

Upon the statement of facts submitted in your letter, there being no funds available, it would appear that there should be submitted to the electors the question of issuing bonds for the purpose contemplated, in an amount which will cause the net indebtedness to be within the limitations set forth in Section 2293-17, supra. The entire procedure for submitting such question is outlined in the Uniform Bond Act.

In specific answer to your inquiry, I am of the opinion that township trustees have authority by virtue of Section 3295, General Code, to purchase a township hall already constructed. If funds are not available for such purpose, the question of issuing bonds therefor should be submitted to the electors in accordance with the provisions of the Uniform Bond Act.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

910.

SCHOOL DISTRICT—MONIES FROM PREVIOUS SPECIAL TAX LEVIES  
COMMINGLED WITH GENERAL FUND—SURPLUS IN SUCH GEN-  
ERAL FUND APPLICABLE FOR BUILDING AUDITORIUM.

SYLLABUS:

*A surplus accumulated over a series of years in the general fund of a school district, may lawfully be expended for the building of a school auditorium, even though such accumulated surplus may consist in part of the proceeds of special tax levies which inadvertently have been placed in the general fund and thus become impossible of identification.*

COLUMBUS, OHIO, September 24, 1929.

HON. ROY E. LAYTON, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion which reads as follows:

“I will thank you for your opinion on the following question:

The Goshen Township School District of Auglaize County, Ohio, has a centralized school located at the former village of New Hampshire, the territory of which village is also now included in said Goshen Township School District.

This centralized school also contains a high school of the first grade. Owing to a lack of room, in particular for athletics, state authorities are inclined to reduce the grade of this high school.

Some ten years ago the board of education passed a resolution providing for the levy of a tax in excess of the 15 mill limitation, which was voted upon favorably by the electors, and said tax was levied and collected. Some five years ago another resolution to the same effect was passed providing for another tax levy of three mills in excess of the 15 mill limitation for a period of five years, and this excess tax was also levied and collected. There is now a surplus of about \$10,000 in the general fund of this school district, and we may assume that some part of this surplus was the result of this excess tax levy, although various improvements were made in the school, which might

have exhausted the greater part of the proceeds derived from this excess tax levy.

The records which should contain copies of the original resolutions providing for these excess tax levies cannot be found, but the minutes of the county board of elections, to whom these resolutions were certified, state that the first excess tax levy, voted upon some 10 years ago was 'for school purposes', and that the second excess tax levy voted upon some five years ago, was 'for the purpose of meeting current expenses.'

The board of education of this district this spring decided to use this surplus in the general fund for the purpose of building a school auditorium to be used for a meeting place for the pupils, for recreational purposes and in particular for athletics. The board passed a resolution to that effect and is now advertising for bids.

The question is, can they use this surplus in the general fund for this purpose, in view of the fact that they have been collecting an excess tax levy of three mills during the past ten years? In this connection it seems to me the first paragraph of Sec. 5625-5 of the General Code, which sets out what amounts may be included in the general levy 'for current expenses', etc., has an important bearing upon the rights of the board in this matter."

Section 5625-5, General Code, to which you refer, provides in part as follows:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements \* \* \* . The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. \* \* \* Provided that nothing herein shall require the inclusion within the general levy of amounts for any purpose for which a special levy is authorized to be made under the provisions of this act."

Section 5625-4, General Code, enacted simultaneously with Section 5625-5, provides that the taxing authority of each subdivision shall divide the taxes levied into certain separate and distinct levies, including the general levy for current expense, within the fifteen mill limitation, and special levies within the fifteen mill limitation, and special levies within the fifteen mill limitation as authorized by law, or by vote of the people outside the fifteen mill limitation. At the same time, there was enacted Section 5625-9, General Code, which provides that each subdivision shall establish certain funds including a general fund and a special fund for each special tax levy.

It will be observed that Section 5625-5, General Code, has to do with the *general* levy for current expenses, whereas the levies about which you inquire were special levies. There is no doubt but that levies for the acquisition or construction of permanent improvements, such as buildings, may now be included in the general levy for current expenses. It was held in a recent opinion of this office, No. 764, rendered under date of August 19, 1929, that "A surplus appearing in the general fund of a school district may be legally used for purchasing needed equipment for a school building." In the course of the opinion, after referring to the several sections of the Code relating to the levying of taxes, it is observed:

"A consideration of these sections clearly discloses that, first, the general levy for current expenses shall be paid into the general fund, and, second, that one of the purposes of the general levy for current expenses is the acquisition or construction of permanent improvements."

