

tween employers and employees, for the purpose of avoiding strikes, lockouts, boycotts, black lists, discrimination, and legal proceedings in matters of employment, as provided under subsection (d) of section 9 of said Act, for when the Labor Department is proceeding under this subsection, all of said proceedings must be conducted on a voluntary basis.

ACCOUNTS, STATE BOARD OF: Taxation. School cities of second class, whether same may levy in excess of 18 cents on each \$100 for bond retirement.

August 30, 1937.

Hon. W. P. Cosgrove,
State Examiner,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following question:

“Can a school city of the second class levy a rate in excess of 18 cents on each \$100.00 worth of taxable property for bond retirement and interest?”

This question requires a consideration of chapter 200 of the Acts of 1903 as subsequently amended and 107 of the Acts of 1907 as subsequently amended.

The Act of 1903, above referred to, is an Act entitled:

“An Act authorizing and empowering Boards of Trustees of school cities of all cities incorporated under the general laws of this State and Boards of Trustees of school towns of incorporated towns, to borrow money and issue their notes or bonds therefor; providing conditions on which such debt may be incurred, and to levy a tax to pay the same, for the purpose of buying grounds and paying for necessary school buildings, or repairs on the same, and declaring an emergency.”

Acts of 1903, page 350.

Section 1 of the above Act authorized the Boards of School Trustees of all cities of the state organized under general laws

and of all incorporated towns to borrow money and to issue the bonds or notes of such school city or school town for the purposes therein set out. Those purposes were expressed by the following language, to-wit:

“The money obtained as a loan on such bonds or notes shall be disbursed by order of such board in payment of expenses incurred in *buying grounds, building school houses or in making repairs on school buildings heretofore erected for such school city or town, and for no other use or purpose whatsoever.*” (Our italics.)

Acts of 1903, page 350.

Section 2 of the Act provided that,

“For the purpose of paying said bonds or notes issued as provided in the foregoing section, said School Trustees are hereby empowered to levy annually a tax not to exceed TWENTY-FIVE CENTS in any one year on each one hundred dollars of the taxable property of such city or town as ascertained by the proper assessing officers, and one dollar on each taxable poll: *Provided*, That the revenue derived from such levy shall be used only in payment of the principal and interest of said notes or bonded indebtedness. Any surplus remaining after the payment of said indebtedness shall be covered into the special school revenues of such school city or town.” (Our capitals.)

Acts of 1903, page 351.

Section 1 of the above Act was amended in 1909 so as to except cities of the first and second class from its provisions.

Acts of 1909, page 100.

In the meantime an Act had been passed in 1907, (chapter 107 of the Acts of 1907) applying solely to school cities of the second class, section 1 of which provided as follows:

“That the Board of Trustees of the school corporation in any city of the second class in this state is hereby authorized and empowered to issue, negotiate and sell bonds of such school city or corporation in such sums and denominations as such board may deem advisable,

to realize money for school uses and purposes; to purchase real estate; to erect buildings and suitably equip them for use for school purposes, including the cost of lighting, heating and sanitation. Also for the purpose of paying any sums due for buildings already erected. Also to fund and pay any existing indebtedness of such school city or corporation. Such bonds shall be known as school funding and improvement bonds. They shall bear interest at the rate not exceeding four (4) per cent per annum, payable semi-annually, and shall be sold at not less than par, and shall mature not later than ten years from the date of their issue. Such bonds may be issued from time to time as the needs of such school city or corporation shall require: *Provided*, That not more than one hundred and fifty thousand dollars (\$150,000.00) of such bonds shall be in existence at any one time. No bonds shall be issued until the money therefor is paid to the treasurer of such board, and interest thereon shall begin to accrue at the time of the delivery thereof. Preparatory to offering such bonds for sale, the Board of School Trustees shall give notice for not less than four (4) weeks, of the date fixed for the sale of such bonds, together with a description of such bonds, and of such offer, and invite bids therefor. Such notice shall be given by advertisements once each week in at least one newspaper published in such school city or corporation, and such other advertisements as the board may make. Said board shall sell such bonds to the highest or best bidder; but shall have the right to reject any and all bids."

Acts of 1907, page 164.

Section 2 of this Act provided that the bonds should be issued in series, one-tenth thereof to be retired each year; and section 3 provided that a tax should be levied each year sufficient to retire the bonds falling due in that year, together with interest likewise falling due. The annual levy, however, was limited to *eight cents* per year on each one hundred dollars of taxable property of the school city or corporation.

Acts of 1907, page 165.

It will be noted that the 1907 Act covers all of the purposes for which bonds as provided in the 1903 Act could be issued

and presumably as to cities of the second class was a substitute for the 1903 Act. It is not necessary, however, to hold that it impliedly repealed the 1907 Act as to cities of the second class since by the amendment of the 1903 Act in 1909, already referred to, cities of the second class were expressly removed from its provisions, leaving the 1907 Act as from time to time amended as the authority for the issuance of such bonds by school cities of the second class.

The 1907 Act provided that its terms should not affect bonds issued prior thereto under any law in force at the time they were issued. (Acts of 1907, page 166.) However, I do not think that provision is of any particular consequence at the present time, because bonds issued by second class cities under the 1903 Act during the time when they could be issued by such cities long since must have been retired or refunded.

In 1909, sections 2 and 3 of the 1907 Act, (the Act applying to cities of the second class) were amended. The important change in section 2 was to authorize the issue to run for twenty years instead of ten years and to authorize the Board of Trustees to determine the proportion of the entire issue which shall mature at any particular time.

Acts of 1909, page 125.

Section 3 was amended to read as follows:

“The Board of School Trustees shall have the power to, and shall levy a special tax in addition to other taxes authorized by law to be levied, sufficient to pay the principal and interest on such bonds as and when they become due and *to create a sinking fund* for the payment when due: *Provided, however,* That the total tax levy for the payment of the principal, interest and sinking fund of *ALL outstanding bonds of any such city* shall not exceed the sum of eighteen cents on each hundred dollars' worth of taxable property and one dollar (\$1.00) on each poll in such city in any one year, but this Act shall not be construed to repeal any law of this state which authorizes Boards of School Trustees to levy taxes for school purposes.” (Our italics and capitals.)

Acts of 1909, page 125.

This section appears as section 28-1328 of Burns Indiana Statutes, Annotated (1933), and so far as I have been able to determine has not been amended, modified or repealed. In my opinion, it governs as to the question submitted, which is therefore answered in the negative.

**ACCOUNTS, STATE BOARD OF: Taxation—appropriation
to be valid must provide funds if not in treasury.**

September 1, 1937.

Hon. W. P. Cosgrove,
State Examiner,
Division of Accounting and Statistics,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of August 26 in which you submit the following questions:

- “1. If there is an appropriation, can a public official contract debts against the county within the limits of the appropriation even though the rate established by the county council will not raise sufficient revenue to pay the obligation and this is known at the time the obligation is contracted?”
- “2. Is it necessary to ask for an appropriation the following year to cover claims allowed by the commissioners and contracted within the appropriation if not paid within the year contracted because of a deficiency in revenue?”

In answering your first question I proceed on the assumption that at the time the annual budget was approved by the county council they approved certain amounts as proper expenditures but fixed the rate for taxation at a figure so low that it would not and could not produce revenue sufficient to meet the authorized expenditures. The question therefore arises as to whether or not such procedure constitutes a valid appropriation.

Section 26-520, Burns Indiana Statutes, 1933 Revision, provides the manner in which the county councils shall proceed with reference to appropriation ordinances. After the various