
WEST VIRGINIA CODE CHAPTER 10
ARTICLE 2A

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§10-2A-1. Definitions.

(a) The term "board" as used in this article shall mean any county court, municipal corporation or county board of education in the State of West Virginia; (b) the term "athletic establishment" shall be construed to mean and include athletic fields of all types, stadiums, gymnasiums, field houses, and all other types of athletic establishments capable of producing revenue, where the cost of such acquisition, construction, extension, equipment or improvements, together with reasonable interest thereon, will be returned within a reasonable period, not exceeding thirty years, by means of charges, rentals, radio broadcasting franchise fees, and other tolls, fees and charges other than taxation; and shall mean and include such athletic establishment in its entirety, and all integral parts thereof.

§10-2A-2. Authority to establish and operate athletic establishments; bonds to pay costs.

Every county court, municipal corporation or county board of education in the State of West Virginia is hereby authorized and empowered to establish, construct, acquire, extend, equip and own, maintain and operate any of the athletic establishments described in section one of this article, together with all appurtenances necessary, useful or convenient for the maintenance and operation of such athletic establishments, and shall have authority to acquire by gift, grant, purchase, condemnation or otherwise, all necessary lands, rights of way and property therefor, and to issue revenue bonds to pay the costs of such athletic establishments and property. No obligation shall be incurred by the board in such establishment, construction, acquisition, extension or improvement, except as is payable solely from the funds provided under the authority of this article.

§10-2A-2a. Joint establishment and operation of athletic establishment.

Any county court, municipal corporation and Board of Education, or any two of them, may jointly establish and conduct such athletic establishment and may exercise all the powers given by this article. In the event of any such joint establishment and operation, they may provide by agreement among themselves for all matters connected with such establishment and operation.

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§10-2A-3. Construction, etc., to be under control of board or committee appointed by board.

The construction, acquisition, improvement, extension, equipment, custody, operation and maintenance of any such athletic establishment, and the collection of revenues therefrom, shall be under the supervision and control of the county court, municipal corporation or county board of education, or all or any part of such powers, duties and responsibilities may be placed in a committee appointed by such board by resolution duly adopted. The term "board" when hereafter used in this article shall be construed to mean the county court, municipal corporation or the county board of education or such duly appointed committee, as the case may be.

§10-2A-4. Powers of board; contracts; employees.

The board shall have power to take all steps and proceedings, and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the financing or the acquisition, construction, extension or improvement of any such works, or any trust indenture as hereafter provided for, shall be approved by the county court, municipal corporation or county board of education.

The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the board may direct. No contract or agreement with any contractor or contractors for labor or material exceeding in amount the sum of \$1,000 shall be made without advertising for bidders, which shall be publicly opened and award made to the lowest responsible bidder, with power in the board to reject any and all bids. After the acquisition, construction, equipment and completion of the athletic establishment the board shall operate, manage and control the same, and may order and complete any extensions, and improvements of and to the athletic establishments that the board may deem expedient if funds therefor be available, and shall establish rules and regulations for the use and operation of the athletic establishment, and do all things necessary or expedient for the successful operation thereof.

§10-2A-5. Preliminary expenses.

All necessary preliminary expenses actually incurred by the board in the making of surveys, estimates of costs and of revenues, employment of engineers or other employees, the giving of notices, taking of options, and all other expenses of whatsoever nature necessary to be paid prior to the issue, sale and delivery of the revenue bonds herein provided for, may be paid by the board to be reimbursed and repaid out of the proceeds of sale of such revenue bonds in this article provided for.

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§10-2A-6. Resolution for construction, etc., of establishment; notice and hearing.

