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BOARD OF EDUCATION—POWERS DEFINED BY STATUTE—RENTING ROOMS FOR SCHOOL GYMNASIUM LAWFUL—PURCHASING BUILDING UNDER "LEASE PLAN" ILLEGAL.

SYLLABUS:

1. *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 statutory provisions. They have no power except such as is expressly given or such as is necessarily implied from the powers that are expressly given.*

2. *A board of education may lawfully rent rooms to be used for a school gymnasium.*

3. *A building for a school gymnasium, or for other school purposes, may not lawfully be purchased on the installment plan, or under a so-called "lease plan."*

COLUMBUS, OHIO, September 11, 1929.

HON. DAVID CREGER, *Prosecuting Attorney, Upper Sandusky, Ohio.*

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

"The board of education of the McCutchenville Rural School District, located in Wyandot and Seneca Counties, is contemplating on erecting a gymnasium at a cost of about \$9,000.00.

This district is bonded to the full extent of the law and the board can use about \$6,000.00 from their general fund for the purpose of constructing this building.

The state examiners have threatened to take away their charter as a first class high school, unless some provision is made for a gymnasium; the present building is also insufficient and the new building would contain two class rooms.

The only possible way for the board of education to secure a building, would be to pay down their \$6,000.00 and the balance at some later date. An agent for a portable building company has offered to do this under a lease plan.

The question is, can a board of education lease property for school purposes?"

The specific question submitted by you: "Can a board of education lease property for school purposes?" is answered by the plain terms of Section 7620, General Code, which reads in part, as follows:

"The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, * * * "

There can be no question with respect to the right of a board of education to lease or rent buildings for school purposes, including the purposes of a gymnasium, this being a necessary and proper school purpose the same as any school room. However, buildings cannot lawfully be purchased under the guise of a so-called "lease plan" or contract whereby the property is to be paid for in installments.

The courts, in many reported cases, have uniformly held that boards of education being creatures of statute, have only such powers as are specifically granted to them by statute, together with such other powers as may be necessary to carry into effect the powers so granted. This principle has recently been applied by the Supreme Court of Ohio in the case of *Schwing vs. McClure, et al.*, 120 O. S. 335; 166 N. E. 230, in which a number of authorities to the same effect, are cited. The first branch of the syllabus of the above case, reads as follows:

“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 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.”

By the terms of Section 7623, General Code, it is necessary for a board of education when it determines to build, repair, enlarge or furnish a schoolhouse or schoolhouses the cost of which will exceed in city districts three thousand dollars and in other districts one thousand dollars, except in cases of urgent necessity, or for the security and protection of school property, to advertise for and receive public bids for the same, and award the contract, in accordance with the bids so received, to the lowest responsible bidder. It is also necessary, before any contract with the said lowest responsible bidder may be made, that the fiscal officer of the board certify that sufficient funds have been appropriated, and are in the treasury to meet the obligation of the contract. Section 5625-33, General Code.

The aforesaid statutory limitations on the powers of a board of education preclude its securing a building by contracting to pay for it on the installment plan, or under the guise of a so-called “lease plan,” although the leasing of a building in good faith for school purposes, and not for the purpose of circumventing the statutory requirements with reference to the acquiring of a school building by purchase or building the same, is lawful.

Although you do not outline in your letter just what is meant by “lease plan,” I assume that it is proposed to make a payment of six thousand dollars on a building the total cost of which is to be nine thousand dollars, and to make other payments in the nature of rentals, until the remaining three thousand dollars is paid, at which time the title to said building is to become absolute, in the board of education. This, in my opinion, is a plain evasion of the law, and is not such an arrangement as is within the powers of the board of education to enter into. Under the circumstances stated by you, it will be necessary for the board to confine itself to the erection of a gymnasium costing not to exceed six thousand dollars, or rent quarters until such time as the funds now available may be supplemented by other funds, either raised by taxation or by the sale of bonds, so as to enable the board to erect such a building as it desires.

Respectfully,
GILBERT BETTMAN,
Attorney General.