

missioner can compel a contractor for a road improvement to give a new or additional bond even though the surety on the original bond should become insolvent or the company giving the bond should cease to do business in this state.

2. The state highway commissioner owes material men and laborers no duty in the way of requiring a bond of the contractor, other than to comply with the provisions of section 1208 G. C. to the effect that he shall require a bond with sufficient sureties before entering into a contract for a road improvement."

In specific answer to your second question, it was held in an opinion found in Opinions of the Attorney General for 1929, Volume II, page 1417, the syllabus of which opinion is quoted in Opinion No. 3822 directed to you under date of December 8, 1931, that the labor and material claimants have no lien on the funds in your hands under a state contract.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3862.

JOINT HIGH SCHOOL FUNDS—MUST BE WITHDRAWN BY ORDER OF PRESIDENT, VICE PRESIDENT, OR DIRECTOR OF SCHOOLS AND COUNTERSIGNED BY CLERK OF BOARD OF EDUCATION.

*SYLLABUS:*

*Funds appropriated for the maintenance of a joint high school, as established by authority of section 7669, et seq., General Code of Ohio, are to be placed in a separate fund in the treasury of the school district in which the high school building is located and cannot be withdrawn from the said treasury except on the order of the president, vice president, or director of schools in school districts having a director of schools, and countersigned by the clerk of the board of education of said district.*

COLUMBUS, OHIO, December 16, 1931.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion with reference to the following:

"Section 7671 of the General Code provides that the funds for the maintenance of a joint high school should be paid into the treasury of the Board of Education of the District in which the school house is located, and paid out by act of the High School Committee for the maintenance of the school.

Section 4768 of the General Code provides that money shall be disbursed by an order signed by the president or vice-president and countersigned by the Clerk of the Board of Education.

Question. Are the funds appropriated for the maintenance of the

joint high school to be paid by orders signed by the president and clerk of the Board of Education of the district in which the high school building is located, or may it be paid upon the order of the joint high school committee?"

By authority of section 7669, et seq., General Code, the boards of education of two or more adjoining school districts by a majority vote of the full membership of each board may unite such districts for high school purposes, thereby establishing what is known as a joint high school. Section 7670, General Code, provides that a high school so established shall be under the management of a high school committee, consisting of two members of each of the boards creating such joint district, elected by a majority vote of such boards.

The law does not fix in detail what the duties and powers of such a joint high school committee are. In contents itself with the general provision that the school shall be *under the management* of a high school committee, as stated above. With reference to the funds necessary to maintain such a school, it is provided by section 7671, General Code, as follows:

"The funds for the maintenance and support of such high school shall be provided by appropriations from the tuition or contingent funds, or both, of each district, in proportion to the total valuation of property in the respective districts, which must be placed in a separate fund in the treasury of the board of education of the district in which the school house is located, and paid out by action of the high school committee for the maintenance of the school.

Section 4768 of the General Code provides in substance that a treasurer of the school district shall not pay out any school money except on an order signed by the president, vice president, or director of schools in school districts having a director of schools, and countersigned by the clerk of the board of education, and when such school moneys have been deposited in a regular school depository, according to law, no money shall be withdrawn from any such depository, except on an order signed by the treasurer and by the president, vice president, or director of schools in such school districts having a director of schools, and countersigned by the clerk of the board of education.

It will be observed from the terms of the statutes, referred to above, that when money is once placed in the treasury of the board of education of a school district the only way it may legally be withdrawn from said treasury, where the same has been deposited in a regular depository, is upon an order signed by the president, vice president, or director of schools, and countersigned by the clerk of the board of education.

Inasmuch as section 7671, General Code, directs that the moneys for the maintenance of a joint high school shall be placed in the treasury of the board of education of the district in which the school building is located, and section 4768, General Code, provides the method of withdrawing money from the treasury of a school district, I am of the opinion that funds appropriated for the maintenance of a joint high school may be paid out upon the orders of the president, vice president, clerk, or director of schools, only, which orders should be countersigned by the clerk of the board of education of the district in which the high school is located.

It may be noted that there is an apparent conflict between the terms of sec-

tion 4768, General Code, and those of section 7671, General Code, inasmuch as Section 4768, General Code, provides that the funds coming into the hands of a school district treasurer, which, by virtue of Section 7671, General Code, include joint high school funds in districts where a joint high school building is located, shall not be paid out except on the "orders" of certain officials of that school district, whereas, Section 7671, General Code, provides that those moneys shall be paid out by "action" of the joint high school committee charged with the maintenance of the joint high school. The conflict between these two sections is, in my opinion, more apparent than real. By the terms of the two sections, it is apparent that the legislature did not intend the officials of the school district in whose treasury the funds were placed to issue "orders" for paying out these moneys without some "action" on the part of the high school committee. The high school committee, being in charge of the maintenance of the high school, should approve claims and bills to be paid before the payment is actually made. The facts on which the validity of such claims are based are peculiarly within the knowledge of this high school committee and the legislature no doubt intended that the committee should take "action" approving bills before "orders" are issued for their payment, very much in the same manner as county commissioners approve certain claims against the county before the county auditor is authorized to draw warrants on the county treasury for their payment. The actual orders or checks for the payment of the money are drawn and issued, however, by the county treasurer.

Likewise, in my opinion, the orders or checks for the payment, out of the school district treasury, of funds appropriated for a joint high school should be made in accordance with section 4768, General Code, upon the approval of the joint high school committee by taking action as directed by section 7671, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3863.

APPOINTMENT OF TEACHER BY COUNTY BOARD OF EDUCATION—  
WHEN SUPERINTENDENT OF COUNTY CHILDREN'S HOME ARBITRARILY REFUSES TO APPROVE SELECTION OF BOARD.

SYLLABUS:

1. *When a school is maintained at a county children's home, the said school shall be under the control and supervision of the city, township or village board of education having jurisdiction over the school district within which such home is located. Teachers for such school shall be employed by the said board of education with the approval of the superintendent of the home.*

2. *When a village or rural board of education, upon which there devolves the duty of employing a teacher or teachers for a school maintained at a county children's home, fails to do so because of the arbitrary action of the superintendent of the home in refusing to approve the employment of any other than one particular person, whereas the board offered to appoint anyone out of a large list of applicants other than the person whose employment the superintendent would approve, it becomes the duty of the county board of education, by force of Section 7610-1, General Code, to employ a teacher for said school.*