

1061.

SCHOOL BUSES—TRANSPORTATION EQUIPMENT—WHEN PURCHASED BY BOARD OF EDUCATION ON INSTALLMENT PLAN—DEFERRED PAYMENTS—NOTES ISSUED—LIMITATIONS—LEVY OF TAXES—INTEREST—NET INDEBTEDNESS—DEBT REPRESENTED—SECTIONS 7732, 2293-15, G. C.—SEE OPINION 1163, SEPTEMBER 9, 1939.

SYLLABUS:

1. *When a board of education purchases school busses or other transportation equipment on the installment plan as authorized by Section 7732, General Code, and issues notes for deferred payments thereon, the amount of such notes that may be issued is limited to the extent that a levy of taxes which must be made contemporaneously with the issuance of notes to meet the interest thereon and maturities thereof when due, may be made within the limitations upon the levy of taxes as fixed in Section 2 of Article XII of the Constitution of Ohio.*

2. *The provisions of Section 2293-15, General Code, with respect to the limitations on the net indebtedness that may be incurred by a school district, are applicable to the debt represented by deferred payments when a board of education resorts to the method of purchasing school busses or other transportation equipment on the installment plan as authorized by Section 7732 of the General Code of Ohio.*

COLUMBUS, OHIO, August 19, 1939.

HON. CHARLES J. SCHWART, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR: This will acknowledge your request for my opinion which reads as follows:

“One of the Boards of Education of a Rural School District in this county, having total taxable property of \$700,000.00 desires to purchase a school bus costing approximately \$2,000.00, under the provisions of Section 7732, General Code. The question on which your opinion is sought is:

‘Do the provisions of Section 2293-15, General Code, apply to the purchase of school busses under Section 7732, General Code?’

Or, in other words:

‘May a board of education of a school district incur an indebtedness in excess of one-tenth of one per cent of the total

value of all property in such school district as listed and assessed for taxation for the purpose of purchasing a school bus under Section 7732, General Code?"

Section 7732, General Code, enacted in House Bill No. 150, of the 93rd General Assembly the effective date of which was July 10, 1939, provides as follows:

"Boards of education, in the purchase of school buses and other equipment used in transporting children to and from school and to other functions as authorized by the boards of education shall be authorized to make such purchases on the following terms, to-wit: not less than one-fourth of the purchase price thereof shall be paid in cash; not less than an additional one-fourth of the purchase price thereof shall be paid within one year from the date of purchase; not less than an additional one-fourth of the purchase price thereof shall be paid within two years from the date of purchase; and the remaining balance if any of the purchase price thereof shall be paid within three years from the date of purchase. Such boards of education shall be authorized to issue the notes of the school districts signed by the president and clerk of the board of education, and specifying the terms of the purchase including deferred payments as provided above, which notes may bear interest at a rate not exceeding four per cent. per annum. In the legislation under which such notes are authorized, the board of education shall make provision for levying and collecting annually by taxation amounts sufficient to pay the interest and the specified portion of the principal; provided, however, that revenues, derived from local taxes or otherwise, for the purpose of providing transportation of children or for defraying the current operating expenses of such district, may be applied to the payment of such interest and the retirement of such notes."

There can be no question, of course, but that the issuance of notes by a board of education for the purpose of purchasing school busses in pursuance of the power to do so as extended by the terms of the above statute creates a debt of the school district and that debt is by express provision of the statute made a general obligation of the district.

It will be noted that the statute provides that when such notes are issued the legislation providing for the issuance of the notes must include provision for the levying and collecting annually of a tax sufficient to pay the interest and meet the maturities of the notes as they become due.

The Constitution of Ohio in Article XII, Section 2, fixes a limita-

tion upon the rate of taxation that may be levied for all purposes without a vote of the people. All legislation for the levying of taxes must, of course, be read and applied in the light of the constitutional limitation on the power to levy taxes as contained in said Section 2, of Article XII, of the Constitution of Ohio. If notes are issued by a board of education in pursuance of the authority extended by Section 7732, General Code, the debt represented by such notes is limited to such an amount that the taxes which must be levied to meet interest and maturity obligations of the notes will not exceed the ten mill tax limitation as contained in the constitutional provision referred to above. *State ex rel. City of Portsmouth v. Kountz, Mayor, 129 O. S., 272.*

While as stated by the court in the above case, the constitutional provision imposing a tax limitation in effect imposes a debt limitation, there exists in addition thereto a specific debt limitation on school districts fixed by statute, which can not be lawfully exceeded unless by action of the Legislature a proposed debt is expressly or by necessary implication excepted from the statutory provision fixing the limitation.

By Section 2293-15, General Code, originally enacted as part of the Uniform Bond Act, school districts are forbidden to incur debts beyond an amount equal to one-tenth of one per cent of the total tax valuation of the property within the district without a vote of the people and never beyond six per cent of that tax valuation even by vote of the people of the district.