Before any board shall construct, acquire, improve, extend or equip any athletic establishment under this article, the board shall adopt a resolution which shall (a) set forth a brief general description of the athletic establishment, and if the same is to be constructed a reference to the preliminary report or plans and specifications which shall theretofore have been prepared; (b) set forth the estimated cost thereof; (c) order the construction, acquisition, extension, improvement or equipment of such establishment; (d) direct that revenue bonds of the county board of education be issued pursuant to this article; in such amount as may be found necessary to pay the costs of such athletic establishment; and (e) contain such other provisions as may be necessary or proper in the premises. Before such resolution shall become effective it, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which such Board of Education is located. The notice shall specify a time and place for a public hearing, the time being not less than ten days after the first publication of said notice; at which time and place all parties and interests may appear before the board, and may be heard as to whether or not said resolution shall be put into effect. At such hearing all objections and suggestions shall be heard and the board shall take such action as it shall deem proper in the premises: Provided, however, That if at such hearing a written protest is filed by thirty percent or more of the owners of real estate situate in said county, then the board of Education shall not take further action unless four fifths of the members of said board assent thereto: And provided further, That in case written protest is filed purporting to have been signed by or on behalf of thirty percent or more of the owners of real estate in said county, the board shall have authority to appoint a subcommittee to consist of one proponent, one opponent and the third to be selected by these two, to determine whether or not thirty percent of the property owners have in fact protested, and said subcommittee shall report its findings to the board.

§10-2A-7. Acquisition of property or establishments; eminent domain.

Every such board shall have power to condemn any land or easements, necessary or convenient for the construction of any such athletic establishment, or extensions, improvements or additions thereto, and in connection therewith shall have and may exercise all the rights, powers and privileges of eminent domain granted to county courts, municipal corporations or county boards of education under the laws relating thereto. Title to property shall be taken in the name of the county court, municipal corporation or county board of education. Proceedings for such appropriation of property shall be under and pursuant to the general provisions of law relating to condemnation proceedings in the exercise of eminent domain: Provided, That the board shall be under no obligation to accept and pay for any property condemned, and shall in no event pay for property condemned or purchased, except from funds provided pursuant to this article; and in any proceedings to condemn such orders may be made as may be just to the board and the owners of the property to be condemned; and an understanding or other security may be required securing such owners against any loss or damage which may be sustained by reason of the failure of the board to accept and pay for the property, but such undertaking or security shall impose no liability upon the board, except such as may be paid from the funds provided under the authority of this article.

In the event of acquisition by purchase, the board may obtain and exercise an option from the owners of said property for the purchase thereof, and may enter into a contract for the purchase thereof, and such purchase may be made upon such terms and conditions, and in such manner as the board may deem proper: Provided, however, That such exercise of option, purchase or contract for such purchase shall in no event bind or obligate said board, or create any debt, liability or claim, except such as may be paid from the funds provided under the authority of this article.

In the event of the acquisition of any athletic establishment already constructed by purchase or condemnation, the board at or before the time of the adoption of the resolution described in section six hereof, shall cause to be determined what repairs, replacements, additions and improvements will be necessary, in order that said establishment may be effective for its purpose, and an estimate of the cost of such improvements shall be included in the estimate of the costs required by section six hereof, and such improvements shall be made upon the acquisition of the establishment and as a part of the cost thereof: Provided, however, That no board shall, under the authority conferred by this article, condemn any existing privately owned athletic establishment in operation at the date of the condemnation.

§10-2A-8. Bonds for improvements and extension of existing athletic establishments.

Whenever any board now or hereafter, shall own and operate any athletic establishment as herein defined, whether acquired or constructed under the provisions of this article or not, and shall desire to construct improvements, enlargements and extensions thereto, or acquire or construct better equipment for the same, it may issue revenue bonds under the provisions of this article to pay for the same, and the procedure therefor shall be the same as in this article provided for the issuance of bonds for acquisition or construction of such athletic establishment: Provided, however, That no existing obligations or rights shall be affected or impaired thereby.

§10-2A-9. Items of expense included in cost of athletic establishment.

The cost of the athletic establishment shall be deemed to include the cost of the acquisition or construction and equipment thereof, the cost of all property and easements deemed necessary or convenient therefor; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or acquisition; engineering and legal expense; expense for estimates of cost and of revenues; expense for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized and the construction or acquisition of the establishment and placing the same in operation, and the performance of the things herein required or permitted in connection with any thereof.

§10-2A-10. Bonds to be payable from special fund; exemption from taxation.

