

Building at the Ohio University, Athens, Ohio, as set forth in Item No. 35; Item No. 36, Alternate 1; Item No. 37, Alternate 2; Item No. 38, Alternate 3; Item No. 41, Alternate 6; Item No. 41 A, Alternate 7, of the Form of Proposal dated May 27, 1930. Said contract calls for an expenditure of forty thousand five hundred and fifty-two dollars (\$40,552.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure have been obtained as required by Section 11 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond, upon which the Commonwealth Casualty Company of Philadelphia, Pennsylvania, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2178.

COUNTY COMMISSIONERS—BOND ISSUE FOR ADDITION TO SEMI-PUBLIC CHILDREN'S HOME UNAUTHORIZED.

SYLLABUS:

A board of county commissioners may not issue bonds in the amount of two hundred thousand dollars for the purpose of constructing an addition to a children's home of an incorporated society when such home is to remain under the management of the board of trustees of such society.

COLUMBUS, OHIO, July 31, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

"We are enclosing herewith a communication received from State Examiner R. H. S., relative to a situation existing in Butler County, as to which the question arises as to whether or not the county commissioners have authority under the law to submit to the electors, a proposition to issue bonds in the sum of \$200,000.00 and have a tax levied outside the fifteen mill limitation to pay off the principal and interest on same, for the purpose of erecting additional buildings at a semi-public children's home in Butler County.

Kindly render to this department your written opinion on this matter."

Enclosed with your letter is the following communication from your State Examiner :

"In Butler County there is what is known as a Semi-public Children's Home which is duly incorporated under the laws of Ohio and operated by a private board of trustees.

This home cares only for children that are committed thereto by the Juvenile Court and the county of Butler pays a per diem rate to the Home for their sustenance.

This board of trustees of the home consists of ladies of the highest character and ability, who have indeed made an excellent record for managing an institution of this kind. Its population averages 120 children for whom the maintenance is kept at a minimum. For these reasons it is the general desire of the community to keep the home in its present status and under the same management.

The trustees of the home, because of the extreme crowded condition are desirous of erecting additional buildings at an approximate cost of \$200,000.00.

The question arises as to whether the county commissioners have authority under the law to submit to the electors, a proposition to issue bonds in the sum of \$200,000.00 and have a tax levied outside the fifteen mill limitation to pay off the principal and interest on same, since the home is county wide as to the care of children and is now almost wholly supported by the county.

If you do not have any definite information regarding this question, would like to have same submitted to the Attorney General for his opinion, as an answer is very urgent at this time due to the closeness of election day."

The general power to issue bonds is contained in Section 2293-2, General Code, which is a part of the Uniform Bond Act, which section provides that "the taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct." Under the provisions of Section 2293-19 of this same act "the taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which such subdivision has power to issue." It is unnecessary in view of the provisions of this last mentioned section to discuss the question of submitting the proposed bond issue to the electors, since the question of issuing any bonds may be so submitted, provided the subdivision has power to issue such bonds. It, therefore, becomes necessary to determine whether or not a county is authorized to construct an improvement such as is proposed to cost \$200,000.00.

The only reference to children's homes as contained in the Uniform Bond Act is set forth in Section 2433, General Code, wherein it is provided that a board of county commissioners, in addition to other powers conferred by law, shall have power to construct, enlarge, improve, rebuild, equip and furnish a county children's home and other necessary buildings and sites therefor. Since the children's home under consideration is not a county children's home but is a home belonging to and under the control of an incorporated society, the Uniform Bond Act contains no express authority for the issuance of bonds in the amount and for the purpose desired.

The provisions contained in the General Code under which a board of county commissioners may aid an incorporated society of this nature appear in Sections 14654, et seq., and in Sections 3108-1 and 3108-2. Section 14654 provides as follows:

"In any county in the State of Ohio, where there now is or hereafter may be an incorporated 'children's aid society,' or 'children's home,' or 'industrial school,' or 'industrial school and home,' or any other incorporated society, whose object is the care, aid and education of neglected or destitute children, the county commissioners of such county, or the city council of any city or cities in such county, in addition to the powers now conferred upon such commissioners or city council, are hereby authorized, if they deem it judicious to aid any such institution to purchase land, erect buildings, either by subscription with others to raise a fund for that purpose, or by direct aid or donation, or otherwise, in amount not exceeding six thousand dollars, as they may deem expedient."

