

1256.

BONDS FOR PERMANENT IMPROVEMENT PART OF WHICH ARE STILL UNPAID—IF SOLD, PROCEEDS SHOULD BE PLACED IN SINKING FUND TO BE APPLIED ON PAYMENT OF SUCH BONDS—SURPLUS, IF ANY, MAY BE PLACED IN SPECIAL FUND.

**SYLLABUS:**

*Where a permanent improvement, as defined in Section 2293-1, General Code, for the acquisition of which bonds have been issued, the whole or part of which issue is still outstanding, unpaid and unprovided for, is sold, the proceeds of such sale should be placed in the sinking fund, to be applied to the payment of the principal of such bonds as provided in Section 3704, General Code. If there be any surplus remaining after the required amount has been so deposited, such surplus may be placed in a special fund for the acquisition of a "permanent improvement," or otherwise disposed of, as provided in Section 5625-10, General Code.*

COLUMBUS, OHIO, November 14, 1927.

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

GENTLEMEN:—Acknowledgment is made of your recent communication as follows:

"Paragraph 'e' of Section 2293-1, G. C., 112 O. L. 365, defines permanent improvement or improvements as any property, asset or improvement with an estimated life of usefulness of five years or more.

The pertinent part of Section 5625-10, G. C., reads:

'If a permanent improvement of the subdivision is sold the amount received for the same shall be paid into the sinking fund or the bond retirement fund of the subdivision, or into a special fund for the construction or acquisition of a permanent improvement or improvements.'

Section 3704, G. C., reads:

'Money arising from the sale or lease of real estate or a public building or from the sale of personal property, belonging to the corporation, shall be deposited in the treasury in the particular fund by which such property was acquired, or is maintained, and if there be no such fund it shall be deposited in the general fund. If the property was acquired by an issue of bonds the whole or a part of which issue is still outstanding, unpaid and unprovided for, such money after deducting therefrom the cost of maintenance and administration of the property, shall on warrant of the city auditor be transferred to the trustees of the sinking fund to be applied in the payment of the principal of the bond issue.'

QUESTION: May the proceeds of the sale of a public improvement which was acquired by an issue of bonds, which bonds are still outstanding and unpaid, be placed in a special fund for the acquisition of a permanent improvement?"

Section 5625-10, General Code, from which you quote in your communication, is a new section and was enacted by the 87th General Assembly as a part of House

Bill No. 80 passed April 13, 1927, effective August 10, 1927. Section 3704, General Code, which you quote is found in the chapter devoted to the "Sale or Lease of Property" and is an old section, being originally Section 1536-119, Bates Revised Statutes, and was enacted in its present form in 1904 (97 O. L. 516).

Section 5625-10, General Code, *supra*, apparently makes optional the payment of the proceeds of the sale of a permanent improvement into the sinking fund or the bond retirement fund of the subdivision or into a special fund for the construction or acquisition of a permanent improvement or improvements. In so providing, Section 5625-10, General Code, is in conflict with Section 3704, General Code, *supra*, which makes mandatory the payment of such proceeds where the property was acquired by an issue of bonds, the whole or part of which is still outstanding, into the hands of the trustees of the sinking fund, to be applied in the payment of the principal of the bond issue.

It is a fundamental rule of statutory construction that where there is an act or provision which is general and applicable, actually or potentially, to a multitude of subjects and there is also another act or provision which is particular and applicable to one of these subjects and inconsistent with the general act, they are not necessarily so inconsistent that both cannot stand though contained in the same act, or though the general law were an independent enactment. The general act would operate according to its terms on all the subjects embraced therein, except the particular one, which is the subject of the special act. That would be deemed an exception unless the terms of the later general law manifested an intention to exclude the exception. In adjusting the general provisions in a general act to the particular provisions of a special act, considerations of reason and justice and the universal analogy of such provisions in similar acts are proper to be borne in mind and ought to have much weight and force. (Lewis' Sutherland on Statutory Construction, Volume II, Section 346.)

Applying the above rule to the two sections quoted in your letter it seems clear that Section 5625-10, *supra*, although a later enactment in point of time, is general, and that Section 3704, *supra*, is special and limits the provisions of Section 5625-10 as to the disposition of the proceeds of sale of a permanent improvement where the same was acquired by an issue of bonds. While there is an apparent inconsistency between the two sections they can be read together and harmonized.

In an opinion of this department appearing in Opinions of the Attorney General for 1917, page 1075, involving the question of the disposition of rents received by the board of park commissioners of a city on properties acquired by bond issues, part of which bonds were still outstanding and unpaid, it was said after quoting Section 3704, General Code.

"The foregoing section provides in part that if real property of a municipality is acquired by an issue of bonds, the whole or a part of which issue is still outstanding, unpaid and unprovided for, any moneys received from the lease of such real estate, after deducting therefrom the cost of maintenance and administration of the property, shall be transferred to the trustees of the sinking fund to be applied in the payment of the principal of the bond issue.

