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UNDER SECTION 5655, G. C., BOARD OF EDUCATION OF ANY SCHOOL DISTRICT MAY BORROW MONEY AND ISSUE CERTIFICATES OF INDEBTEDNESS IN ANTICIPATION OF COLLECTION OF CURRENT REVENUES.

SYLLABUS:

Under the provisions of Section 5655, General Code, as amended in 111 Ohio Laws, page 371, which became effective July 21, 1925, the board of education of any school district in anticipation of the collection of current revenues in any fiscal year, may borrow money and issue certificates of indebtedness therefor under the provisions, within the limitations, and upon the conditions contained in said section.

COLUMBUS, OHIO, January 17, 1927.

HON. W. S. PAXSON, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you state that:

“A question has been propounded to me by the clerk of the board of education of Green township. * * * By reason of the reappraisal in this county, the tax duplicate for 1926 has not yet been placed in the treasurer's hands for collection, and from present indications, the collection of taxes cannot be begun until March. The funds for running their schools in this township are nearly exhausted. He wants to know if they have authority to borrow money to run on until they receive their taxes. It seems to me that Section 5655, G. C., covers the situation, but I am not quite sure.”

Section 5655 has been frequently amended in recent years. As it stood in 1923, this department rendered an opinion (*Opinions of Attorney General, 1923, page 762*), as follows:

“Under the provisions of Section 5655, General Code, as amended by the 85th General Assembly in House Bill 599, a board of education, after January 1, 1924, can no longer borrow money under the provisions of this section.”

Said section at that time, however, in its concluding clause, read as follows:

“Provided that after January 1, 1924, no board of education shall borrow money in anticipation of the funds to be received at, or in advance of, the August settlement with the county auditor.”

It was further stated in said opinion that:

“It is believed, under this provision, borrowing of funds by a board of education in anticipation of the so-called February settlement would be borrowing in anticipation of funds to be received in advance of the August settlement with the county auditor.”

It was also held in the case of *State on Relation of Perkins, vs. Ross and others*, 109 Ohio St., at page 461 (decided March 7, 1924), in the fourth paragraph of the syllabus that:

"By virtue of the limitations of Section 5655, General Code, (110 O. L., p. 324), no school district has power or authority to borrow money to maintain schools in operation after January 1, 1924."

The Court, also, in said case held that:

"Section 5655, therefore, very clearly gave a county board of education the power to borrow money, and as clearly took that power away by the proviso that it should not borrow money after January 1, 1924."

However, the legislature of Ohio in April, 1925, again amended Section 5655, evidently with the intention of removing the prohibition contained in said section. Said Section 5655 now reads as follows:

"In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest. The proceeds of any such certificates shall be used only for the purposes for which the anticipated revenues or taxes were raised, collected or appropriated. No political subdivision or taxing district shall borrow money or issue certificates in anticipation of the February tax settlement before January 1 of the year of such tax settlement."

It will be noted that the clause which contained the provision prohibiting school boards from borrowing money in anticipation of the collection of the current revenues in any fiscal year after January 1, 1924, has been repealed, and that the clause enacted in its stead contains the provision that money may not be borrowed or certificates issued in anticipation of the February tax settlement before January 1 of the year of such tax settlement.

You are, therefore, advised that under the provisions of Section 5655, General Code, as amended in 111 Ohio Laws, page 371, which became effective July 21, 1925, the board of education of any school district in anticipation of the collection of current revenues in any fiscal year, may borrow money and issue certificates of indebtedness therefore under the provisions, within the limitations, and upon the conditions contained in said section.

Respectfully,
EDWARD C. TURNER,
Attorney General.