Funds for the payment of all or such part of the costs of such athletic establishment as may be determined by the board, shall be provided by the issuance of revenue bonds of such board. Such bonds shall be payable solely from the special fund herein provided for such payment; and such bonds shall not in any respect be a corporate indebtedness of the county court, municipal corporation or county board of education issuing the same. All such bonds shall be exempt from taxation by the State of West Virginia or any county or municipality therein. All of the details of such bonds and the issuance thereof shall be determined by resolution of the board.

§10-2A-11. Interest rate and life of bonds; redemption; how payable; form; denominations; negotiability; surplus funds; additional bonds authorized; interim certificates.

Such revenue bonds shall bear interest at not more than six per cent per annum, payable annually or at shorter intervals, and shall mature at such time or times not exceeding thirty years from the date thereof, as may be determined by resolution of the board. Such bonds may be made redeemable before maturity, at the option of the board, at not more than the par value thereof plus five per cent, under such terms and conditions as may be fixed by the resolution authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Said resolution shall determine the form of the bonds, including the interest coupons to be attached thereto, if any, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any bank or trust company within or without the state, or at such other place as said resolution may provide. The bonds shall contain a statement on their face that the board shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from the net revenue of the athletic establishment, or a certain pro rata part thereof, as the case may be. All such bonds shall be, and shall have, and are hereby declared to have all the qualities and incidents of negotiable instruments, under the Negotiable Instruments Law of this state. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone. Bonds shall be executed in such manner as the board may direct. The bonds shall be sold by the board in such manner as may be determined to be for the best interest of the board: Provided, however, That said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of six per cent per annum to the purchaser upon the amount paid therefor. Any surplus of the proceeds from the sale of such bonds over and above the cost of such athletic establishment shall be paid into the sinking fund hereinafter provided. If the proceeds of the bonds shall be less than the cost of the athletic establishment, additional bonds may in like manner be issued to provide the amount of such deficit, and unless otherwise provided in the resolution authorizing the issuance of the bonds first issued, or in the trust indenture hereinafter authorized, shall be deemed to be of same issue, and shall be entitled to payment without preference or priority of the bonds first issued, but such preference or priority shall not extend to an amount exceeding ten per cent of the original issue. Prior to the preparation of the definite bonds, interim certificates may, under like restrictions, be issued with or without coupons exchangeable for definite bonds upon the issuance of the latter.

§10-2A-12. Obligations not to bind member of board personally.

No member of any board or any committee appointed by such board hereunder shall in any event be personally liable upon any contract or obligation of any kind or character executed under the authority contained in this article, even if said undertaking should hereafter be held ultra vires.

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§10-2A-13. Additional bonds for extension or improvement of athletic establishments.

Any board may provide by the resolution authorizing the issuance of the bonds or in the trust indenture hereinafter referred to, that additional bonds may thereafter be authorized and issued at one time, or from time to time, under such limitations and restrictions as may be set forth in said resolution or trust indenture, for the purpose of extending or improving such athletic establishments when deemed necessary in the public interest, such additional bonds to be secured and be payable from the revenues of the athletic establishment, as provided in section eight of this article.

§10-2A-14. How proceeds of bonds applied; lien.

All moneys received from the sale of any bonds issued pursuant to this article, after reimbursements and repayments to said board of all amounts advanced for preliminary expenses, as provided in section five of this article, shall be applied solely to the payment of the costs of the athletic establishment, or to the appurtenant sinking fund, and there shall be, and hereby is created and granted a lien upon such money, until so applied, in favor of the holders of the bonds or the trustees hereinafter provided for.

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§10-2A-15. Bonds secured by trust indenture between board and corporate trustees.

In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the board and a corporate trustee which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no such trust indenture shall convey, mortgage or create any lien upon the athletic establishment or any part thereof.

The resolution authorizing the revenue bonds, and fixing the details thereof, may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the board, and any committee appointed by the board under this article, in relation to the construction or acquisition of the athletic establishment and the improvement, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that the athletic establishment shall be contracted for, constructed and paid for under the supervision and approval of the consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the athletic establishment or other moneys pertaining thereto shall be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee. Except as in this article otherwise provided, the board may provide by resolution or in such trust indenture for the payment of the proceeds of the sale of the bonds and revenues of the athletic establishment to such officer, board or depository, as it may determine, for the custody thereof, and for the method of distribution thereof, with such safeguards and restrictions as it may determine.

