

your duties under the statute and in violation thereof, for the statute requires that you decide questions only after proper notice, hearing, and the carrying out of other procedural safeguards set forth in the statute.

"Local school boards are by law given authority to retain their own attorneys, to advise them on all school matters."

For the reasons stated, it is the opinion of this office that while state funds can be used to pay the cost and expenses incidental to Tenure Commission members attending a state convention or visiting local school districts for the purpose of improving their understanding of the Commission's function as a review board,⁵ state funds cannot be used to pay cost and expenses while attending meetings of various Michigan boards of education or teachers' associations for the purpose of explaining rules and regulations applicable to the Tenure Act or to encourage school districts to adopt the Teachers' Tenure Act.

FRANK J. KELLEY,
Attorney General.

630302.2

BONDS: Transfer of bond proceeds into general fund for operating purposes.

SCHOOLS: Authority of school tax electors to vote to transfer bond proceeds.

Where a school district borrows money and issues bonds for the purpose of constructing and equipping elementary school buildings, a high school building, and purchasing school sites, bond proceeds must be used for those purposes only or be transferred to the debt retirement fund for payment of principal and interest on the aforesaid outstanding bonds. School tax electors are without authority to vote a transfer of bond proceeds to the general operating fund of the school district so long as the bonds are outstanding.

No. 4123

March 22, 1963.

Hon. Carl O. Little
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion in answer to the following question:

Can moneys in the building and site fund of a third class school district (which moneys were derived from the sale of bonds of the school district issued for the purpose of constructing and equipping elementary school buildings, a high school building, and purchasing school sites) be transferred by an approving vote of the tax electors of the school district, to the general operating fund of the district?

⁵ O.A.G. No. 3614, *supra*.

Act No. 269, P.A. 1955, as amended, being C.L.S. 1956, § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the School Code of 1955.

Section 681 of the School Code of 1955, as last amended by Act 45, P.A. 1959, provides in pertinent part as follows:

"Any school district may, by a majority vote of the school tax electors voting at an annual or special election called for that purpose, borrow money and issue bonds of the district therefor, to pay for a schoolhouse site or sites, or to pay for an addition or additions of territory to a schoolhouse site or sites, or to purchase, erect, furnish and equip school buildings, or to complete school buildings under the course of construction, or to pay for an addition or additions to a schoolhouse or schoolhouses, or for the remodeling of school buildings, or for a heating plant, or for the purchase of a school bus or buses, or in part, for refunding existing bonded indebtedness and in part for any of the aforesaid purposes. * * *"

A plain reading of Sec. 681 of the School Code of 1955, is persuasive of the legal conclusion that the legislature has not authorized school districts to borrow money and issue bonds for operating purposes. Nor does the statute empower school districts to divert bond proceeds from the enumerated purposes for which moneys were borrowed and bonds issued.

The proceeds of bonds issued by a school district must be applied solely to purposes for which the bonds were issued and the funds may not be diverted to other purposes or uses. *Bell v. Board of Education of Barren County School District* (Ky.) 343 S.W. (2) 804 (1961).

The law characterizes the proceeds from the sale of bonds authorized by the people for a particular purpose as constituting a trust fund for that purpose which cannot be diverted therefrom to some other purpose. *Marks v. Richmond County* (Ga.) 140 S.E. 880 (1927). Thus, an attempt to transfer bond moneys into the general fund was held by the Michigan Supreme Court in *McArthur v. City of Cheboygan*, 156 Mich. 152 (1909) to be a diversion of the fund from proper and intended use so that in contemplation of law the money for the enumerated purposes was considered to be still in the bond proceeds fund.

Th Attorney General has ruled, O.A.G. 1952-54, page 387, that the unexpended balance of the proceeds of a bond issue authorized by a county for the construction and the equipping of a jail remaining after the completion of the project may not be diverted for the purpose of purchasing an automobile. Nor may such use be authorized by the electors at an election.

I find no authority in law under which the school tax electors may vote to transfer bond proceeds to the general fund for operating purposes so long as the bonds are outstanding.

After a school district completes construction of school buildings or acquisition of sites within the enumerated purposes authorized by the school tax electors, the remaining bond proceeds should be transferred to the debt retirement fund for payment of principal and interest on the outstanding bonds, thus relieving school tax electors of their obligation to that extent.

Therefore, it is my opinion that the transfer of bond proceeds derived by a school district from the sale of bonds issued for the purpose of constructing and equipping elementary school buildings, a high school building, and purchasing school sites to the general operating fund of the district is illegal. School tax electors are without authority to vote such a transfer.

FRANK J. KELLEY,
Attorney General.

630322.3

SCHOOLS: Powers of board of education.

Sale of bus transportation equipment.

Discontinuance of bus transportation.

The board of education of a third class school district, which determines that bus transportation equipment is no longer necessary for school purposes, is empowered to sell the same and give proper bills of sale or other instruments passing title thereto under Sec. 113 of Act 269, P.A. 1955.

The board of education of a third class school district is empowered under Sec. 121 of Act 269, P.A. 1955, to discontinue bus transportation without vote of the school electors.

No. 4139

March 22, 1963.

Hon. Carl O. Little
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion in answer to the following questions as they relate to the power of a board of education of a third class school district:

1. Does the board of education have authority to sell transportation equipment?
2. Does the board of education have authority to eliminate the transportation system?

1. Act No. 269, P.A. 1955, as amended, being C.L.S. 1956, § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the School Code of 1955.

The legislature has made provision for school districts of the third class in Chapter 4, Part 1 of the School Code of 1955.

Sec. 113 of the School Code of 1955 empowers the board of education of any school district of the third class, in part as follows:

“To sell, exchange or lease * * * any real or personal property of the district which is no longer *required* thereby for school purposes, and to give proper deeds, bills of sale or other instruments passing title to the same.” (Emphasis supplied)

Consideration must also be given to Sec. 121 of the School Code of 1955,