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BOND ISSUE—BOARD OF EDUCATION AUTHORIZED BY ELECTORS TO CONSTRUCT AND FURNISH SCHOOL BUILDING MAY NOT EXPEND PART OF PROCEEDS FOR SITE—SPECIFIC CASE DISCUSSED.

SYLLABUS:

1. *Where the electors of a school district have authorized a board of education to issue bonds for the purpose of erecting and constructing school buildings and furnishing the same, such board may not use a portion of the proceeds of such bond issue for the purpose of acquiring sites for such buildings.*

2. *Where, in such event, a board of education has no other funds available for the purchase of such sites, funds for such purpose may be obtained by issuing bonds without a vote of the people, provided such bond issue would not increase the unvoted net indebtedness beyond the limitation set out in Section 2293-15, General Code, or by the levy of a tax, which tax must fall within the fifteen mill limitation, unless the same be voted outside such limitation under the provisions of Section 5625-15 et seq., General Code.*

COLUMBUS, OHIO, December 27, 1928.

HON. RALPH E. HOSKOT, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, which reads, in part, as follows:

“The following situation has presented itself in one of our rural school districts:

At the general election in November, 1927, the board of education submitted to the vote of the people a bond issue, which was voted upon favorably by the people of the district.

In submitting the question of the issuance of bonds, the resolution passed asking the clerk of the board, as the fiscal officer thereof, to certify his estimate of the life of the improvement, the purpose recited was for the ‘purpose of erecting, constructing and furnishing fire proof school buildings’. The board estimated the sum of \$500,000.00 would be required for the purpose recited; that they desired a single bond issue and that \$450,000.00 thereof was to be used for constructing buildings and \$50,000.00 to be used for furnishing.

In pursuance thereof the clerk certified the estimated life to be for the constructing of the improvement, twenty-five years, and for the furnishing of the improvement, ten years.

Thereupon, the board proceeded with the resolution declaring the necessity of such bond issue, in which the same purpose was recited as above set forth, requesting the Auditor to certify the millage, and later passed a resolution to submit the question of the bond issue to the electors, certifying the same to the Deputy State Supervisors of Elections, in which resolution the purpose was recited as above set forth.

The bond issue was submitted to the electors on a ballot which recited the purpose as that of ‘erecting, constructing, and furnishing fire proof school buildings’.

Either through error or with the idea possibly it would not be necessary to acquire a site for their school building, they failed to include in their resolutions and proceedings the provision for the acquiring of a site, although it was contemplated by them that part of the bond issue should be used for the purpose of purchasing a site.

The question now presented is as to whether or not they may use part of this bond issue for the purpose of purchasing a site as contemplated. The bond issue will be of no benefit inasmuch as they will have the money for a school house but no place on which to build it.

* * * "

I have quoted only the portion of your communication which sets out the facts and presents the question, the remainder being a discussion of various sections of the General Code which will be hereinafter referred to.

Sections 2293-9 and 2293-10, General Code, are pertinent to your inquiry.

Section 2293-9 provides, in part, as follows:

"The maturities of bonds, notes or other evidences of indebtedness issued by any subdivision shall not extend beyond the following limitations as specified in the following classifications, the period to be measured from a date twelve months prior to the date of the earliest maturity, if maturing in annual installments, or six months prior thereto, if maturing in semi-annual installments:

When issued for—

* * *

Class (B) The acquisition of real estate or easements or other interests in real estate, grade crossing elimination, and flood prevention, thirty years;

Class (C) The construction or improvement of fireproof buildings or other structures, widening, opening, extending or changing the line of roads, highways, streets or alleys, general waterworks improvements, sanitary and storm sewers, sewage disposal works, and bridges, twenty-five years;

* * *

Class (E) Water meters, fire apparatus, road rollers, furniture and furnishings, machinery in garbage disposal plant, landscape planting, playground apparatus, sidewalks, curbs, gutters, and the construction, resurfacing, grading, or drainage of roads, highways, streets or alleys, or improvements thereof by boulevard or whiteway lighting system, ten years;

* * *

Class (I) A single bond issue for a purpose which includes two or more of the foregoing classes, the average number of years of usefulness as measured by the weighted average of the amounts proposed to be expended for said several classes in accordance with above table of maturities; such estimating and calculation of average to be made by the fiscal officer."

I have noted only that portion of Section 2293-9, General Code, which I consider pertinent. This section fixes the limitations beyond which bonds issued for specific improvements may not run, and provides further (Class I) that where a single bond issue includes two or more of the classes enumerated in Section 2293-9, such issue shall be limited to the average number of years of usefulness as measured by the weighted average of the amounts proposed to be expended for each of said classes.

Section 2293-10, General Code, provides in part:

“ * * * The amount expended from the proceeds of the bonds for any purpose or purposes falling within any class shall not exceed the amount allotted in said schedule to said class; provided, however, that whenever the bond issuing authority deems such transfer to be necessary for the carrying out of the purpose of the bond issue, then such authority may transfer any unexpended portion of the amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity and, upon such transfer, the amount expended for any purpose or purposes falling within the class to which such transfer has been authorized may include the amount so transferred; but no transfer may be made from any class to a class with a shorter maturity. Each such certification by the fiscal officer shall state whether or not the asset, property, construction or improvement has an estimated life or usefulness of at least five years.”