In some instances, where authority is extended by law to a subdivision to incur a debt, it is expressly provided that the authority so extended shall not be subject to the debt limitation contained in other statutory provisions of law. An instance of this character will be found in Section 7201, General Code, relating to the purchase by county commissioners and township trustees of road machinery on the installment plan. This statute provides inter alia, that notes issued for deferred payments when road machinery is purchased in pursuance of the statute shall not be subject to the provisions of Sections 2293-1 to 2293-44, General Code, wherein are contained debt limitations applicable to counties and townships. Other such instances might be mentioned. Section 7732, General Code, does not contain such a provision. Nor can the authority extended by Section 7732, General Code, be regarded as an exception to or a modification of the debt limit provisions of Section 2293-15, General Code, for the purposes mentioned in the statute, by the application of so-called rules of construction. A rule of statutory construction that is well settled and of almost universal application is to the effect that specific provisions of law applicable to specific subjects prevail over general provisions relating to a subject matter within which is included the subject of the specific provisions, but that rule applies only when there exists an irreconcilable conflict between the general and specific provisions. If both provisions may exist without conflict one does not neutralize the other.

That is the case here. Notes may be issued under and by authority of Section 7732, General Code, but the debt represented by such notes must be within the limitation of indebtedness for school districts as fixed by Section 2293-15, General Code. The statute itself, Section 7732, General Code, contains nothing, as it well might, to absolve the power extended by it from limitations on that power fixed by other statutes.

Moreover, the intention of the Legislature is the prevailing criterion for determining what is meant by legislation, and that intention must in accordance with all authorities, be gathered from the language used when viewed in the light of the context and other circumstances incident to the enactment of the legislation.

Section 2293-15, General Code, was last enacted in Amended Substitute Senate Bill No. 48 of the 93rd General Assembly passed by the Legislature on May 31, 1939. The Legislature must be held to have known at the time of this enactment that the passage of House Bill No. 150 wherein Section 7732, General Code, was enacted had taken place on April 5, 1939. If there had been any intention on the part of the Legislature to exempt the notes authorized by Section 7732, General Code, from the limitation of Section 2232-15, General Code, such an exemption might well have been included in its provisions which, as was noted above were not enacted for several weeks after House Bill No. 150 was passed.

I am therefore of the opinion that :

1. When a board of education purchases school busses or other transportation equipment on the installment plan as authorized by Section 7732, General Code, and issues notes for deferred payments thereon, the amount of such notes that may be issued is limited to the extent that a levy of taxes which must be made contemporaneously with the issuance of notes to meet the interest thereon and maturities thereof when due may be made within the limitations upon the levy of taxes as fixed in Section 2, of Article XII of the Constitution of Ohio.

2. The provisions of Section 2293-15, General Code, with respect to the limitations on the net indebtedness that may be incurred by a school district, are applicable to the debt represented by deferred payments when a board of education resorts to the method of purchasing school busses or other transportation equipment on the installment plan as authorized by Section 7732, of the General Code of Ohio.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1062.

COUNTY COMMISSIONERS—IN GOOD FAITH WITHOUT FRAUDULENT INTENT — MAY LEASE BUILDING — HOUSE COUNTY OFFICES—PERIOD TEN YEARS—REASONABLE RENTAL — ADVANTAGEOUS TO COUNTY — SECTION 2433 G. C.

SYLLABUS:

A board of county commissioners in good faith and without fraudulent intent may, under the authority of Section 2433, General Code, enter into a lease of a building necessary and convenient for the housing of such county offices as may not be housed in the court house, for a period of ten years at a rental for such term reasonable in amount, if in the use of its discretion such lease is advantageous to the county.

COLUMBUS, OHIO, August 19, 1939.

HON. THOMAS J. O'CONNOR, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR: Your request for my opinion reads:

“About the middle of this month our Board of County Commissioners submitted to me a proposed lease of a building formerly occupied by the Toledo News-Bee and situated at the corner of Huron and Jackson Streets, just one block from the county court house.

I am enclosing a copy of this proposed lease which you will find provides for:

- (a) A term of ten years, beginning with September 1, 1939.
- (b) Annual rental of \$13,500.00 payable in 12 equal monthly installments of \$1125.00 each.
- (c) Option vested in lessee to purchase property during term of lease for \$135,000.00, plus cost of improvements, alterations and repairs.
- (d) Rentals paid to be applied on purchase price, less, however, 5%.
- (e) Lessee to pay all taxes and assessments during term of lease.

On July 22, my assistant, Joel S. Rhinefort, drafted an opinion and in it indicated the uncertainty of the authority of the Board to enter into this lease. After receipt of this opinion from my office, the board of commissioners requested that I ask

you to rule on this matter, and in order to assist you in considering it, I am enclosing a copy of Mr. Rhinefort's opinion."

