

197.

SCHOOL BUILDING—NECESSITY FOR ADDITIONAL FUNDS FOR ITS COMPLETION—HOW OBTAINED—SECTION 2293-15, G. C., APPLICABLE TO INDEBTEDNESS PRIOR TO UNIFORM BOND ACT.

SYLLABUS:

1. *The limitations set out in Section 2293-15, General Code, apply to indebtedness existing prior to the enactment of the Uniform Bond Act.*

2. *When bonds may not be issued to complete a school building without a vote of the electors within the limitations set out in Section 2293-15 and Section 2293-18, General Code, and a board of education has no other funds available for such purpose, the only remaining way in which such building could be completed would be by submitting an additional issue to the electors or by the levy of a tax within the fifteen mill limitation or by submitting to the electors the question of levying a tax outside the fifteen mill limitation under the provisions of Section 5625-15, et seq., General Code.*

COLUMBUS, OHIO, March 16, 1929.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

"I respectfully ask your opinion in the following matter.

At the election in Novmeber 1927, the Madison Township Rural School District of this county voted a bond issue of \$35,000 for the improvement of a school within the district. The improvement is about completed but the school board now finds that it will require \$3500 more to finish. The contract as let for the construction did not exceed the bond issue. The board of education now desires to issue an additional \$3500 in bonds of the district without a vote of the people to complete the work.

Section 2293-15 of the General Code provides that indebtedness can never be incurred or created to exceed one-tenth of one per cent of the tax valuation of the district without a vote of the people.

The question arises as to whether or not this provision applies to indebtedness created since the passage of the Uniform Bond Act or whether it is meant to include indebtedness which had been incurred without a vote of the people prior to the passage of that act.

The tax valuation of this district as given to me by the auditor is \$7,718,000. The indebtedness is \$226,500 of which indebtedness \$210,000 is by vote of the people and the following is issued without vote of the people: the school deficiency under House Bill 254, \$500; improvements under Section 7629, \$5600; issued under House Bill 599, \$3393.75; net deficiency as of December 31, 1925, \$2801.05; emergency under 7629 and 7630 G. C. \$2000; total \$14,495.

This was issued prior to the enactment of the Uniform Bond Act and Section 2293-15 and greatly exceeds the one-tenth of one per cent as provided in that section. If this board of education can proceed under this section then they can issue better than \$7,000 of indebtedness without the vote of the people. If this section is meant to apply to pre-existing indebtedness without the vote of the people then apparently they will be unable to complete this school building by the issuance of bonds under this section.

Thanking you for your opinion in this matter, I am,"

It has been held by my predecessor that a board of education of a school district may issue bonds without a vote of the electors for the purpose of completing a school building partially erected within the limitations of Section 2293-15, General Code. Opinion No. 1765, February 25, 1928, directed to the Bureau of Inspection and Supervision of Public Offices. The syllabus of this opinion is as follows:

"Under the provisions of Section 2293-2, General Code, read in connection with those of Section 7625, General Code, enacted as a part of the Uniform Bond Act, 112 O. L. 364, a board of education of a school district is authorized to issue bonds without a vote of the electors, within the limitations as to amount prescribed by Sections 2293-15 and 2293-18, General Code, for the purpose of completing a school building which has been partially erected and constructed out of the proceeds of bonds issued by the board of education on a vote of the electors of the school district."

This opinion was based on the express provisions of Section 7625, General Code, 112 O. L. 380.

In a later opinion of December 27, 1928, No. 3064, directed to your predecessor in office, it was held that while a board of education may not use a portion of the proceeds of bonds authorized by the electors for the acquisition of real estate for school buildings when such authorization only extended to the construction and furnishing of school buildings, funds may, however, be obtained for the purchase of such sites by issuing bonds without a vote of the people, provided such bond issue would not increase the unvoted net indebtedness beyond the limitation set out in Section 2293-15, General Code, or by the levy of a tax, which tax must fall within the fifteen mill limitation, unless the same be voted outside such limitation under the provisions of Sections 5625-15, et seq.

With reference to the question of whether or not, under the circumstances as set forth in your letter, \$3500 bonds may be issued by the board of education without a vote of the people, it is necessary to note whether or not bonds already issued by the school district in question fall within any of the classes set forth in said Section 2293-15, as not required to be considered. After providing that the net indebtedness created or incurred in any school district without a vote of the people shall not exceed one-tenth of one per cent of the total valuation of the property in the district as listed and assessed for taxation, it is expressly provided in said Section 2293-15 that:

"In ascertaining the limits of this section, the bonds specified in Section 2293-13 and the following bonds shall not be considered:

(a) Bonds issued prior to April 29, 1902, or to refund, extend the time of payment of, or in exchange for bonds issued prior to April 29, 1902.

(b) Bonds heretofore issued to meet deficiencies in the revenue which at the time of issuance were not required by law to fall within any debt limitation.

(c) Bonds heretofore issued under the provisions of Section 7630-1 or hereafter issued for the purpose of rebuilding or repairing a schoolhouse wholly or partly destroyed by fire or other casualty, or for the purpose of building a new school house in lieu of repairing or rebuilding such schoolhouse destroyed by fire or other casualty; provided that any insurance moneys received as a result of any such destruction are first applied to reduce the amounts of bonds issued for such repair, rebuilding or new construction, but bonds excepted from the limitation of this section under the provision of this paragraph (c) shall never exceed three per cent of the total value of all property in any such school district as listed and assessed for taxation."

