

341.

SPECIAL ELECTION FOR BOND ISSUE—NO AUTHORITY FOR PURPOSE
OF ERECTING NEW SCHOOL BUILDING TO REPLACE ONE CLOSED
BY ORDER OF DEPARTMENT OF INDUSTRIAL RELATIONS.

SYLLABUS:

There is no authority for submitting to a special election the question of issuing bonds for the building of a new school building to replace one closed by reason of an order of the Department of Industrial Relations.

COLUMBUS, OHIO, April 18, 1927.

HON. LESLIE S. WARD, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“Fayette village school house has been condemned by the state department under school order No. 30. They are not allowed to open school another fall in said building and they will have to increase bonds to rebuild same. After they received the order from the department, they with the township school board petitioned the county school board to combine the two schools under section 4736, which was granted.

Please advise whether or not under Section 7630-1 G. C., they can hold a special election voting a bond issue for the building of this new school building.”

The question which you ask resolves itself into a determination of whether or not, where a school house has been condemned by the State Department of Industrial Relations, the construction of a new school building may be authorized at a special election.

You refer to the authority conferred by section 7630-1 of the General Code, which is as follows:

“If a schoolhouse is wholly or partly destroyed by fire or other casualty, or if the use of any schoolhouse for its intended purpose is prohibited by any order of the department of industrial relations, and the board of education of the district is without sufficient funds applicable to the purpose, with which to rebuild or repair such schoolhouse or to construct a new schoolhouse for the proper accommodation of the schools of the district, and it is not practicable to secure such funds under any of the six preceding sections because of the limits of taxation applicable to such school district, such board of education may, subject to the provisions of sections seventy-six hundred and twenty-six and seventy-six hundred and twenty-seven, and upon the approval of the electors in the manner provided by sections seventy-six hundred and twenty-five and seventy-six hundred and twenty-six issue bonds for the amount required for such purpose. Such bond issue may be voted upon at a general election or if the bonds are issued for the purpose of rebuilding or repairing a school house wholly or partly destroyed by fire or other casualty, or for the purpose of building a new schoolhouse for the proper accommodation of schools of the district in lieu of repairing or rebuilding such schoolhouse destroyed by fire or other casualty, at a general election or at a special election called for that purpose. For the payment of the principal and interest on such bonds and on bonds heretofore issued for the purposes herein mentioned and to provide a sinking fund for their final redemption at matur-

ity, such board of education shall annually levy a tax as provided by law. The maximum net indebtedness in any school district shall not exceed the limitations in Section 7630-2."

A reading of this section makes it clear that a special election is only authorized where it is necessary to rebuild or repair a school house wholly or partly destroyed by fire or other casualty, or where it is necessary to build a new school house in lieu of repairing or rebuilding a school house "destroyed by fire or other casualty."

Earlier in the section these purposes are recognized as authorizing the submission of a vote at a general election, and in addition thereto, such authorization may be had at a general election for the construction of a new school house where the use of the school house is prohibited by any order of the Department of Industrial Relations.

Clearly, therefore, there are three separate and distinct causes which may justify bond issues under authority of this section:

1. Destruction by fire.
2. Destruction by other casualty
3. Prohibition of use by an order of the Department of Industrial Relations.

By the latter provisions of Section 7630-1, General Code, only issues for the first two purposes may be submitted at a special election. The obvious conclusion is that where the purpose comes within the definition of class "3" the question as to the issuance of the bonds must be submitted at a general election.

While the language of this section of itself is a sufficient answer to your inquiry, I call to your attention the fact that all procedure relating to the submission of any question of issuing bonds to a vote of the people is now exclusively controlled by Sections 5649-9a, 5649-9b, 5649-9c and 5649-9d of the General Code, which were enacted by the last General Assembly.

By the language of Section 5649-9a these sections are specifically applicable "in every case on which said bond issuing authority is required to submit any bond issue to vote of the people."

The provisions of Section 5649-9d of the General Code are as follows:

"The question of issuing bonds shall always be submitted to popular vote at a November election, except that whenever it is necessary to rebuild or repair public property wholly or partially destroyed by fire or other casualty, the question of issuing bonds to rebuild or repair said property or to build a new similar property in lieu of repairing or rebuilding said property may be submitted to popular vote at a special election called for that purpose with the consent of the tax commission of Ohio. In such case the bond-issuing authority of said subdivision shall submit said question to the tax commission of Ohio, and if said tax commission of Ohio, finds that the submission of said question at a special election is necessary to meet the requirements of the people of said subdivision, it shall certify said fact together with its written consent to the bond-issuing authority desiring to have said special election called. Thereupon the requirements of Sections 2, 3 and 4 of this act shall apply but all references in said sections to the November election shall be taken to refer to the date of said special election, instead of the November election therein referred to. The provisions of Sections 2, 3, 4 and 5 of this act shall supersede the various provisions of law governing the issue of bonds of any bond-issuing authority, the passage of resolutions, the publication of notices, the holding of elections, the form of the ballot, the percentage of vote required, the time of holding elections and the levy of taxes, in so far as they are inconsistent herewith."

This language is clearly to the effect that the matter of submitting bonds at a

special election is controlled expressly by its terms and that the only purpose for which bonds may be voted at a special election is "whenever it is necessary to rebuild or repair public property wholly or partially destroyed by fire or other casualty, * * * or to build a new similar property in lieu of repairing or rebuilding said property." The words "fire or other casualty" clearly do not comprehend the prohibition of use under order of the Department of Industrial Relations, since, under Section 7630-1, General Code, above quoted, such a prohibition is recognized as a separate and distinct purpose.

Answering your question specifically, therefore, I am of the opinion that there is no authority for submitting at a special election the question of issuing bonds for the building of a new school building to replace the one closed by reason of an order of the Department of Industrial Relations.

I call your attention to the fact that there is now pending before the present General Assembly House Bill No. 1, the purpose of which is to revise and codify the laws relating to the issuance of bonds by political subdivisions. This bill has not been passed, but should it be enacted into law, it would constitute the governing procedure in the case of the submission of such a bond issue as you suggest to a vote of the people.

Section 2293-22 of the bill is in its language analogous to Section 5649-9b, which I have quoted above, and it would seem that the same conclusion would be reached as to the lack of authority to authorize bonds at a special election under the proposed law. It is my suggestion, therefore, that you take care to examine any changes in the bond issuing law before proceeding.

Respectfully,

EDWARD C. TURNER,

Attorney General.

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ROADS AND HIGHWAYS—TRACTORS—DAMAGES RECOVERED THROUGH CIVIL ACTION—INTERPRETATION OF WORD "CLEAT" USED IN SECTION 13421-12, GENERAL CODE.

SYLLABUS:

1. *The word "cleat", as used in Section 13421-12 of the General Code, means a strip of wood or iron fastened to the tires or wheels of a tractor, to prevent said tractor from slipping.*
2. *An angle iron attached to the wheel or tire of a traction engine or tractor driven over an improved highway violates Section 13421-12.*
3. *Where a statute for the protection of roads is violated, damages may be recovered through civil action.*

COLUMBUS, OHIO, April 19, 1927.

HON. C. H. CONAWAY, *Prosecuting Attorney, Mt. Gilead, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent letter reading as follows:

"You will find enclosed diagram of tractor wheel. Exhibits Numbers 1 and 4 I do not question as being cleats as referred to in the latter part of an opinion by your department dated August 11, 1917, and appearing on page 817 of Department Reports of Ohio, Volume 6.

Numbers 2, 3 and 5 we find on numerous tractors in our county, which are at this particular time of the year doing considerable damage.