneca County have passed a resolution setting forth the necessity for the issuance of poor relief bonds to the amount of \$25,000, under the provisions of Amended Senate Bill No. 4, passed by the Special Legislature in May, 1932. It is our understanding that such bonds have to be issued in the year 1932. There is not sufficient time remaining in the year 1932 to complete all the legislation necessary, including the advertising of the bonds for sale, and still complete all necessary acts in this year.

We would like to know whether or not the provisions of the Uniform Bond Act may be invoked to the extent of issuing notes at this time, and then later taking up the notes by the issuing of bonds. In other words, do all the provisions of the Uniform Bond Act apply to the poor relief law as enacted in Amended Senate Bill No. 4?”

Section 3 of Amended Senate Bill No. 4, enacted at the First Special Session of the 89th General Assembly, as amended by the Second Special Session of the 89th General Assembly, authorizes the county commissioners of any county to borrow money in the year 1932 for poor relief “and evidence such indebtedness by the issuance of negotiable bonds or notes” as therein set forth. The second paragraph of this section expressly provides that the “issuance, sale and characteristics of said bonds or notes shall conform * * * to the provisions of the Uniform Bond Act governing the issuance, sale and characteristics of bonds or notes issued without a vote of the people” except as otherwise provided in this special act. The reference in Amended Senate Bill No. 4, as amended, to notes as well as bonds and to the Uniform Bond Act, expressly authorizes the issuance of anticipatory notes as provided in the Uniform Bond Act. Furthermore, Section 3 of the act expressly authorizes the issuance of notes in the year 1932.

Section 2293-13 of the Uniform Bond Act provides that “an indebtedness shall not be deemed to have been created or incurred until the delivery of the bonds under contract of sale.” The use of the term “bonds” in this section clearly includes anticipatory notes, since notes as well as bonds must be considered in determining the amount of indebtedness existing in any subdivision at any time under the Uniform Bond Act.

In case anticipatory notes are issued and sold, the indebtedness is created at the time of the delivery of such notes and the subsequent issuance of bonds to take up such notes does not constitute the creation of an indebtedness at such subsequent date. It must be borne in mind that under Section 2293-25, General Code, except in the case of notes issued in anticipation of special assessment bonds, the resolution or ordinance providing for the issue of anticipatory notes “shall provide for the levy of a tax during the year or years while such notes run, not less than that which would have been levied if bonds had been issued without the prior issue of such notes.” It is obvious that at the time of the issuance and sale of anticipatory notes, the indebtedness is fixed, provision for the levy of a tax required by Section 11, Article XII of the Constitution is made, and the subsequent issuance of bonds to take up the anticipatory notes does not constitute the incurring of any additional indebtedness at the time the notes are about to mature.

It is, therefore, my opinion, in specific answer to your question, that anticipatory notes may be issued under the provisions of Amended Senate Bill No. 4, as

enacted at the First Special Session of the 89th General Assembly, as amended by the Second Special Session of the 89th General Assembly, at any time during the year 1932, which notes may mature not later than two years from date, and when such notes are about to mature the same may be retired by the issuance of bonds subsequent to the year 1932 in accordance with the provisions of Section 2293-26 of the Uniform Bond Act.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4831.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN HARRISON COUNTY, OHIO.

COLUMBUS, OHIO, December 20, 1932.

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

4832.

DOMESTIC LIFE INSURANCE COMPANY—WHERE ARTICLES ARE SILENT, SHAREHOLDERS MAY VOTE CUMULATIVELY.

SYLLABUS:

Where the articles of incorporation of a legal reserve life insurance stock company contain no provision with reference to the right to vote cumulatively, section 8623-50, General Code, applies, and the shareholders of such company have such right subject to the restrictions contained in said section.

COLUMBUS, OHIO, December 21, 1932.

HON. CHARLES T. WARNER, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“Domestic Reserve Life Insurance Companies are organized under Sections 9339, et seq., General Code. Section 9340 provides that such companies may provide in their charter certain powers, including the number of directors or trustees and the manner of electing them. The charter of such a company makes such provision.

Section 8623-3, General Code, which is a part of the Corporation Act, provides ‘that where the General Code makes special provision for the filing of articles of incorporation of designated classes of corporations, such corporations shall be formed under such provisions and not hereunder.’

Section 8623-132, also a part of the Corporation Act, makes provision as follows:

‘When special provision is made in the General Code for the in-