

74.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO THROUGH DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS, WITH BOARD OF TRUSTEES, KENT STATE NORMAL SCHOOL AND THE THATCHER HEATING COMPANY, AKRON, OHIO, FOR HEATING, VENTILATING AND PLUMBING, LIBRARY BUILDING, KENT STATE NORMAL SCHOOL AT A COST OF EIGHTEEN THOUSAND DOLLARS—FEDERAL SURETY COMPANY, SURETY.

COLUMBUS, OHIO, February 11, 1927.

HON. G. F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, for and on behalf of the board of trustees, Kent State Normal School, and the Thatcher Heating Company, of Akron, Ohio. This contract covers the heating and ventilating and plumbing contract for library building, Kent State Normal School, Kent, Ohio, and calls for an expenditure of eighteen thousand dollars (\$18,000.00).

You have submitted the certificate of the director of finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Federal Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

75.

BOARD OF EDUCATION OF SCHOOL DISTRICT—WITHOUT AUTHORITY TO LEASE LANDS ACQUIRED BY PURCHASE FOR OIL OR GAS PURPOSES—NOT MATERIAL THAT LAND BE USED FOR SCHOOL PURPOSES.

SYLLABUS:

A board of education of a school district is without authority to lease lands, which it has acquired by purchase, for oil or gas purposes, regardless of whether or not such lands be used for school purposes.

COLUMBUS, OHIO, February 12, 1927.

HON. VERNER E. METCALF, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of January 20, 1927, reading as follows: .

"The board of education of Lawrence township, this county, is the owner in fee simple of 80 acres of land, they having obtained title to this land several years ago as the result of a foreclosure of a mortgage. They have been desirous of leasing this land for oil and gas purposes. I advised them that they had no authority to lease it, basing my advice upon Attorney General's Opinion, 1918, Volume 2, page 254; 1913, Volume 2, page 1508. Subsequently they took the matter up with your predecessor in office and under date of January 7th of this year they were advised by the Hon. C. C. Crabbe that he would furnish me as prosecuting attorney an opinion should I request it. I have hesitated to ask for an opinion on this as the law seems to be well stated, but at the same time this board of education is not satisfied. Is it possible that there could be some difference in the authority of the board to lease for oil and gas purposes when they own this real estate that is not used for school purposes? Personally I am of the belief that they have no authority to own the land and the lending of the money several years ago and foreclosing on the same but the fact is they still have the land and desire to lease it. I would like a letter from you in this regard at your earliest convenience."

It is noted that in the above letter you refer to an opinion rendered by this department upon the question here involved, reported in Opinions of Attorney General, 1918, Volume II, page 254. There is no page 254 in Volume II of the opinions for that year, but at page 1354 I find an opinion relating to your question, which is probably the opinion intended to be cited.

I agree with you that the board of education in question has no authority to lease the land described in your letter for oil and gas purposes.

In one of the opinions mentioned in your letter reported at page 1508, Volume II, Opinions of Attorney General for 1913, it was held that:

"Section 4749, General Code, which enumerates the powers of the board of education with reference to acquiring, holding, possessing and disposing of real and personal property, does not include any provision for the leasing of such property by the board, and as the statutes nowhere prescribe the manner of executing such a lease, the board cannot be held to possess such power."

In the opinion the following language is used:

"The board of education of each school district being a body corporate, such board has only such powers as are specifically granted by statute. Said Section 4749, supra, cannot be so construed as to include powers which are not therein specifically enumerated. In my judgment, Section 4749, supra, gives the board of education the power to alienate, convey or sell its real property acquired by purchase, but does not give the board the right to lease such property.

* * * * *

If the legislature had intended to vest boards of education with power to lease real property acquired by purchase it would not only have specifically provided for such power by including it in said Section 4749, supra, but would have provided how such real property could be leased, and how the leases of such property should be executed as in the case of the sale and conveying of real property in accordance with Sections 4756 and 4757 of the General Code above quoted."

In the other opinion referred to (Volume II, Opinions of Attorney General, 1918, page 1354), this department held:

"A board of education of a rural school district has no power to lease school grounds for oil or gas purposes,"

saying in the opinion as follows:

"* * *. Nowhere in the statute. Section 7620, General Code, is there any authority granted to boards of education to grant leases of school lands or school property. In this the powers granted to boards of education are more limited than are the powers which are granted to county commissioners, for Section 2486 provides that when in their opinion the county would be benefited thereby, the commissioners may make, execute and deliver contracts or leases to mine iron ore, stone, coal, petroleum, salt, and other minerals, upon lands owned by such county, thus giving to boards of county commissioners full and complete authority to lease county property for oil or gas purposes. * * * a board of education which is authorized to purchase real estate would, by inference, be authorized to accept deeds to such real estate. But a lease of real estate for a purpose other than that granted by statute could not be held to be a power necessarily inferred from the power to purchase for school purposes."

This opinion also quotes the syllabus of *Herald, et al., vs. Board of Education*, 65 S. E. 102 (W. Va.), which reads as follows:

"A board of education is a quasi public corporation, existing only under statute, having only the powers given by statute, and such implied powers as are absolutely necessary to execute such express powers. It cannot engage in business or make contracts outside its functions touching education. It cannot lease a school house lot for production of oil and gas."

From the above it will be seen that the conclusion in each of the opinions referred to is based upon the principle that a board of education, which is a quasi public corporation existing only under statute, has only those powers expressly conferred by statute and such other powers as are necessary to carry out the powers expressly granted. The reasoning of those opinions is applicable here, and since I find no statute authorizing boards of education to lease for oil and gas purposes, real property acquired by purchase, which is not used for school purposes, I conclude that such board of education is without authority to enter into such a lease.

Specifically answering your question it is my opinion that a board of education of a school district is without authority to lease lands, which it has acquired by purchase, for oil or gas purposes, regardless of whether or not such lands be used for school purposes.

Respectfully,
EDWARD C. TURNER.
Attorney General.