

2271.

SCHOOL BUILDING—REPAIR OF SANITATION SYSTEM—NOTES COVERING COST OF SUCH REPAIR MAY BE ISSUED WITHOUT VOTE OF ELECTORATE WHEN—NOTES MAY NOT BE ISSUED TO REPAIR STEAM HEATING PLANT.

SYLLABUS:

Notes may be issued by a board of education of a school district for the purpose of repairing the system of sanitation of the public schools of such district under the provisions of Section 2293-7, General Code, as therein provided, when such repair is necessary to prevent a threatened epidemic and when the Tax Commission of Ohio has determined that funds for such purpose are not otherwise available. This section does not, however, authorize the issuance of notes for the purpose of repairing a steam heating plant which has been condemned.

COLUMBUS, OHIO, September 2, 1930.

HON. L. M. SOLIDAY, *Prosecuting Attorney, Zanesville, Ohio.*

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

“In the R. School District of our county, the system of sanitation has been condemned by The State Board of Health, and the steam heating plant in one of the school buildings is in such condition that it is unsafe, and we are expecting within the next week a report from the Department of Workshops and Factories condemning this heating system. The board of education is anxious to remedy these conditions, and it will cost in the neighborhood of \$1,200.00 to take care of the costs of repairing the sanitary system and heating plant. It will be necessary for the board of education to levy a tax in excess of the limitation provided by law and it is practically a settled fact that popular vote would not favor the levy of an additional tax.

In the case of condemnation of the system of sanitation and heating plant, would the R. Board of Education be authorized under Section 2293-7 of the General Code to declare an emergency and to borrow money as provided by said section. If so, would such board of education be authorized to issue bonds for a period of five years to pay off the notes, or would it be necessary to levy a sufficient tax to pay such notes in full during the year 1932 in accordance with the section above referred to.

Your opinion in this matter will be greatly appreciated.”

Section 2293-7, General Code, to which you refer, provides:

“If it is determined by the tax commission of Ohio that funds are not otherwise available, the taxing authorities may borrow money and issue notes:

(a) In case of epidemic or threatened epidemic, or during an unusual prevalence of a dangerous communicable disease, to defray those expenses which the local board of health deems necessary to prevent the spread of such disease.

(b) In case of the destruction of any bridge, road, school or public building, by fire, flood, or extraordinary catastrophe, to provide temporary facilities for bridge, road, school or building purposes.

(c) In case of a special election called after the adoption of the annual appropriation measure, to defray the expenses of such election.

Such notes shall mature one-half on March first next following the next February tax settlement at which, in accordance with the ordinary budget procedure, a tax to pay such notes can be included in the budget and one-half on the following September first, and a tax shall be levied to pay such notes, which tax shall be outside of all limitations of law."

Under the provisions of this section, I think it is clear that notes may be issued as therein provided for the purpose of repairing the sanitary system of a public schoolhouse if the Tax Commission determines that funds are not otherwise available and if such repair is necessary to prevent a threatened epidemic. This section does not, however, authorize the issuance of such notes for the purpose of repairing a heating plant of a school building which has been condemned. The unsafe condition of a heating plant probably has no bearing upon a threatened epidemic. Under paragraph "(b)" of Section 2293-7, supra, it is necessary that the school building be destroyed by an extraordinary catastrophe before the provisions of the section are applicable. I find no authority in the Uniform Bond Act or elsewhere in the General Code whereby a board of education may issue bonds or notes for the purpose of repairing a steam heating plant, which bonds or notes are to be paid by a levy of taxes outside of the fifteen mill limitation without authority of the electors. Since such authority is not conferred upon a board of education, it follows, of course, that it must be denied on account of the well established rule that public officers have only such powers as are conferred by law and such as are necessary to carry into execution the express powers so conferred.

In the event notes are issued under the foregoing section, before bonds may be issued to retire them, some authority must be conferred by the legislature so to do. Section 2 of the Uniform Bond Act authorizes a board of education to issue bonds for the purpose of acquiring or constructing any permanent improvement which school districts are authorized to acquire or construct. While the repair of a steam heating plant may be a permanent improvement within the meaning of the act, the section does not authorize the issuance of bonds for the purpose of liquidating an indebtedness previously incurred in acquiring or constructing a permanent improvement. It should be observed that the only authority to issue bonds to retire notes of a subdivision is contained in Section 2293-26, General Code, wherein the taxing authority is authorized to issue bonds to retire notes which have been issued in anticipation of the issuance of such bonds under Sections 2293-24 and 2293-25, General Code.

You are aware, of course, that in the event the school district in question has a tax duplicate of \$1,200,000.00, and such district has no present unvoted net indebtedness within the meaning of Section 2293-15, General Code, bonds may be authorized without a vote of the electors for the desired purpose. The levy, however, to meet the interest and principal requirements of such unvoted bonds will, of course, be within the fifteen mill limitation, unless such levy is voted outside of the fifteen mill limitation as provided in the Budget Law. In the event the proposed issue is submitted to the electors in accordance with the provisions of Sections 2293-19, et seq., and voted favorably upon as therein provided, the levy, of course, will be outside of the fifteen mill limitation.

In specific answer to your inquiry, it is my opinion that notes may be issued by a board of education of a school district for the purpose of repairing the system of sanitation of the public schools of such district under the provisions of Section 2293-7, General Code; as therein provided, when such repair is necessary to prevent a threatened epidemic and when the Tax Commission of Ohio has determined that funds for such purpose are not otherwise available. This section does not, however,

authorize the issuance of notes for the purpose of repairing a steam heating plant which has been condemned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2272.

APPROVAL, BONDS OF CITY OF GREENVILLE, DARKE COUNTY, OHIO
—\$14,840.00.

COLUMBUS, OHIO, September 2, 1930.

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

2273.

APPROVAL, BONDS OF WAYNE RURAL SCHOOL DISTRICT, CHAM-
PAIGN COUNTY, OHIO—\$1,000.00.

COLUMBUS, OHIO, September 2, 1930.

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

2274.

APPROVAL, BONDS OF VILLAGE OF WEST SALEM, WAYNE COUNTY,
OHIO—\$7,500.00.

COLUMBUS, OHIO, September 2, 1930.

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

2275.

APPROVAL, BONDS OF VILLAGE OF SOUTH WEBSTER, SCIOTO
COUNTY, OHIO—\$3,900.00.

COLUMBUS, OHIO, September 2, 1930.

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