

5226.

BOND ISSUE—SUBMISSION TO ELECTORATE UNDER AMENDED SENATE BILL NO. 15 (91ST G. A., AS AMENDED BY S. B. NO. 336).

SYLLABUS:

Under Amended Senate Bill No. 15 of the 91st General Assembly, as amended by Senate Bill No. 336 of said General Assembly, it was necessary to submit the question of issuing bonds to the electors of the municipality taking advantage of said act prior to December 31, 1935.

COLUMBUS, OHIO, March 11, 1936.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: I acknowledge receipt of your communication in which you enclose letter from the law director of Youngstown which reads as follows:

“Amended Senate Bill 15 was passed January 31, 1935. It was amended by Senate Bill 336 passed May 23, 1935. Section 7 as amended now provides: ‘When the question of issuing such bonds is submitted to the electors of any subdivision at any time prior to December 31, 1935, such bond issues shall require the affirmative vote of the majority of those voting upon the proposition.’ Section 12 as amended provides: ‘All provisions of the General Code insofar as they conflict with the provisions of this act are hereby suspended for the period ending December 31, 1936.’

We would like to have you submit to the Attorney General for his opinion the following question:

Has Amended Senate Bill 15 expired or may a municipal corporation during 1936, submit to the electors the question of issuing bonds to fund an existing deficit for the fiscal year 1935, the only difference being that now General Code Section 2293-23 which requires the approval of 65% of those voting is applicable instead of Section 7 of said bill which required only a majority?”

Amended Senate Bill No. 15 of the 91st General Assembly is entitled “An act to authorize the taxing authorities of municipal corpora-

tions to fund deficiencies in operating revenues for the year 1935, and to authorize a special election on the question of issuing bonds and the levy of taxes for such purposes, and to declare an emergency.”

“Deficiency” is defined in Section 1 as follows:

“‘Deficiency’ means the excess of the estimated aggregate ‘fixed charges’ and ‘current expenses’ as such terms are hereinafter defined, of such subdivisions for the fiscal year 1935 over and above the revenues from taxes and other sources received and the balance of revenues estimated to come into the treasury of such subdivision for the remainder of said fiscal year and applicable to such ‘fixed charges’ and ‘current expenses’ during the fiscal year 1935.”

Where a deficiency existed for the year 1935 it was because of the fact that the amount appropriated for said year which must be based upon the official certificate of estimated resources of the budget commission was less than the requirement for fixed charges and current expenses for said year.

Sections 7 and 12 of the act, before their amendment by Senate Bill 336, read as follows:

“Section 7. When the question of issuing any such bonds is submitted to the electors of any subdivision at any time prior to April 1st, 1935, such bond issues shall require the affirmative vote of a majority of those voting upon the proposition.”

“Section 12. All provisions of the General Code insofar as they conflict with the provisions of this act are hereby suspended for the period ending December 31, 1935; otherwise they shall in no manner be impaired by the passage of this act.”

Section 9 reads as follows:

“The anticipated proceeds to be derived from bonds lawfully authorized by an effective ordinance under the provisions of this act shall, prior to their issuance and sale, be deemed and treated as other revenues available or to become available to such subdivision for the purpose specified herein, for the fiscal year 1935; and upon certification thereof by the fiscal officer of the subdivision to the county budget commission, said budget commission shall certify an amended official certificate of estimated resources for such subdivision under the provisions of section 5625-27 of the General Code of Ohio. Thereupon the taxing

authority of the subdivision shall amend/or supplement its annual appropriation ordinance in accordance with the provisions of sections 5625-32 and 5625-33 of the General Code of Ohio. The proceeds of such bonds shall be credited to the proper funds of the subdivision in the several accounts in which deficiencies exist in accordance with the respective amounts of such deficiencies and shall then be deemed appropriated and made available for expenditure for the purpose with respect to which said deficiencies exist and shall not be used for any other purpose. Provided, however, that in any municipality availing itself of the provisions of this act and having interest and/or principal of previously issued general bonds of said municipality falling due within the year 1935, unless such interest and principal shall, by said municipality, be paid as and when falling due in the year 1935, a respective amount of the proceeds arising under this act equal to such defaults (in the payments of such interest and/or principal) as and when occurring shall be retained and not expended after such respective defaults, but nothing herein shall affect or be construed to limit the powers under sections 2293-5 and 2293-5p of the General Code of Ohio."

There is no date expressly prescribed for the expiration of this act except as may be inferred from Section 12, which, as amended, would be December 31, 1936. However, it was apparently intended by Section 9, which has not been amended, that the bonds should be authorized during the year 1935. Under this section, as soon as the bonds were authorized, their anticipated proceeds were to be treated as other revenues available and to become available for the purpose specified *for the fiscal year 1935*, and the budget commission was authorized to certify an amended official certificate of estimated resources and the taxing authority had the right to amend or supplement its annual appropriation ordinance. These provisions of Section 9 could only refer to the certificate of estimated resources and the appropriation ordinance for the year 1935, since under the original act it is clear that bonds could not be authorized after 1935 and since this section has not been amended, its meaning would not be changed. Of course, Section 12 now provides that all provisions of the General Code in so far as they conflict with the provisions of this act are suspended for the period ending December 31, 1936, but while the bonds must be authorized prior to 1936, the time set forth in section 12 was apparently extended in view of the fact that the date set forth in section 7 was extended to December 31, 1935, and it would be very possible to have bonds authorized in 1935 which could not be issued or sold until some time during the year 1936.

Moreover, the emergency clause contained in Senate Bill 336 reads as follows:

“This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the fact that under the existing provisions of Amended Senate Bill No. No. 15, passed January 31, 1935, questions of issuing bonds under said act must be submitted prior to April 1, 1935. Therefore in order that opportunity to vote on said bond issues may be given at the present time, under the extension granted in this act, this act shall go into immediate effect.”

This shows that it was the intention of the legislature that under Section 7, as originally passed, the question of issuing bonds under said act must be submitted prior to April 1, 1935. Since said Section 7 now reads the same as originally except that the date is changed to December 31, 1935, said Section 7 as amended would have the same meaning.

I am therefore of the opinion that under Amended Senate Bill No. 15 of the 91st General Assembly, as amended by Senate Bill No. 336 of said General Assembly, it was necessary to submit the question of issuing bonds to the electors of the municipality taking advantage of said act prior to December 31, 1935.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5227.

SCHOOL—TRANSFERS OF SCHOOL TERRITORY FROM ONE SCHOOL DISTRICT TO ANOTHER DISCUSSED.

SYLLABUS:

1. *Transfers of school territory from one school district of a county school district to another district of the same county school district may be made by the county board of education of a county school district upon its own initiative, providing such transfer conforms to a legally adopted and approved “plan of organization” for such county school district in pursuance of Sections 7600 to 7600-8, of the General Code of Ohio, unless centralized school territory is involved in the proposed transfer in which event no such transfer can be made unless jurisdiction is first conferred upon such board by the filing of a proper petition therefor as provided by Section 4727, General Code, and the duty to make such transfer is never*