

tion and does not violate the last sentence of Article IX, Section 3, Constitution of 1963.

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SCHOOLS: District — power to borrow money and construct stadium.
BONDS: Authority to issue, for athletic stadium.

A school district is without authority to borrow money and issue bonds for the purpose of erecting a permanent type seating facility, lighting and storage building, including toilet accommodations, on an athletic field of the school district under Sec. 681 of Act 269, P.A. 1955, as amended by Act 90, P.A. 1963.

No. 4266

May 15, 1964.

Hon. Homer Arnett
State Representative
Lansing, Michigan

You have requested my opinion on the following question:

May a school district, subject to approval of its school tax electors, borrow money and issue bonds pursuant to authority found in Sec. 681 of Act 269, P.A. 1955, as amended by Act 90, P.A. 1963, for the purpose of installing lighting for night athletic contests, seating for spectators, and a storage building, including toilet facilities?

Your question is based upon a factual situation where a school district proposes to seek the approval of its tax electors to borrow money and issue bonds for the purpose of erecting lighting facilities and permanent type bolted steel bleachers as seating facilities for spectators, including rest rooms and storage facilities, on an athletic field of the school district.

Act 269, P.A. 1955, as amended, being C.L.S. 1961 § 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 said act enumerates the purposes for which the tax electors of a school district may borrow money and issue bonds. Section 681 was amended by Act 90, P.A. 1963, to broaden the purposes to include "for site development and improvement, or for the building or constructing and equipping of athletic fields and playgrounds *but not including athletic stadiums.*" (Emphasis supplied). Act 90, P.A. 1963, began its legislative life as Senate Bill No. 1010 and as originally proposed school tax electors could approve the borrowing of money and the issuance of bonds for the purpose of "building or constructing and equipping of athletic fields, playgrounds and athletic stadiums, or other educational purposes of the school district."

Senate Bill No. 1010 was reported favorably by the Senate Committee on Education with the recommendation that the language "or other educational purposes of the school district" be stricken. Senate Journal 1963, Vol. 1, page 145. The Committee of the Whole recommended to the Senate that

Senate Bill No. 1010 be amended to strike the language "playgrounds and athletic stadiums, or other educational purposes of the school district" and insert "and playgrounds but not including athletic stadiums." The Senate agreed to the amendment and the bill was placed on the order of Third Reading of Bills. Senate Journal 1963, Vol. 1, page 172. Senate Bill No. 1010, so amended, was approved by the Senate on February 18, 1963 by vote of 29-1. Senate Journal 1963, Vol. 1, page 183.

An effort was made in the House of Representatives to delete the restrictive language "but not including" so as to allow stadiums as a proper purpose, but such effort was unsuccessful. House of Representatives Journal 1963, Vol. 2, page 1458. Senate Bill No. 1010 was then approved by the House of Representatives by vote of 77-20. House of Representatives Journal 1963, Vol. 2, page 1459.

This review of the legislative history of Act 90, P.A. 1963, requires the conclusion that the legislature was authorizing school districts to borrow money and issue bonds upon approval of their tax electors for athletic fields but not for athletic stadiums.

Research fails to reveal any decision of the Michigan Supreme Court construing the phrase "athletic stadium."

The Arizona Supreme Court in *Alexander v. Phillips*, 254 Pac 1056 (Ariz. 1927), defined a stadium as a structure where various forms of athletic games are held and spectators could be properly accommodated while observing them.

The basic element of a stadium was held by the New York Court of Appeals in *Steinberg v. Forest Hills Golf Range*, 105 N.E. 2d 93 (N.Y. 1952), to be the seating of spectators.

Since the legislature has expressly authorized school districts to borrow money and issue bonds for the purpose of building or constructing and equipping of athletic fields and playgrounds and has barred such power as to athletic stadiums, under the authorities that have been cited it must be concluded that the legislature intended to bar any permanent type facilities for the seating of spectators at athletic contests, including lighting, toilet accommodations and storage facilities as a purpose for which a school district could borrow money and issue bonds.

Therefore, it is the opinion of the Attorney General that a school district is without power to borrow money and issue bonds for the purpose of erecting permanent seating facilities, lighting and storage facilities, including toilet accommodations, on an athletic field of the school district.

FRANK J. KELLEY,
Attorney General.