It should be noted that in the foregoing opinion the general levy for current expenses authorized to be levied by force of Sections 5625-3, 5625-4 and 5625-5, General Code, was being dealt with and no consideration was given to any special levy spoken of in Sections 5625-6 and 5625-15, General Code.

Moreover, Section 5625-5, General Code, under consideration in the above mentioned opinion, and the other sections of the Code, hereinbefore referred to, are a part of the present existing Budget Law and did not become effective until August 10, 1927. The tax levies mentioned in your inquiry were made before that time and by authority of laws then in force. The said Section 5625-5, General Code, and present existing cognate sections of the Code embraced within the so-called Budget Law are therefore not helpful in the determination of your question.

Although you do not state the exact dates of the two voted tax levies referred to, it is apparent that the former, which was voted upon "some ten years ago" "for school purposes" was levied prior to 1925 and the action with reference thereto was therefore taken under the provisions of Section 5649-5, General Code, as enacted in 1911 (102 O. L. 272). That section of the Code authorized the submission to the voters of a proposition to levy taxes outside of certain limitations fixed by law, and by its terms did not require that any specific purpose be stated as to what the levy was for, other than for school purposes, or municipal purposes, or county purposes, etc., as the case might be. In 1925 said Section 5649-5, General Code, was amended, and as amended, required, if the proposition to levy taxes outside of general limitations be submitted to the voters, that the specific purpose for which the levy is sought be stated. One of the enumerated purposes for which such a levy might have been made under the law as amended in 1925 was "for the purpose of meeting the current expenses of the subdivision."

Inasmuch as the second levy spoken of by you was for "current expenses", it is probable that it was submitted since the amendment of Section 5649-5, General Code, which was made in 1925 (111 O. L. 345). It is possible that some part of this levy has been collected since the effective date of the present existing Budget Law, to-wit August 10, 1927.

During all the time that either of the levies spoken of was being collected, there was in force Section 7603, General Code, and said section is still in force. It reads in part as follows:

"The certificate of apportionment furnished by the county auditor to the treasurer and clerk of each school district must exhibit the amount of money received by each district from the state, the amount received from any special tax levy made for a particular purpose, and the amount received from local taxation of a general nature. \* \* \* Funds received from special levies must be designated in accordance with the purpose for which the special levy was made and be paid out only for such purposes, except that, when a balance remains in such fund after all expenses incident to the purpose for which it was raised have been paid, such balance will become a part of the contingent fund, and the board of education shall make such transfer by resolution. Funds received from the local levy for school purposes must be designated so as to correspond to the particular purpose for which the levy was made.  
\* \* \* "

In addition to the provisions of Section 7603, General Code, quoted above, the proceeds of either of the tax levies spoken of which have been collected since August 10, 1927, must be dealt with in accordance with the provisions of Section 5625-9, General Code, which provides that a special fund shall be established for each special levy.

From the foregoing, it will readily be seen that the proceeds of the tax levies about which you inquire should have been placed in special funds and not in the general fund. So far as any proceeds of the first levy spoken of, that is the one "for school purposes", is concerned, there is no doubt, provided any revenues collected in pursuance of that levy are still in existence, but that they might be used for the erection of an auditorium. As to any revenues collected under the second levy "for current expenses" those revenues in my opinion could not be used for the erection of any building. Their use should be confined to what is generally understood to be current running expenses. However, it appears from your statement that all these revenues have been placed in the general fund and thus become so commingled with the general revenues of the district that they could hardly be identified.

While it is very possible that the surplus which has accumulated would not have been accumulated had it not been for the special levies spoken of, yet we cannot say that any of the specific moneys now composing the accumulated surplus came directly from the special levies mentioned. It may as reasonably be said that the money expended was the money derived from the special levies, and the surplus now on hand was derived from the general levies, as to say that money derived from the general levies was expended and that from the special levy allowed to accumulate.

I am of the opinion, under the circumstances, that the accumulated surplus now in the general fund of the Goshen Township School District may lawfully be used for the construction of a school auditorium.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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911.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE WEGE MARBLE AND TILE COMPANY, COLUMBUS, OHIO, FOR MARBLE; TILE AND TERRAZZO FOR PHARMACY AND BACTERIOLOGY BUILDING, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$10,455.00—SURETY BOND EXECUTED BY THE INDEMNITY INSURANCE COMPANY OF NORTH AMERICA.

COLUMBUS, OHIO, September 24, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval, a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of the Ohio State University, and The Wege Marble and Tile Company of Columbus Ohio. This contract covers the construction and completion of marble, tile and terrazzo contract for Pharmacy and Bacteriology building," Ohio State University, Columbus, Ohio, and calls for an expenditure of ten thousand four hundred and fifty-five dollars (\$10,455.00).

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