Section 14655 provides that after the county commissioners have aided a children's home to purchase land or erect buildings in any amount not exceeding six thousand dollars, they may contribute to complete such purchase of land or the construction of buildings not exceeding the sum of twenty-five hundred dollars. Section 14656, General Code, provides as follows:

"When such commissioners have contributed the whole amount of said purchase money, and find the buildings are not sufficient to enable such incorporated children's home to accommodate all the neglected and destitute children of such county, they are hereby authorized to contribute, subject to the conditions provided in Section One (G. C. §14655) of this act, such amount as they deem sufficient to construct the necessary additions to such buildings and to make the necessary improvements of such property, and they are hereby authorized to contribute an amount not exceeding three hundred dollars in any one year for the purpose of keeping such property in repair."

It is obvious that even if this section may be construed as placing no limitation on the amount that a board of county commissioners may contribute for the purpose of constructing necessary additions, the provision of the section is predicated upon contributions having been previously made to purchase land and erect buildings as therein set forth. Without passing upon the question of whether or not Section 14656 is subject to the same limitations as to amount of contribution set forth in Sections 14654 and 14655, you have submitted no facts to indicate that such previous contributions for the purchase of land and the erection of buildings have already been made. Section 14658, General Code, provides for the appointment of trustees by the judge of the Common Pleas Court to manage a children's home to which there has been contributed money or property of the amount or value of five thousand dollars or more. Perhaps the broadest section of the law relating to county aid of the nature here under consideration is Section 14664, General Code, which provides as follows:

"For the purpose of carrying out the foregoing provisions, the county commissioners of any such county are hereby authorized, when in their opinion the interests of the public demand it, to provide for the purchase of a suitable site and the erection of the necessary buildings for the same, and to provide by taxation or otherwise, for the erection and support of said buildings and institution; and they are hereby authorized to receive and hold in trust for the use and benefit of any such an institution, any grant or devise of land, and any donation or bequest of money or other personal property that may be made for the establishment or support thereof."

Section 14665, however, provides that "when the necessary site and buildings are provided by the county, it shall be the duty of the Court of Common Pleas of such county, immediately thereafter, to appoint a board of six trustees to manage the said institution, and who shall be judicious persons, resident of said county." Since it is desired in the case you present that the children's home remain under its present management, even if land were to be purchased, it is manifest that Section 14664, supra, would be of no assistance.

Section 3108-1, General Code, hereinbefore mentioned, provides that the county commissioners of any county which has no county children's home may aid a semi-public home by contributing toward the purchase of land or erection of buildings or additions to buildings or other improvements, an amount not exceeding twenty-five hundred dollars. Section 3108-2 relates to how a home may become semi-public and to the filing of reports.

In view of the foregoing, it must follow that however laudable the purpose, the law does not authorize a board of county commissioners to construct such an improvement as is contemplated and, accordingly, county bonds may not be issued therefor, until the Legislature provides relief for such a situation as you present.

I am therefore compelled to conclude, in specific answer to your question, that a board of county commissioners may not issue bonds in the amount of two hundred thousand dollars for the purpose of constructing an addition to a children's home of an incorporated society when such home is to remain under the management of the board of trustees of such society.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2179.

SALARY—APPELLATE JUDGES ENTERING OFFICE BEFORE 1930 CENSUS—NOT INCREASED BY CHANGE IN COUNTY POPULATION.

SYLLABUS:

Judges of courts of appeals who took office prior to the official certification and announcement of the 1930 federal census are not entitled to an increase of compensation because of increased population shown by such census.

COLUMBUS, OHIO, July 31, 1930.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—I am in receipt of a recent communication over the signature of Harry S. Commager, assistant prosecuting attorney, as follows:

"I am submitting to your department the question of the amount of salary to be paid to certain judges of the Court of Appeals. One of the judges of the Court of Appeals was elected in the June election of 1928 and commenced his present term of office in February, 1929.

Section 2253-2 of the General Code provides for additional salaries for Court of Appeals judges based upon the last federal census. The question arises, is the salary of this one judge of the Court of Appeals, whose present term of office commenced after the taking effect of Section 2253-2 of the General Code, increased by reason of the increase in population of Lucas County