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BOND ISSUE—INFIRMARY FARM—LIMITATION ON BONDS WITHOUT VOTE OF PEOPLE DISCUSSED—COUNTY COMMISSIONERS MAY PURCHASE FARM WHEN FUNDS OTHERWISE AVAILABLE.

*SYLLABUS:*

1. *County commissioners may not, without a vote of the people, lawfully issue bonds in excess of \$20,000.00 in any period of five years for the purpose of purchasing an infirmary farm.*

2. *Where, however, funds are available and no bonds are required to be issued, there is no limitation as to the amount that may be expended for such purposes, so long as no fraud exists or such action does not constitute a gross abuse of discretion.*

COLUMBUS, OHIO, December 6, 1928.

HON. C. O. TURNER, *Prosecuting Attorney, Coshocton, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads as follows:

“The commissioners have been contemplating buying a new infirmary farm, the cost price of which will amount to something like \$75,000.00, but we do not think that they can exceed a payment of over \$20,000.00 for a farm. Please let us hear from you as to whether or not the county commissioners here can purchase this farm if they so desire and pay the purchase price of \$75,000.00 for same.

Now, Mr. Turner, the buildings on our infirmary farm here have been condemned and no doubt there will either have to be new buildings put up or buy a new farm, and we think it would be better and cheaper to buy a farm with the buildings on than to repair the one we have.”

In considering your question it is essential to examine the provisions of Section 2433, General Code, as amended by the 87th General Assembly (112 v. 364), as a part of the so-called uniform bond act. Said section reads:

“The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county infirmary, 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.”

It will be noted that this section in its original form, among other things, authorized the county commissioners to purchase additional land for an infirmary and the following sections prescribed the method of levying taxes for such purposes. It will also be noted that Section 5638, General Code, limited the county commissioners in appropriating money, issuing bonds or levying taxes for the purpose of building county buildings or for land for infirmary purposes in excess of \$15,000.00, except in cases of casualties, without submitting the question to a vote of the people. The following sections prescribed the method of procedure when such vote was submitted to the people. However, the sections last mentioned were repealed in the said The Uniform Bond Act and Section 2433, General Code, as hereinbefore quoted now furnishes the authority for such commissioners to purchase necessary sites and

buildings for infirmary purposes. It follows, of course, that in the exercise of such power the county commissioners are limited by the other provisions of the so-called The Uniform Bond Act in so far as such power is therein restricted.

It is believed that in the event the funds are available there is no limitation as to the amount that may be expended for such purposes by the county commissioners so long as the power does not constitute an abuse of discretion. However, in the event that funds are not available for the purpose the provisions of the uniform bond act must be examined in order to determine the method and amount of funds that may be lawfully provided for such an enterprise.

Section 2293-2, General Code, among other things, provides:

“The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct. \* \* \*”

Section 2293-9, General Code, provides for the maturities of bonds within the limitations as to the nature of the improvement as therein defined.

Section 2293-13, General Code, provides the method of determining the net indebtedness of any subdivision.

Section 2293-16, General Code, which relates to the limitations of the net indebtedness that may be created by a county, in part provides:

“The net indebtedness created or incurred by any county without vote of the electors shall never exceed a sum equal to one per cent of the first one hundred million dollars or part thereof of the tax list of the county plus one-half of one per cent of such tax list in excess of one hundred million dollars. \* \* \*

Provided that, except by vote of the electors, bonds shall not be issued by any county in an amount exceeding twenty thousand dollars in any period of five years, for the acquisition, construction, improvement, enlargement or extension of any one county building, including the acquisition of a site therefor, but this limitation shall not apply to buildings for a district consisting of two or more counties.

The total net indebtedness created or incurred by any county shall never exceed a sum equal to three per cent of the first one hundred million dollars. In ascertaining the limitations of this section, the bonds specified in Section 2293-13 and the following bonds shall not be considered: \* \* \*”

From the section last quoted it appears that the commissioners may not issue bonds without a vote of the people exceeding \$20,000.00 in any period of five years for the acquisition or improvement of any one county building, including the site therefor. It would seem that this section is applicable to the purchase of a farm for infirmary purposes.

Based upon the foregoing and in specific answer to your inquiry, you are advised that county commissioners may not lawfully issue bonds in excess of \$20,000.00 in any period of five years for the purpose of purchasing an infirmary farm, without a vote of the people. Where, however, funds are available and no bonds are required to be issued, there is no limitation as to the amount that may be expended for such purposes, so long as no fraud exists or such action does not constitute a gross abuse of discretion.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*