§10-2A-16. Sinking fund.

At or before the issuance of any such bonds, the board shall, by resolution, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banks or trust companies for making payment of such bonds, and interest, out of the net revenues of said athletic establishment, and shall set aside and pledge a sufficient amount of the net revenues of the athletic establishment to be paid by the board into such sinking fund at intervals to be determined by resolution adopted prior to the issuance of the bonds, for: (a) The interest upon such bonds as the same becomes due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the maintenance of a proper sinking fund for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided for, which margin, together with unused surplus of such margin carried forward from the preceding year, shall equal ten per cent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the athletic establishment. Net revenues as used herein shall mean the revenues of the athletic establishment remaining after the payment of reasonable expense of operation, repairs, maintenance, insurance and all other reasonable costs of maintaining and operating the same required to be paid from the revenues thereof. After the payment into the sinking fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repairs, maintenance and depreciation for an ensuing period of not less than twelve months, into the sinking fund or into a fund for extensions, improvements and additions to such athletic establishment. All amounts for sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the West Virginia Municipal Bond Commission at such periods as shall be designated in the resolution, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission, consistent with provisions of this article and the order pursuant to which such bonds have been issued. The West Virginia Municipal Bond Commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any resolution adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the board directly thereto.

§10-2A-17. Charges and rentals for use of athletic establishment.

The board shall have the power and it shall be its duty, by resolution to establish and maintain just and equitable charges and rentals as the case may be, for the use of such athletic establishment, and may readjust, amend and modify such charges and rentals from time to time. Such charges and rentals shall be in such amounts that the total thereof shall be at least sufficient in each year for the payment of the proper and reasonable expenses of operation, repair, replacements and maintenance of the athletic establishment, and for the payment of the sums herein required to be paid into the sinking fund. A schedule of the charges and rentals so established shall be kept on file in the office of the board issuing such bonds and also in the office of the committee having charge of the operation of such athletic establishment, if there be such committee.

§10-2A-18. Accounting system; yearly audit; custodian of funds.

Any board issuing revenue bonds under the provisions of this article, shall install and maintain a proper system of accounting showing the amount of revenue received and the application of same and the board shall, at least once a year, cause such accounts to be properly audited by a competent Auditor and the report of such Auditor shall be open for inspection at all reasonable times to any taxpayer, citizen of the county or any holder of bonds issued under the provisions of this article, or anyone duly authorized acting for and on behalf of such taxpayer, citizen or bondholder. The treasurer of such board or other official or institution specifically charged by such board with such duty, shall be custodian of the funds derived from revenues from such athletic establishment, and shall give proper bond for the faithful discharge of his or its duties as such custodian which bond shall be fixed and approved by the board. All of the funds received as revenue from said athletic establishment, and all funds received from the sale of revenue bonds issued under this article, shall be kept separate and apart from other funds of the board, and separate accounts shall be maintained from the several items required to be set up by section fifteen of this article.

§10-2A-19. Board to pay charges and rentals for use of establishment.

The board shall be subject to the same charges and rentals established as hereinbefore provided, or to charges and rentals established in harmony therewith, for the use of such athletic establishment, and shall pay such charges and rentals, when due, from corporate funds, and the same shall be deemed to be a part of the revenues of the athletic establishment as herein defined, and may be applied as herein provided for the application of such revenues.

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§10-2A-20. Operation under supervision and control of board; leasing.

The board may, in its discretion, provide by resolution that the custody, administration, operation and maintenance of such athletic establishment shall be under the supervision and control of a committee as provided by section three hereof, and in such case, the board may provide by resolution for said committee to exercise such of the functions of the board in connection with said establishment as they consider proper, and may provide for said committee to receive such compensation as such board may deem proper, all of which authority and compensation shall be specifically provided for by resolution. All compensation and expenses of such committee shall be paid solely from funds provided under the authority of this article. Such committee shall have power to establish bylaws, rules and regulations for its own government.

