

General Code, county commissioners were directed to make allowances to the sheriff for actual and necessary expenses incurred in operating and keeping in repair vehicles owned by himself and used in the performance of his official duties, when such upkeep and repairs were the outgrowth of such use.

It is a fair presumption, from the premise of your inquiry, that Trumbull County furnishes county owned automobiles for the use of the sheriff and his deputies in performing the regular duties of the sheriff's office. If that be true, it of course would preclude the sheriff and his deputies from using their own private automobiles in the performance of the ordinary routine of the office, and being reimbursed for expenses incurred by reason of such use, unless there was an understanding between the sheriff and the commissioners that the privately owned machines of the sheriff and his deputies were to be used to supplement the use of the county machines when necessary.

Be that as it may, however, the pursuit of a fleeing criminal may be, and in most instances is, such an emergency that the immediate need of pursuit would justify the officer in commandeering any available means at his command to pursue and apprehend the criminal. I have no hesitancy in saying that under such circumstances, the deputy sheriff is justified in using his own machine if it be more available than others, whether the county owns machines for that purpose or not, and he should be reimbursed for necessary and proper expenses incurred by reason of such use.

If an accident should occur, which accident is attributable to such official use of the car, by reason of which the automobile is damaged, necessitating repairs, especially if the accident occurs through no negligence of the officer himself, as you indicate was the situation about which you inquire, the officer should be reimbursed for the necessary cost of repairing the automobile. Under this rule, if the automobile were completely demolished, and could not be repaired, the amount that should be allowed to the sheriff would be a sufficient amount to make him whole for his loss which would be the difference between the value of the car before the accident, and afterwards.

I am therefore of the opinion, in specific answer to your question, that the commissioners of Trumbull County may lawfully allow to the sheriff the cost of the necessary repairs to the deputy's automobile which were caused by reason of the accident which occurred while he was pursuing the criminal to which you refer in your inquiry, and if the automobile was completely demolished, the deputy should be made whole.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2920.

BOARD OF EDUCATION—RURAL—MAY PURCHASE RIGHT OF WAY
FROM HIGHWAY TO SCHOOL HOUSE—AUTHORITY TO PETITION
FOR ROAD DISCUSSED.

SYLLABUS:

1. *A rural board of education may, under the provisions of Section 7620, General Code, purchase a right of way leading from a highway to a school house.*
2. *A board of education may properly file a petition with the county commissioners under the provisions of Section 6887, General Code.*

3. *Section 6862, General Code, as last amended, does not authorize a board of education to file a petition under said section to establish a road. However, there seems to be nothing to prevent the members of the board of education from encouraging the freeholders of the district to sign such a petition.*

COLUMBUS, OHIO, November 22, 1928.

HON. ISAAC E. STUBBS, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads as follows:

“How will a township Board of Education proceed to secure a road from a school house to a public road?

You will observe that Section 6862 of the General Code was amended last spring so that a Board of Education has not the right to petition for public roads as formerly provided under said section.

Section 6887 of the General Code provides for the establishment of a road benefiting the public from lands of a person, firm or corporation through lands of another to a public highway. The Board of Education by Section 4749 is a body politic and corporate.

Under Section 7624 it would seem that the Board of Education does not have the right to appropriate land for a *right of way*.

The question that has been bothering me a little is as to whether the Board may proceed under Section 6862 by having a petition signed by twelve free-holders of the vicinity, or may proceed under 6887. Being the legal advisor of both the County Commissioners and the Board of Education I am wanting to advise the proper proceedings, as there is likely to be a contest by a land owner through whose land said road will go.”

Section 6862, General Code, prior to its amendment in 112 O. L. 430, expressly authorized a board of education to petition the county commissioners for a road for the convenience and welfare of the pupils in the district. However, as stated in your communication, the amended section eliminated the provision relative to the board of education. Said section, as amended, reads:

“When the county commissioners are of the opinion that it will be for the public convenience or welfare to locate, establish, alter, widen, straighten, vacate or change the direction of a public road they shall so declare by resolution, which resolution shall set forth the general route and termini of the road, or part thereof, to be located, established, or vacated, or the general manner in which such road is to be altered, widened, straightened, or the direction thereof changed. When a petition signed by at least twelve freeholders of the county residing in the vicinity of the proposed improvement is presented to the board of county commissioners of any county requesting said board to locate, establish, alter, widen, straighten, vacate or change the direction of a public road, such board of county commissioners shall view the location of the proposed improvement, and if they are of the opinion that it will be for the public convenience or welfare to make such improvement, they may take the action prescribed by this and the succeeding sections and proceed to make such improvement. Such petition shall set forth the general route and termini of the road, or part thereof, to be located, established or vacated, or the general manner in which such road is to be altered, widened, straightened or the direction thereof changed.”

The section above quoted authorizes twelve freeholders to petition the county commissioners to locate, establish, alter, widen, straighten, vacate or change the direction of the public road, etc., and undoubtedly freeholders of the school district who are interested in having a proper public road to a school building could file a petition under this section and obtain the same results as a board of education could have obtained under the previous section.

Your attention is directed to Section 7624, General Code, which relates to the appropriation of land by a board of education for the purposes therein specifically mentioned. The language used in said section would not seem to include rights of way. Statutes authorizing appropriations must be strictly construed and such methods may not be employed unless the authority is clearly and expressly granted. I have found no other sections of the General Code which expressly authorize boards of education to make such appropriations. If, in acquiring a new site, or enlarging grounds for the purposes mentioned in said section, a board of education should include enough land to extend to a highway and construct thereon a road it probably would have such power. However, as heretofore indicated, the language of said section is not express and clear upon the proposition, and it is believed that the doubt must be resolved against the power, especially in view of the fact that other sections of the Code treat of the subject of rights of way.