The above language is clear and seems to require no interpretation. It limits the amount to be expended for any purpose falling within any of the classes covered by a bond issue to the amount allotted in the schedule to said class, except that, under certain circumstances, transfers may be made from the unexpended portion allotted to any class to a class with a longer maturity. The section further provides that “upon such transfer, the amount expended for any purpose or purposes falling within the class to which such transfer has been authorized may include the amount so transferred”. This language clearly contemplates the transfer from one class to another class included in the schedule; and to hold that it permits the transfer of funds to a class not within the schedule would, in my opinion, be straining the language beyond its clear import, even though the class to which the transfer is proposed to be made may have a longer maturity than the class or classes in the schedule from which the transfer is to be made.

In the portion of your communication not quoted above, you quote a portion of Section 2293-20, General Code, and state that the claim is made that, for the purpose of constructing fireproof school buildings, it may not only include several different school buildings but that it may also include all necessary expenditures, including the acquisition of a site and the purchase of equipment, when used for the same general purposes; and that following this line of reasoning under the provisions of Section 2293-10, the board may transfer, for carrying out the purpose of the bond issue, any unexpended portion of an amount allotted to any class from the class to which it was originally so allotted to any class with a longer maturity.

There is no question but that a single bond issue may include several different school buildings and may include the acquisition of sites, the erection of the buildings and the purchase of equipment therefor. However, your attention is directed to the fact that Section 2293-20, General Code, relates only to the resolution provided for in the preceding section, Section 2293-19, which is a resolution declaring the necessity of the bond issue and fixing the amount, purpose and approximate date, interest rate and maturity, and also the necessity of the levy of a tax outside of the fifteen mill limitation to pay the interest on and to retire said bonds, and which must be passed as one of the steps preliminary to submitting to the electors of a subdivision the question of issuing bonds. Section 2293-20, General Code, provides in part:

“The resolution provided for in the foregoing section shall relate only to one purpose. ‘One purpose’ shall be construed to include, * * * ; in the case of a school district any number of school buildings; and in any case all expenditures, including the acquisition of a site and purchase of equipment, for any one utility, building or other structure, or group of buildings or structures for the same general purpose, or for one or more roads, highways, bridges and viaducts included in the same resolution.”

Instead of supporting the claim that this section read with Section 2293-10 authorizes the transfer from any class included in the schedule to a class not included in the schedule, it seems to me to lead to the opposite result; that is to say, the resolution passed preliminary to submitting the question of issuing bonds to the electors must include all of the classes within the general purpose of the bond issue for which expenditures are to be made.

I realize that in holding that the proposed transfer may not be made will, in the instant case, leave the board of education with ample authority and funds to erect and furnish a school building but without any place to erect it, but, in my opinion, to hold otherwise would open the door to transfers which, in some cases, might utterly defeat the original purpose of the bond issue. For example, it would hardly be claimed that a board of education could submit to the electors of a school district the question of issuing \$50,000.00 of bonds for the purpose of furnishing and equipping school buildings, and, after a favorable vote, transfer half or some other portion of the fund to another class and use it to repair existing school buildings or to build additions thereto. Yet, were an opposite conclusion reached in this opinion such a transfer would not be any more unreasonable than that proposed in the instant case.

You also ask for suggestions as to how the money to acquire a site for the school building may be secured in the event this opinion should hold that the proposed transfer is unauthorized. I am assuming that the board of education has no other funds available which may be used for that purpose.

I do not have before me a financial statement showing the total value of all property in the school district, as listed and assessed for taxation, and showing the net indebtedness of the school district, as evidenced by bond issues. I am therefore unable to determine whether or not the board of education is authorized to issue bonds without a vote of the people under the provisions of Section 2293-15, General Code; that is to say, I am unable to determine whether or not the unvoted bonds heretofore issued by the school district, assuming that such bonds have been issued, together with the amount of bonds which it will be necessary to issue in order to provide funds for the acquisition of a site, will exceed one-tenth of one per cent of the total value of all the property in the district as listed and assessed for taxation. If it is not possible to issue unvoted bonds under the provisions of Section 2293-15, I know of no other way in which funds may be provided except by making provision for the levy of a tax which, of course, would not be available until the year 1930, and which tax would have to be levied within the fifteen mill limitation, unless the same be voted outside the fifteen mill limitation, at the November, 1929, election, as provided in Section 5625-15 et seq., General Code.

In specific answer to your question, you are advised that in my opinion the board of education referred to in your communication has no authority to use any portion of the \$500,000.00 bond issue for the purpose of acquiring a site or sites for the erection of the school buildings in question.

You are further advised that unless the board of education has other funds available for the acquisition of such site or sites, such funds may be provided by the issuance of bonds without a vote of the people, provided such issue will not make the total unvoted bonded indebtedness exceed the one-tenth of one per cent limitation as set out in Section 2293-15, General Code, or by the levy of a tax which must be levied within the fifteen mill limitation, unless the same be voted outside the limitation in accordance with the provisions of Sections 5625-15 et seq., General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.