The board also, in its discretion, may provide by resolution for the leasing of such athletic establishment or any part thereof and provide for the custody, operation and maintenance thereof by a lessee in accordance with the provisions of such resolution and lease contract executed pursuant thereto: Provided, however, That the lessee shall pay to the board for the use of such athletic establishment, or part thereof, an amount which when added to other revenues therefrom shall be sufficient to provide a sinking fund for the payment of the bonds and the interest thereon and all other charges mentioned in section sixteen hereof.

§10-2A-21. When statutory mortgage lien created; enforcement of lien by bondholders; suit to compel performance of duties.

In the event bonds issued hereunder are not secured by a trust indenture as provided for in section fifteen of this article, there shall be, and there is hereby, created a statutory mortgage lien upon such athletic establishment acquired or constructed under the provisions of this article, which shall exist in favor of the holder of said bonds, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such athletic establishment shall remain subject to such statutory mortgage lien until payment in full of the principal and interest of said bonds. Any holder of bonds issued under the provisions of this article, or of any coupons representing interest accrued thereon, may, either at law or in equity, enforce the statutory mortgage lien hereby conferred and may, by proper suit, compel the performance of the duties of the board set forth in this article.

§10-2A-22. Acquisition of property on which encumbrance exists.

No property shall be acquired under this article upon which any lien or other encumbrance exists, unless at the time such property is acquired a sufficient sum of money, derived from the sale of bonds issued hereunder or otherwise, be deposited in trust to pay and redeem such lien or encumbrance in full.

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§10-2A-23. Protection and enforcement of rights of bondholders; receivership.

Any holder of any such bonds or any of the coupons attached thereto, and the trustee, if any, except to the extent that the rights herein given may be restricted by the resolution authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus, or other proper proceeding protect and enforce any and all rights granted hereunder or under such resolution or trust indenture and may enforce and compel performance of all duties required by this article, or by such resolution or trust indenture to be performed by the board or the committee, including the making and collecting of reasonable and sufficient charges and rentals for the use of such athletic establishment. If there be default in the payment of the principal or interest of any of the bonds on the date therein named for such payment, which default continues for a period of sixty days, any court having jurisdiction may appoint a receiver to administer the athletic establishment on behalf of the board, the bondholders and trustee, if any, subject to the restrictions in the resolution or trust indenture, if any, with power to charge and collect charges and rentals sufficient to provide for the payment of the expenses of operation, repair and maintenance, and also to pay any bonds and interest outstanding and to apply the revenues in conformity with this article and said resolution and trust indenture, if any; and the power herein provided for the appointment of a receiver shall apply to cases where such athletic establishment is operated by a lessee of the board as well as to cases where operated by the board. In case a receiver is appointed for an athletic establishment operated by a lessee, the lease agreement then existing between the board and the lessee shall be automatically terminated and all property, equipment, accounts receivable and assets of every kind used in connection with the operation of such athletic establishment shall pass to the receiver, and upon the termination of such receivership, such athletic establishment, property, equipment, accounts receivable and assets of every kind then in the hands of the receiver shall pass again to the board.

§10-2A-24. Article confers additional powers.

The authority herein given shall be in addition to and not in derogation of any power existing in any board under any Constitutional, statutory or other provisions of the law which it now may have or may hereafter acquire.

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§10-2A-25. Construction of powers conferred.

This article shall, without reference to any other statute, be deemed full authority for the construction, acquisition, improvement, equipment, maintenance, operation and repair of the athletic establishment herein provided for, and for the issuance and sale of bonds by this article authorized, and shall be construed as an additional alternative method therefor, and for the financing thereof, and no petition or other or further proceeding in respect to the construction or acquisition or improvement of such athletic establishment, or to the acquisition or sale of bonds for the improvement of such athletic establishment, or in respect to the issuance or sale of bonds under this article, and no publication of any resolution, notice, or proceeding relating to such construction, improvement or acquisition, or to the issuance or sale of such bonds shall be required, except such as are prescribed under this article, any provisions of other statutes of the state to the contrary notwithstanding.

§10-2A-26. Article liberally construed.

This article being for the public health, safety, and welfare, shall be liberally construed to effectuate the purposes thereof.

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