Section 2433, General Code, with reference to the duties of the taxing authority of a county, reads:

"The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, for cash or by installment payments, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county home, juvenile court building, detention home, public market houses, county children's home and other necessary buildings, and sites therefor; also, such real estate adjoining an existing site as such taxing authority may deem necessary for any of the purposes aforesaid, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress;
* * *"

From an examination of the copy of the indenture of lease submitted, it would appear that the purpose of the lease is to provide quarters for county offices which may not now be accommodated in the county court house. The recitals of such lease read:

"WHEREAS, the Board of County Commissioners of Lucas County, Ohio, has the duty of providing quarters in the City of Toledo for the following agencies: Automobile Bill of Sale Registration Bureau, Bureau of Aid for Dependent Children, Bureau of Aid to the Blind, County Board of Education, County Board of Health, Soldiers and Sailors Relief, County Agriculture Agent, Metropolitan Park Board, Board of Elections and other public agencies; and

WHEREAS, certain of said agencies are presently occupying space in the Court House needed for other departments; and

WHEREAS, certain other agencies are occupying leased quarters at divers places in the City of Toledo outside of the Court House; and

WHEREAS, the Board of County Commissioners of Lucas County, Ohio, is desirous of providing more permanent quarters for the agencies now located outside of the Court House and of providing additional quarters to house agencies now located in the Court House; and

WHEREAS, the said Board of County Commissioners of Lucas County, Ohio, desires to place all of said departments in

one building as nearly contiguous to the Court House as possible for the convenience of the public and the more efficient administration of said departments.”

The board of county commissioners is the taxing authority of the county (subparagraph (c) of Section 5625-2, General Code).

Under the statute above quoted, it is apparent that the board of county commissioners not only has the power to purchase but to “lease” or to “lease with option to purchase” county offices “and other necessary buildings, and sites therefor.” I have no opinion as to whether the rental reserved under the lease is or is not a reasonable annual rental for the property proposed to be leased. You submit no information from which such opinion could be formulated. Such fact is one to be determined by the board of county commissioners by use of its discretion.

Since the statute grants to boards of county commissioners express authority to lease property for an intended purpose, I consider only the question as to whether a board of county commissioners has the power to lease property for proper county purposes for a period of ten years, or for a longer period than the present term of office of its members.

You will note that the section above quoted does not place any express limitation upon the term for which the property may be leased for such purpose. In the decisions we find many statements purporting to look with disfavor upon the power of a board to make contracts binding upon its successors in office. On the other hand, we find many decisions which expressly held that certain contracts so entered into were valid.

In *Heirs of Reynolds vs. Commissioners of Stark County*, 5 Ohio, 204, the court decreed specific performance by a board of county commissioners of a contract entered into by a prior board of county commissioners to lease certain county property, even though the lease had not been executed prior to the end of the term of the commissioners who entered into the contract for the lease.

In the case of *Bennett vs. Petroleum County*, 87 Mont., 436, the Supreme Court of Montana had before it a question as to the validity of a lease of county property, not needed for county purposes, by the board of county commissioners when the term thereof extended beyond the term of the board. In holding the lease valid the court said:

“The statute specifically confers the power to so contract upon the board of county commissioners, the body existing at the time, and the mere fact that the term of office of a member of the body which so contracts may expire before the contract does not in any manner affect its validity. Were the rule of law otherwise, the business of counties would be very greatly hampered, and at times suspended, with resulting damage. The board of county commissioners functions for the municipal corpora-

tion in its authorized powers as a continuous body, and, while the personnel of its membership changes, the corporation continues unchanged. The county has power to contract, and its contracts are the contracts of its board of county commissioners, not of the individual members thereof."

The holding of the court in this cause finds support not only in the cases cited in such opinion but in the following additional authorities :

Mantey vs. Scott, 108 Minn., 142;
 Biddeford vs. Yates, 104 Me., 506;
 Picket Publishing Co. vs. Carbon County, 36 Mont., 188.

From my analysis of the cases examined, it would seem to be a fair statement of the rules to be deduced therefrom that the board of county commissioners may not contract in reference to matters which are purely personal to a successor board if the contract is to be performed after the expiration of the term of office of its members. One line of cases lays down the rule that if the board of county commissioners has the authority to enter into a particular type of contract, the mere fact that the contract was entered into a short time before the expiration of the term of office of its members and extends far into the term of office of their successors, does not make such contract void as contrary to public policy; and, in the absence of fraud, such contract is binding upon the successor boards. Another line of cases takes the view that a contract is entered into by the county commissioners in the exercise of a governmental function and if it is to be performed chiefly in the term of a successor board it will be presumed to be against public policy and will not be upheld unless it be shown that such action by the board was necessary by reason of public interest and was entered into in good faith for the public interest. See 14 Am. Jur., 210, sec. 41. It would seem, from the authorities above referred to, that if the board of county commissioners enters into a contract of lease which may not be performed within the term of office of its members in good faith for the purpose of promoting the public welfare, such indenture of lease is not necessarily void. We find in Section 2433, General Code, the authority to enter into a lease, either with or without an option to purchase the leased premises.

Section 2419, General Code, provides that :

*"A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. * * *"*
 (Italics the writer's.)

In business practice it is generally recognized that a business block may be rented at more advantageous terms when the term is for a long