

effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate of the Controlling Board, showing that said board has released funds for this project in accordance with section 8 of House Bill No. 531 of the regular session of the 91st General Assembly.

In addition you have submitted a contract bond upon which the Globe Indemnity 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,

JOHN W. BRICKER,
Attorney General.

5987.

TUITION—BOARD OF EDUCATION NOT AUTHORIZED TO
PAY TUITION FOR PUPILS ATTENDING NORMAL
SCHOOL OR COLLEGE—IMMATERIAL WHERE NORMAL
- SCHOOL OR COLLEGE LOCATED.

SYLLABUS:

A school district board of education may not lawfully pay tuition as such, for persons residing within the district who attend a teachers training school or college either within or without the district.

COLUMBUS, OHIO, August 22, 1936.

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

GENTLEMEN: This will acknowledge receipt of your request for my opinion, which reads as follows:

“We are enclosing herewith a letter from our school examiner in the City of Cleveland School District, with reference to the authority of the Cleveland Board of Education to pay tuition in the Teachers' Training Colleges of Ohio, for students

who have not yet completed the course of instruction, and when such students are residents of the City of Cleveland.

A copy of the resolution of the board of education is attached to the examiner's letter.

You are respectfully requested to furnish this department your written opinion as to the authority of the Cleveland Board of Education to pay such tuition."

The resolution of the Board of Education of the City of Cleveland, referred to in your inquiry, reads in part, as follows:

"Be it resolved, by the Board of Education of the City School District of the City of Cleveland, that the Cleveland Board of Education discontinue the operation of the Cleveland School of Education at the end of the present school year, August 31, 1936, and that arrangements be made to pay the tuition of all students who are at present receiving free tuition at the School of Education and who are residents of the Cleveland City School District, to any teacher training college located in the State of Ohio."

The question submitted by you is not new. Your attention is directed to an opinion of my predecessor which will be found in the reported Opinions of the Attorney General for 1932, at page 167, where it is held:

"A school district board of education may not lawfully pay tuition to the Kent State Normal College for pupils of the district who attend a high school maintained by said college, even though the district does not maintain a high school."

In the course of the opinion it was said:

"The authority for a board of education to pay tuition for resident pupils who attend schools other than those maintained by the board is purely statutory. This authority is found in Sections 7734, 7736, 7747, 7748, 7748-1, 7750 and cognate sections of the General Code. An examination of these several sections of the Code authorizing boards of education to pay tuition for school attendance outside the district clearly shows that the payment of tuition to any other agency than a board of education for some other school district in Ohio is not contemplated.

There is no authority, either express or implied, in the statutory law of Ohio for the payment of tuition by a school district board of education to a normal school or college for any of the resident pupils of the district. In the absence of such authority no other conclusion can be reached than that the authority does not exist."

Since the rendition of the opinion referred to above, the legislature, without repealing any of the statutes mentioned in that opinion except Section 7747, General Code, enacted Section 7595-1d, General Code, as a part of what is commonly known as the School Foundation Law. This section reads in part, as follows:

"Pursuant to law, a pupil may attend school outside his district of legal residence, and for such pupil, his board of education shall pay tuition not more nor less than that which shall be computed as follows:"

From an examination of the other and further provisions of Section 7595-1d, General Code, which I do not believe it is necessary for our present purpose to quote in full, it will be found that the statute clearly contemplates the payment of tuition by a board of education to none other than another board of education in some other school district. That appears so clearly from the provisions of this statute that it is beyond dispute.

Attention may be directed to the fact that under the terms of Section 7647, General Code, boards of education in city school districts may maintain normal schools, and Section 7650-1, General Code authorizes boards of education in city school districts to enter into contracts not exceeding one year upon such terms and conditions as the said board may deem expedient, with the trustees or other duly authorized officials of any college or university legally organized within the meaning of the provisions of Section 7650, General Code, for the purpose of obtaining in such school district instruction in the special, technical, professional or other advanced studies which may be pursued in such college or university beyond the scope of the public high school. The statute further authorizes the making of similar contracts with private corporations or associations not for profit, maintaining and furnishing a museum of art, science or history, or providing musical instruction, for the purpose of obtaining in such school district such instruction or other educational services as can be rendered to the schools by such private corporation or association.

The authority extended by Section 7650-1, General Code, exists only

as to the making of contracts for special instruction beyond the scope of the public high school with institutions that measure up to certain standards as defined in Section 7650, General Code. Such a contract may be made by a board of education of a city school district for teacher training if the institution with which the contract is made meets the requirements of the statute. Regardless of the terms of such a contract, any payments that might be made by the board of education to the college or university would not pay tuition in the sense that that term is used in the statutes.

There is no authority found in the statutes anywhere which authorizes a board of education of a school district in Ohio, to pay tuition as such, to any institution, public or private, or any agency other than the board of education of another school district within the state.

I am therefore of the opinion in specific answer to your question, that the Board of Education of the Cleveland City School District may not pay tuition for persons residing in the school district who attend a teachers' training school or college located either within or without the district.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5988.

VACATION OF PLAT—NO INJUNCTION FILED OR DISSENT MADE—MANDATORY DUTY OF AUDITOR TO VACATE PLAT ON RECORD—NO VACATION OF DEDICATED STREETS WITHIN PLAT.

SYLLABUS:

1. *Where proceedings have been brought pursuant to the provisions of Sections 3601, et seq., General Code, to vacate a plat and no notice of an injunction has been served upon the county auditor or notice of dissent from such vacation by the owners of any of such lots, it is the mandatory duty of the county auditor to vacate such plat on his records.*

2. *Proceedings for the vacation of a plat under the provisions of Sections 3601, et seq., General Code, do not vacate the dedicated streets within the limitations of the plat.*