

1. A jail matron appointed under the provisions of section 3178, General Code, is not entitled to her meals free of charge in the absence of a provision in her contract which would take into consideration the question of meals.

2. Where persons are employed to prepare meals for prisoners in a county jail and their compensation is fixed at a certain sum and board, the county is authorized to furnish their meals without any additional charge.

3. County Commissioners are without authority to provide for the expense of lighting that part of the county jail which is used by the sheriff as a residence. County Commissioners are unauthorized to pay for the electric current used to prepare the meals of the sheriff and his family but may pay for the electric current used to prepare the meals of the prisoners in the county jail.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1890.

CLAIMS—TOWNSHIP TRUSTEES AND BOARDS OF EDUCATION UN-AUTHORIZED TO SETTLE AND COMPROMISE CLAIMS DUE THEIR RESPECTIVE SUBDIVISIONS.

SYLLABUS:

Boards of township trustees and boards of education do not have the power to settle and compromise claims due to their respective subdivisions similar to that granted to boards of county commissioners by Section 2416, General Code.

COLUMBUS, OHIO, NOVEMBER 20, 1933.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion as follows:

“I wish to inquire if boards of education or township trustees have the same authority as county commissioners to compromise claims against the subdivision, the same being in reference to their authority to compromise with the sureties on a personal bond securing their depository funds in closed banks?”

In your request, you ask my opinion concerning the right of boards of education and boards of township trustees to settle claims *against* such subdivisions, yet the specific problem you present is a claim *in favor* of the subdivision. I, therefore, am assuming your question to be whether such subdivisions have the right to settle a claim in favor of the subdivision.

Under date of April 23, 1931, my immediate predecessor in office, in an opinion rendered to the Prosecuting Attorney of Tuscarawas County (1931 O. A. G., p. 579) held as stated in the syllabus:

“Under proper circumstances, county commissioners have authority under section 2416 of the General Code, to enter into a compromise of claims

due the county for money deposited in a county depository, which depository is in course of liquidation."

Such opinion of my predecessor is based on the provisions of Section 2416, General Code, which grants specific power to the board of county commissioners to settle and compromise claims due to the county. Such section reads:

"The board may compound or release, in whole or in part, a debt, judgment, fine or amercement due the county, and for the use thereof, except where it, or either of its members, is personally interested. In such case the board shall enter upon its journal a statement of the facts in the case, and the reasons for such release or composition."

See also *Shanklin et al. vs. Commissioners of Madison County*, 21 O. S. 375; *State ex rel. Sayre*, 91 O. S., 85; *Shephard vs. Commissioners*; 8. O. S. 354; *Carder vs. Commissioners*, 16 O. S. 353; *Jones vs. Commissioners*, 57 O. S. 189.

In Opinions of the Attorney General for 1930, Vol. I, page 543, my predecessor in office held that a municipal corporation had the authority to compromise and settle claims *against* a municipality. Such opinion might well be sustained by reason of the provisions of the Constitution and statutes of Ohio granting to municipalities powers of "home rule."

Under date of November 19, 1929, my predecessor in office had before him the question as to whether the prosecuting attorney, county treasurer or other officer had the authority when a suit had been brought by the county to collect delinquent real estate taxes, to settle and compromise such claim. (1929 O. A. G. 1803). In such opinion my predecessor held, as stated in the syllabus:

"There is no provision of law authorizing any officer to compromise a claim for delinquent taxes and penalties on real estate."

Similarly, in *Peter vs. Parkinson*, 83 O. S. 36, it was held that the county commissioners had no authority to settle such claim.

Section 3244, General Code, with reference to the powers of township trustees, in so far as is pertinent to your inquiry reads:

"Each civil township lawfully laid off and designated, is declared to be, and is hereby constituted, a body politic and corporate, for the purpose of enjoying and exercising the rights and privileges conferred upon it by law. It shall be capable of suing and being sued, pleading and being impleaded, and of receiving and holding real estate by devise or deed, or personal property for the benefit of the township for any useful purpose. * * *"

The language of such section is similar to that with reference to the powers of boards of education. (Section 4749, General Code.) Such section reads:

"The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and

taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state."

Boards of education and boards of township trustees are bodies politic in Ohio, being specifically made so by statute (Sections 4749 and 3244, General Code). However, such entities do not have all the attributes of a private corporation; such bodies politic might better be referred to as quasi-corporations than as corporations. A quasi-corporation is a governmental or public agency which has been created by the legislature and has been endowed with power to act as an entity within the scope of the powers granted. (1 McQuillin on Municipal Corporations, Section 135.) From an examination of such Sections 4749 and 3244, General Code, and related sections, it becomes evident that neither boards of education nor boards of township trustees have all the attributes of a corporation, as such. Thus, they have no charter, they do not have perpetual existence, but exist only during the pleasure of the legislature, their powers are granted by the legislature, and new powers or duties may be added at any time at the will of the legislature. Counties, townships, school districts, sanitary districts are listed by McQuillen as examples of such quasi-corporations (Section 135.) As stated in *Harris vs. School District*, 28 N. H., 58; "A school district is a quasi-corporation of the most limited powers known to law."