One-tenth of one per cent of the tax valuation of the district, as per the figures set forth in your letter, would be \$7,718.00. The indebtedness of \$2,801.05 which you indicate was incurred to meet a deficiency as of December 31, 1925, was undoubtedly incurred under the provisions of House Bill 527, 112 O. L. 542. This bill provides for funding such indebtedness by the issuance of notes. In case this indebtedness which you mention is represented by notes issued under this act in anticipation of the collection of current revenues, they need not be considered in computing the unvoted indebtedness, being exempted by Section 2293-13. The issue of \$500.00 under House Bill 254, 109 O. L., 191, providing for the issuance of bonds to fund a deficiency of the school district as therein defined also need not be counted in ascertaining the limit of indebtedness under paragraph (b) of Section 2293-15, supra. However, the issues of \$5600.00 and \$2000.00, under authority of Sections 7629 and 7630, totaling \$7600.00, are apparently not to be disregarded in computing the one-tenth of one per cent as provided in Section 2293-15. The issue of \$3393.75 under House Bill 599, enacted in 1923, 110 O. L. 324-326, and being Sections 5655 to 5655-3, General Code, inclusive, is also apparently not to be disregarded in computing said one-tenth of one per cent limitation for the reason that such bonds are not specifically mentioned in said Section 2293-15. See Opinions of the Attorney General, 1923, Vol. I, p. 733. There appears, therefore, to be an outstanding unvoted bonded indebtedness, within the meaning of Section 2293-15, of \$10,993.75, or \$3275.75 in excess of the one-tenth of one per cent limitation. The bonds of the school district in question in the amount of \$10,993.75, as above noted, do not apparently fall within any of these classes and therefore must be considered in ascertaining the limits of indebtedness under Section 2293-15.

Section 2293-18, General Code, 112 Ohio Laws, 372, provides:

"If at the effective date of this act any of the limitations of Sections 2293-14, 2293-15, 2293-16 or 2293-17 hereof are exceeded in any subdivision, such subdivision so long as such excess exists may in any calendar year issue bonds falling within the class covered by said limitations in an amount equal to a sum not exceeding nine-tenths of the amount by which the net indebtedness on bonds of such class has been reduced during the said calendar year; provided that the total bonds issued in any year under the provisions of this section shall in no case exceed an amount equal to amount of bonds which may be issued within said limitation."

In view of the fact that the school district in question apparently had an outstanding unvoted net indebtedness in excess of one-tenth of one per cent of the tax valuation of the district at the time of the enactment of the Uniform Bond Act, this last cited section is applicable. Under the provisions of the section, \$3500.00 unvoted bonds could be issued, providing approximately \$3900.00 of unvoted bonds had been retired during the calendar year.

In view of the express language of the Uniform Bond Act, as contained in Sections 2293-15 and 2293-18, supra, providing for certain bonds issued prior to the enactment of said act, I am of the opinion that the limitations set out in Section 2293-15, General Code, apply to pre-existing indebtedness, except such pre-existing indebtedness as is specifically, in said section, excluded from consideration, in ascertaining such limits of indebtedness. I am further of the opinion that when bonds may not be issued to complete a school building without a vote of the electors within the limitations set out in Section 2293-15, and Section 2293-18, General Code, and a board of education has no other funds available for such purpose, the only remaining way in

which such building could be completed would be by submitting an additional issue to the electors or by the levy of a tax within the fifteen mill limitation or by submitting to the electors the question of levying a tax outside the fifteen mill limitation under the provisions of Section 5625-15, et seq., General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

198.

AMENDED HOUSE BILL NO. 203—APPROPRIATING MONEY FOR CLEVELAND STATE HOSPITAL—SUPERINTENDENT OF PUBLIC WORKS MUST RESERVE FUNDS FOR EQUIPMENT.

SYLLABUS:

Under the provisions of Amended House Bill No. 203, as enacted by the 88th General Assembly, which reappropriates money for "Cold Storage, Storeroom, Kitchen and Equipment," and "Cold Storage, Storeroom, Kitchen, Bakery and Equipment," for the Cleveland State Hospital, it is mandatory that in the construction of said buildings by the Superintendent of Public Works a reasonable amount be reserved for equipment.

COLUMBUS, OHIO, March 16, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—Hon. Herbert B. Briggs, State Architect and Engineer, has requested my opinion as follows:

"Amended House Bill No. 203 of the 88th General Assembly contains the following reappropriations for the Cleveland State Hospital:

1. Cold Storage, Storeroom, Kitchen and Equipment (House Bill No. 502)—\$111,473.14.

2. Cold Storage, Storeroom, Kitchen, Bakery and Equipment (Hawthornden) (House Bill No. 502)—\$93,100.00.

Note: 1. above is an appropriation for a building at the institution in Cleveland. 2. above is for a building at the Hawthornden Farm of the Cleveland State Hospital.

Section 4 of the Amended House Bill No. 203 provides:

"The appropriations made herein for buildings or structures, including remodeling and repairs, shall be for a complete operating unit ready for use and occupancy, except furnishings, and shall include complete heating, lighting, ventilating and plumbing systems, including lighting fixtures, when such systems are authorized or necessary, unless otherwise specifically provided in the item of appropriation."

If Section 4 applies to equipment for the building noted in 1. above, it will be necessary to include in the cost of the building shelving, bins, and other similar facilities for storage purposes in the storeroom; refrigerating apparatus and insulation therefor in the cold storage part; ranges, steam kettles, and all other essential kitchen and scullery equipment in the kitchen; and elevators to properly serve the building.