It seems clear, therefore, that the object and purpose of the legislature in making such a provision was to require that after the current running expenses of maintaining and administering said property had been paid any surplus should be transferred to the sinking fund and utilized in the retirement of the bonds from the issue of which the funds were derived to purchase said property. When the purpose of such provision is considered in

connection with the phraseology of said section the conclusion seems evident that such provision is mandatory in character."

Section 3704, General Code, was again under consideration in an opinion of this department found in 1923 Opinions of the Attorney General, page 145, the syllabus of which reads :

"Under the provisions of Section 3704, G. C., if the sale of property acquired by an issue of bonds produces a sum of money in excess of such bonds outstanding, unpaid or unprovided for, such excess above that necessary to meet the needs of the sinking fund may be deposited in the general fund of such corporation."

In the course of the opinion it is said :

"The first part of the section provides that the money arising from such sale shall be deposited first in the particular fund by which such property was acquired or is maintained, and if there be no such fund, it shall be deposited in the general fund. Your question seems to eliminate the possibility of depositing the money arising from such sale in the 'fund by which such property was acquired, or is maintained.' Therefore it would seem the excess over the requirements of the sinking fund should go to the general fund."

The opinion last above referred to holds that any surplus arising from the sale of public property over and above the amount required to be placed in the sinking fund for the retirement of outstanding bonds, issued for the purpose of acquiring the property, should be placed in the general fund. However, Section 5625-10, General Code, *supra*, permits the payment of the amount received from the sale of a permanent improvement into the sinking fund or the bond retirement fund of the subdivision or into a special fund for the construction or acquisition of a permanent improvement or improvements.

It seems to me, therefore, that Section 5625-10, General Code, and Section 3704, General Code, are inconsistent in their provisions relative to the disposition of the proceeds of the sale of a permanent improvement as to any excess of such proceeds over and above the amount required by Section 3704 to be paid into the sinking fund to be applied to the payment of the principal of the bond issue. To the extent of any such inconsistency the provisions of Section 5625-10, General Code, being later in point of time, are controlling, and it is my opinion that when the property sold is a "permanent improvement," defined by Section 2293-1, General Code (112 O. L. 365), as any property, asset or improvement, with an estimated life of usefulness of five years or more, any surplus over and above the amount required to be placed in the hands of the trustees of the sinking fund need not be placed in the general fund but may be placed in a special fund for the acquisition of a permanent improvement or otherwise disposed of, as provided in Section 5625-10, General Code. Where the property sold is not a "permanent improvement," any such surplus must be deposited in the general fund, as provided in Section 3704, General Code.

For the foregoing reasons it is my opinion that where a permanent improvement, as defined in Section 2293-1, General Code, for the acquisition of which bonds have been issued, the whole or part of which issue is still outstanding, unpaid and unprovided for, is sold, the proceeds of such sale should be placed in the sinking fund, to be applied to the payment of the principal of such bonds as provided in Section 3704, General Code. If there be any surplus remaining after the required amount

has been so deposited, such surplus may be placed in a special fund for the acquisition of a "permanent improvement," or otherwise disposed of, as provided in Section 5625-10, General Code.

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

1257.

CERTIFICATES—HIGH SCHOOL TEACHERS' CERTIFICATES—SHOULD BE SPECIFIC FOR TEACHING ONLY BRANCHES NAMED THEREIN—  
"ORIGINAL" CERTIFICATE, DEFINED—"RENEWAL," DEFINED—  
CONVERSION OF PROVISIONAL INTO A LIFE CERTIFICATE, DISCUSSED.

**SYLLABUS:**

1. *All high school teachers' certificates, whether life, provisional, limited, temporary, or emergency, granted by any certifying authority, should be specific for teaching only the branches named therein.*

2. *The word "original," as used in Section 7829-1, General Code, applies to the first high school certificate granted, whether it be a life certificate issued by the state board of school examiners under authority of Sections 7807-2 or 7807-7, General Code, a provisional high school certificate granted by the Director of Education, or limited, temporary and emergency certificates granted by local boards of school examiners.*

3. *The word "renewal," as used in Section 7829-1, General Code, includes not only all certificates issued by authority of law as renewals, for a limited period of time, of certificates which had formerly been granted, but also includes all certificates which are issued when provisional or limited certificates previously granted are converted into life certificates by authority of Sections 7806-6, 7806-7 and 7806-11, General Code.*

4. *A provisional high school certificate heretofore granted by authority of Section 7807-4, General Code, may be converted into a life certificate as provided by Section 7807-6, General Code. Before such conversion may be made, the applicant must meet such requirements for the inclusion of branches to be taught thereunder as may be prescribed by the Director of Education, which requirements may be in the form of an examination, or additional training if the applicant has less than twelve years' teaching experience.*

5. *The issuing of life high school teachers' certificates under Sections 7807-7 and 7807-11, General Code, is governed by the same rules as is the conversion of provisional certificates into life certificates under Section 7807-6, General Code, so far as the inclusion therein of branches which the certificate authorizes the recipient thereof to teach is concerned.*

COLUMBUS, OHIO, November 14, 1927.

HON. JOHN L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"Section 7829-1, General Code, provides that all original high school certificates issued after July 1, 1924, by any certifying authority and all re-