

2337.

NOTES—ISSUED UNDER SENATE BILL NO. 7 OF 2ND SPECIAL SESSION OF 90th GENERAL ASSEMBLY DISAPPROVED.

SYLLABUS:

Notes issued in pursuance of the provisions of Senate Bill No. 7 of the second special session of the 90th General Assembly disapproved.

COLUMBUS, OHIO, March 2, 1934.

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

GENTLEMEN:—I acknowledge receipt of your communication, which reads as follows:

“This Board is being offered a number of note issues authorized under the provisions of Senate Bill No. 7, as recently enacted by the 90th General Assembly in special session, authorizing the issuance of notes in anticipation of state aid. We are advised that some question has been raised concerning the authority to issue notes under this Act and should therefore appreciate your immediate opinion with respect to this matter before agreeing to purchase any of these note issues.”

Amended Senate Bill No. 412 of the 90th General Assembly authorized boards of education of state-aid districts to borrow money by the issuance of notes in anticipation of and not exceeding the amount which the director of education calculated that each district was entitled to receive under the law from the state educational equalization fund, and which amount had accrued to June 30, 1933. This act was amended by Senate Bill No. 25 of the first special session of the 90th General Assembly, which, among other things, extended the maturity of notes from July 1, 1934, to January 1, 1935. This act was discussed in my Opinion No. 2314 addressed to Harry S. Day, Treasurer of State. The fourth and fifth branches of the syllabus of this opinion read as follows:

“4. The notes issued by a board of education by authority of Amended Senate Bill No. 412 of the 90th General Assembly, and referred to in Senate Bill No. 25, of the first special session of the 90th General Assembly, may be issued for such amounts only, within the limits of the appropriation made in the partial appropriation act of the 90th General Assembly (Amended Senate Bill No. 21) to the ‘Department of Education—Educational Rehabilitation—H-8—Contributions’, that the Director of Education calculated the school district was entitled to receive from the educational equalization fund and which accrued prior to June 20, 1933.

5. The aggregate amount of all such notes, together with any amounts distributed from the 1933 appropriation to school districts pursuant to Sections 7595 et seq. of the General Code, including all amounts for which encumbrance certificates had been issued whether actual payments had been made or not prior to July 7, 1933, the effective date of the 1933 General Appropriation Act (House Bill No. 699) may not exceed the sum of \$1,445,500.00, the amount appropriated in the 1933 partial appropriation act (Amended Senate Bill No. 21) to ‘Department of Education—Educational Rehabilitation—H-8-Contributions.’”

There was no additional appropriation to the state educational equalization fund since the passage of the partial appropriation act, referred to above, until the passage of Senate Bill No. 8 of the second special session of the 90th General Assembly, effective February 20, 1934.

Senate Bill No. 7 of said second special session, which contains language similar to that used in said Senate Bill No. 412, reads in part as follows:

"Section 1. The director of education shall within ten days after this act goes into effect, calculate the amount which each school district is entitled to receive under the law from the state educational equalization fund and which amount has accrued to January 1, 1934, and is owing to such school district for personal service, maintenance and rehabilitation items under the laws, regulations, formulae and schedules provided in the General Code of Ohio for state-aid districts. The director of education shall forthwith, upon determining the amount due to each state-aid school district, certify the same to the board of education of each such district.

Section 2. In anticipation of the receipt of the amount so certified, the board of education of any school district entitled to any part of such appropriation may, prior to April 1, 1934, borrow money not in excess of the amount so certified and issue notes of the school district therefor."

It appears that notes of state-aid districts were issued and sold under said Amended Senate Bill No. 412 in excess of the appropriation of \$1,445,500.00 on the faith of certificates issued by the Director of Education. This situation was taken care of in Senate Bill No. 9 of said second special session, which provides, among other things, that:

"* * * The entire collection of the cigarette tax for and during the year 1934 shall be security for and is hereby appropriated to the redemption of all notes issued under the authority of Amended Senate Bill No. 412 enacted on July 1, 1933, as amended by Senate Bill No. 25 enacted on August 29, 1933. * * *"

The amount which the director of education must certify under said Senate Bill No. 7 is the amount which has accrued to each district prior to January 1, 1934. Section 2 of this act provides for the issuance of notes by "the board of education of any school district entitled to any part of such appropriation." "Such appropriation" can only mean any appropriation existing prior to January 1, 1934, and since the appropriation to the equalization fund as it existed prior to that date was entirely expended or anticipated by the issuance of notes, the director of education could not possibly certify under said Senate Bill No. 7 that any amount has accrued to any state-aid districts prior to January 1, 1934. Section 9 of this act reads as follows:

"There is hereby appropriated out of any monies now or hereafter in the state educational equalization fund such sums as shall be necessary for the payment of the principal and interest of the notes herein authorized."

Sections 1 and 2 of the act provide the limit of the amount that may be

borrowed by the issuance of notes, and section 9 which appropriates such sums as shall be necessary for the payment of the notes "herein authorized" could not be construed to allow the borrowing of more money than is authorized by sections 1 and 2. Section 9 does not provide for the payment of moneys "now or hereafter appropriated to the state educational equalization fund" but simply appropriates the necessary amounts "out of any moneys now or hereafter in the state educational equalization fund." In other words, section 1 fixes the amount as that which shall be calculated as having accrued to each state-aid district from the state educational equalization fund to January 1, 1934, section 2 provides for the borrowing of this money by districts "entitled to any part of *such appropriation*," and section 9 provides the means for the payment of the notes "herein authorized" out of the equalization fund whether the moneys to meet such appropriation are actually paid into the treasury before or after the effective date of the act.

Since it is my opinion that the director of education cannot lawfully certify under the provisions of Senate Bill No. 7 of the second special session of the 90th General Assembly that any school district is entitled to receive any amount from the state educational equalization fund, which has accrued to January 1, 1934, it is my advice that you do not purchase notes issued under said act until it is amended to change the date of accrual to sometime subsequent to the effective date of Senate Bill No. 8 of said second special session which appropriated five million dollars (\$5,000,000.00) to said equalization fund.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2338.

APPROVAL, BONDS OF BROOKFIELD TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$3,000.00.

COLUMBUS, OHIO, March 2, 1934.

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

2339.

DEPOSITORY BANK—BONDS OF HOME OWNERS LOAN CORPORATION ACCEPTABLE FROM BANK DEFAULTING IN DEPOSITORY CONTRACT IN EXCHANGE FOR FIRST MORTGAGES HELD BY MUNICIPALITY WHEN.

SYLLABUS:

1. *By virtue of section 2293-38, General Code, bonds of the Home Owners' Loan Corporation may be accepted from a depository bank in exchange for first mortgages held by a municipality when such bank has defaulted in its depository contract and when the council or other legislative body of the municipality has determined such action to be advisable with a view to conserving the value of such*