

80.

BOARD OF EDUCATION—BOND ISSUE—PROCEDURE UNDER SECTIONS 7630-2 AND 5649-9e, G. C.—WHEN VOTE OF PEOPLE NECESSARY.

*SYLLABUS:*

1. *When a board of education desires to issue bonds the amount of which will make the net indebtedness created or incurred by the said school district as defined in Section 7630-2, General Code, with the exceptions therein provided, exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, it is necessary that the same be submitted to a vote of the people, and as a condition precedent to the submission of said question to popular vote it is necessary to secure the written consent of the Tax Commission of Ohio as provided by Section 5649-9e.*

2. *A failure on the part of the board of education to comply with the provisions of Section 5649-9e, by securing the written consent of the Tax Commission of Ohio, before submitting an issue of bonds to popular vote, when the said issue will bring the indebtedness of the school district outside the four per cent limitation as set out in said section, is fatal to the entire issue of bonds so attempted to be made and no part of said issue of bonds is legal even though such part might be within the said four per cent limitation.*

COLUMBUS, OHIO, February 14, 1927.

HON. CLARENCE J. CROSSLAND, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—I have your communication of recent date in which you set out that the West View school district in your county submitted to the electorate of the school district the question of a school bond issue in the amount of two hundred twenty-five thousand and no/100 dollars (\$225,000.00) and that the amount of said bond issue, together with the present net indebtedness will slightly exceed four per cent of the school district tax duplicate; that the question was favorably voted upon and that the board is now seeking to sell notes in anticipation of funds to be derived from the sale of said bonds with a view of letting a contract for a school building which was the purpose of the issue.

You further state that in holding the election the terms of Section 5649-9e were not complied with and you submit with your letter four questions for my opinion, as follows:

1. Is G. C., Section 5649-9e mandatory so as to completely invalidate the election where not complied with?

2. Does the fact of a successful and favorable election cure the defect of omission above stated?

3. If G. C., Section 5649-9e is considered to be mandatory, in the event of non-compliance, may the part of the issue voted in said election of November 2, 1926, which together with present net indebtedness, will aggregate not to exceed four per cent of the tax duplicate, be sold, providing the sale of such part is a sufficient amount to be a practicable attainment of the purpose of said issue?

4. If neither of the two immediately preceding questions are affirmatively answered, can you offer or suggest any other solution short of a new proceeding and another election?

Section 5649-9e, General Code, reads as follows:

"Whenever any board of education desires to issue bonds which will make the net indebtedness created or incurred by the said school district as defined in Section 7630-2 of the General Code and with the exceptions therein provided, exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, said board of education shall submit to the Tax Commission of Ohio the question whether the issue of said bonds shall be submitted to popular vote, and no popular vote shall be taken upon the question of issuing said bonds until the Tax Commission has given its written consent thereto in accordance with the provisions of this section. The Tax Commission shall consider whether the interest and retirement charges on any such bonds will be unreasonably burdensome on the people of said school district. If they find that they will not be so unreasonably burdensome, they shall certify said fact to the board of education submitting the question together with their written consent that said issue be submitted to popular vote, and thereupon said board of education may submit said question to popular vote in accordance with the provisions of law applicable thereto."

You will note that, by the plain terms of this statute, the submission of the question of the issuing of bonds to a popular vote in such cases as you have outlined requires as a condition precedent to such submission the written consent of the Tax Commission, the statute clearly providing that "no popular vote shall be taken upon the question of issuing said bonds until the Tax Commission has given its written consent thereto in accordance with the provisions of this section." The statute further provides that when the Tax Commission has given this written consent the board of education may submit the question to popular vote. The statute is plain and unambiguous and its provisions are mandatory, and it follows that when an attempt is made to issue bonds as in the instant case where an election is necessary, as a condition precedent to such election, the written consent of the Tax Commission must be secured.

As stated in your letter, this was not obtained, and since in my opinion the written consent of the Tax Commission is jurisdictional, the failure to obtain such written consent makes the entire proceeding void, so that the entire issue which the board is attempting to make is void.

Replying to your questions in their order:

1. It is my opinion that Section 5649-9e is mandatory, and the failure on the part of the board of education to comply with the terms thereof completely invalidated any election that may have been held.
2. Inasmuch as compliance with the terms of Section 5649-9e is a condition precedent to the holding of an election, the fact that the vote is favorable cannot cure the omission to get the written consent of the Tax Commission to the holding of said election.
3. As the holding of said election was illegal the entire issue of bonds which the board is attempting to issue by this proceeding is void.
4. I know of no way that the failure to comply with the terms of Section 5649-9e can be cured after an election is held.

Inasmuch as you state in your letter that you might get along with a smaller amount and possibly within the four per cent limitation you might proceed under

Section 7629 of the General Code. To determine whether or not you can proceed under this section, it would, of course, be necessary to consider your entire financial statement.

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

81.

**FINES ASSESSED AND COLLECTED—MUNICIPAL COURT OF MARION  
—VIOLATIONS OF CRABBE ACT—FINES MUST BE PAID ONE-HALF  
INTO CITY TREASURY AND ONE-HALF INTO STATE TREASURY.**

**SYLLABUS:**

*Fines assessed and collected by the municipal court of Marion, for violation of the Crabbe act (Section 6212-13, et seq., General Code) are required by the provisions of Section 6212-19, General Code, to be paid one-half into the city treasury, and one-half into the state treasury.*

COLUMBUS, OHIO, February 14, 1927.

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

GENTLEMEN:—I am in receipt of your letter of February 7th, 1927, which reads as follows:

"The following language is used in the second last paragraph of Section 38 of the act creating the Marion municipal court, 111 O. L. 359, 'he (clerk) shall on the first day of each month in each year pay to the county treasurer all fines collected for the violation of state laws.'

We fail to find any other reference to the disposal of fines in this act which give rise to the question of whether or not Crabbe act fines assessed and collected in the Marion municipal court should be paid to the county or distributed as provided in Section 6212-19, G. C."

Section 1579-798, General Code, provides for the appointment of a clerk of the municipal court of Marion and enumerates the powers and duties of said officer. In enumerating his duties said statute provides:

"\* \* \* he shall on the first day of each month in each year, pay to the county treasurer all fines collected for the violation of state laws. \* \* \*"

The above quoted section became effective as a law July 21, 1925. Section 6212-19, General Code, provides:

"Money arising from fines and forfeited bonds shall be paid one-half into the state treasury credited to the general revenue fund, one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal or county officer."