The language of Section 3244, General Code, with reference to powers of township trustees clearly indicates that it is to be considered a body politic or corporate for a limited purpose only, "for the purpose of enjoying and exercising the rights and privileges conferred upon it by law."

I might well use the language of Price, J., in *Board of Education vs. Volk*, 72 O. S. 478, in describing boards of education:

"Such boards are 'declared to be bodies politic and corporate, and, as such, capable of suing and being sued, contracting with' * * * The other parts of the title measure the duties and powers of the board in all respects, so much so, that nothing is left to inference or implication."

It is to be observed that the opinion of my predecessor as to the right of the board of county commissioners to settle certain claims due to the county is based upon the specific provisions of or grant of power contained in the statute. There is some discussion in an opinion of my predecessor in office (1930 O. A. G., p. 543) to the effect that the power contained in the statute "to sue and be sued" was also authority to compromise claims. Such argument in that opinion is obiter dicta, in that it was unnecessary for the purposes of the opinion. Boards of county commissioners, boards of township trustees and boards of education are quasi-corporations, not corporations. They are rather agencies of the state. Their powers are only those expressly granted to them by the legislature and such as are necessarily inferred from the language of the statutes granting express powers. In the case of *Schwing vs. McClure, et al.*, 120 O. S. 335, it is stated in the first branch of the syllabus:

"Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except

such as is expressly given, or such as is necessarily implied from the powers that are expressly given."

I quote further from the language of the court at pages 340 and 341 :

"A member of a school board, while he is not a township, county, or city officer, is a public officer. * * *

The strictness with which the powers of public officers are to be exercised is evidenced by a great variety of cases, ending in this state with the decision in *State ex rel. A. Bentley & Sons Co., vs. Pierce, Auditor*, 96 Ohio St., 44, 117 N. E., 6, which holds that the contractual power of an officer or board is fixed by the statutory limitations upon his power, and that any doubt as to the power of a public officer, as between himself and the public, must be resolved in favor of the public and against the officer. Public officers have no power except such as expressly given. *Ireton vs. State, ex rel. Hunt*, 12 C. C. (N. S.), 202, 21 C. D. 412, affirmed without opinion, 81 Ohio St., 562, 91 N. E., 1131; *Peter vs. Parkinson, Treas.*, 83 Ohio St., 36, 93 N. E., 197, Ann. Cas., 1912A, 751."

In the case of *State ex rel. Clarke vs. Cook, Aud.*, 103 O. S. 465, the court states as a rule in the second paragraph of the syllabus :

"Boards of education and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted."

In *State ex rel. Locher vs. Menning*, 95 O. S. 97 at page 99, the court states :

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

Bearing in mind that the board of county commissioners is expressly granted the power to compromise and settle claims due to the county (§2416, G. C.) and that in Section 2408, General Code, such county commissioners are expressly granted the right to sue and be sued, prosecute and defend actions in court, it is difficult to perceive any purpose for the enactment of Section 2416, General Code, unless it was the legislative intent to grant to the county commissioners the right to compromise and settle claims due to the county which was not granted by granting the authority to sue and be sued.

An examination of the sections of the statute by means of which the legislature has granted and defined the powers of boards of education and township trustees failed to disclose any express grant of power to such boards to settle and compromise claims due to such subdivisions as in the case of county commissioners; although there is a similar provision granting such bodies the right to sue and be sued. I am not unmindful of the fact that cases are reported in other states holding that a grant of power to sue and be sued gives power to the grantee thereof to compromise and

settle the claim forming the subject matter of the suit, yet such does not appear to have been the intent of the legislature of Ohio, for to give such effect to such language would render superfluous all of the provisions of Section 2416, General Code, with reference to the powers of the board of county commissioners. It is an elemental rule of statutory construction, that courts must give some meaning if possible, to all provisions of the statute, and construe it according to the legislative intent as there expressed. Such legislative intent is to be gathered from all the provisions of the law bearing on the subject matter, and not from isolated passages. *Standard Oil Company vs. Surety Co.* 24 O. App. 237.

It would appear to me that the legislature has indicated its intent that the words "to sue and be sued" did not mean also "to compromise and settle," otherwise, when it desired to grant the power to compromise claims to the board of county commissioners it would not have deemed it necessary to enact Section 2416, General Code, to grant such power, and if they were of such opinion it would appear singular that they did not grant similar powers to boards of education and boards of township trustees to compromise claims if it intended to grant such governmental agencies such powers.

Specifically answering your inquiry it is my opinion that boards of township trustees and boards of education do not have the power to settle and compromise claims due to their respective subdivisions similar to that granted to boards of county commissioners by Section 2416, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1891.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY,
OHIO, \$22,000 00.

COLUMBUS, OHIO, NOVEMBER 20, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1892.

APPROVAL, BONDS OF CLEVELAND HEIGHTS CITY SCHOOL DIS-
TRICT, CUYAHOGA COUNTY, OHIO, \$12,000.00.

COLUMBUS, OHIO, NOVEMBER 20, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.