Section 7620, General Code, provides in substance, that the board of education may purchase or lease sites or rights of way thereto, etc. There is no doubt, of course, but that the board of education is authorized under this section to negotiate with owners of land for a right of way in the case you mention.

Section 4749, General Code, to which you refer, provides in substance, that the board of education of each school district shall be a body politic and corporate, with power to contract and acquire real estate, etc., and to exercise such powers as are conferred by law relating to the public schools of the state.

Section 6887, General Code, provides:

"Any person, firm or corporation, desiring to secure for the use of the public a road leading from any land owned by said person, firm or corporation, through the lands of another person or persons, to a public highway, may file a petition with the county commissioners describing the road so desired, and giving the respective names and places of residence of the owner or owners of all the land through which the proposed road will pass."

In considering whether or not a board of education is a "person" or a "corporation" within the meaning of the section last mentioned, it has been noted that the statutes of Ohio in numerous instances have defined the word "person" as including corporations. Without undertaking specifically to refer to each of the instances wherein the word "person" has been so defined, it may be stated that in each case such definitions are made in connection with a special group of sections dealing with a particular subject matter.

To illustrate, Section 1390, General Code, which constitutes a part of the fish and game laws, has defined "person" to be a corporation; Section 6212-1, General Code, which relates to nuisances provides that the word "person" shall include a corporation; Section 8993-52, General Code, which is a part of a group of sections relating to the regulation of fares and freight charges defines a corporation to be a "person".

However, it will be noted that such provisions as those above mentioned furnish little light upon the question here presented for the reason that they treat of particular subjects and there is an inference that had the Legislature not expressly provided that the word "person" included a corporation the opposite conclusion would have obtained in interpreting the section.

Neither do these statutes aid us in determining whether or not a school board is a corporation within the meaning of such section. Two instances have been noted, however, where the Legislature in defining the word "corporation" to be a person has expressly provided that the word "corporation" shall not include county, township, city, village or other political subdivision, and that the term "public corporation" shall be taken to mean counties, townships, cities, villages, school districts, etc. See Section 6602-34, General Code, which is a part of the sections relating to sanitary districts and Section 14219-1, General Code, which relates to canal districts.

In considering the provisions of the sections last mentioned, there is an inference that in the mind of the Legislature the term "corporation" includes public corporations unless otherwise provided. There is also an inference arising from the provision of said section that a school district is to be regarded as a public corporation. It will be noted, however, that notwithstanding these special provisions defining the word "person" the courts in the absence of such authority have frequently included a corporation within the definition of the word "person".

In the case of *Springfield vs. Walker*, 42 O. S. 543, a municipal corporation was held to be a person even though apparently there was no statute existing declaring it to be such. That the word "person" includes a private corporation was held in *Cincinnati Gas Light and Coke Company vs. Avondale*, 43 O. S. 257. A county has been held to be a "person". Bouvier's Law Dictionary, page 2575.

In the case of *State ex rel. Board of Education, etc. vs. Board of Education, etc.*, 7 O. C. C. 152, it was held that a board of education was not such a corporation as is mentioned in Section 12304 of the General Code. The latter section relates to the authority to institute actions in quo warranto against corporations, therefore, the holding that it did not contemplate the ousting of a board of education, was logical and the decision is not of much force in considering the meaning of the term as used generally. It probably is true, generally speaking, that the statutes when speaking of corporations have reference to private corporations as contradistinguished from public corporations or quasi corporations. However, Section 4749, supra, in designating a board of education as a body politic and corporate, further expressly grants said board the authority to exercise powers and privileges as are conferred by law relating to public schools. Other sections place upon such board the duty of providing for the convenience of such schools, and its powers have ever been liberally construed by the courts.

If a roadway is needed for the convenience of the schools, it is believed, the courts would favor an interpretation which would authorize a board of education to proceed in its corporate capacity to obtain the same. It is, therefore, my opinion that a board of education may file a petition with the county commissioners for the purpose of securing a road under the provisions of Section 6887, supra. Action under this section probably would not result any more beneficially than an action by the freeholders of the community under Section 6862 of the General Code. However, it does have the advantage of enabling the board of education to proceed on its own initiative.

Based upon the foregoing, and in specific answer to your inquiry, you are advised that:

1. A rural board of education may, under the provisions of Section 7620, General Code, purchase a right of way leading from a highway to a school house.

2. A board of education may properly file a petition with the county commissioners under the provisions of Section 6887, General Code.

3. Section 6862, General Code, as last amended, does not authorize a board of education to file a petition under said section to establish a road. However, there seems to be nothing to prevent the members of the board of education from encouraging the freeholders of the district to sign such a petition.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2921.

APPROVAL, BONDS OF WYANDOT COUNTY—\$35,000.00.

COLUMBUS, OHIO, November 22, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2922.

APPROVAL, BONDS OF HANCOCK COUNTY—\$9,100.00.

COLUMBUS, OHIO, November 22, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2923.

TAX LEVY—EFFECT OF ANNEXATION OF MUNICIPALITY TO ANOTHER AFTER RESPECTIVE BUDGET CERTIFIED—WHERE TAX PROCEEDS PAYABLE.

SYLLABUS:

The annexation of one municipality by another, pursuant to a vote of the electors, having been accomplished subsequent to the action of the Budget Commission upon the budgets of such respective municipalities, will have no effect upon the tax levies in such municipalities which must be made separately, although the proceeds of taxes collected are payable to the treasury of the annexing municipality.