

2103.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN HAMILTON AND WARREN COUNTIES AND FINAL RESOLUTION FOR IMPROVEMENT IN CUYAHOGA COUNTY.

COLUMBUS, OHIO, July 17, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

2104.

BOARD OF EDUCATION—AUTHORITY TO LEASE SCHOOL BUS WITH PRIVILEGE OF PURCHASE AT TERMINATION OF LEASE.

**SYLLABUS:**

*A board of education may legally lease a school bus for a two or three year period if in its judgment such action is for the best interest of the schools under its control. Such a contract of lease may contain a provision granting the board the option to purchase at expiration of lease. However, such a lease must provide for the payment of a rental commensurate with the use of such bus, and such a contract may not be in fact a contract of purchase under the guise of a lease.*

COLUMBUS, OHIO, July 18, 1930.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—You have presented the following inquiry:

“Several township boards of education of Trumbull County desire to purchase school busses and operate them rather than to let contracts for the transportation of the school children to private individuals. They, however, have not sufficient funds in their school budget to purchase the busses outright and do not wish to ask a bond issue for this purpose. If they were permitted to contract for the purchase of school busses with payments extending over a period of two or three years, the busses could be purchased out of the money which would otherwise be used to pay private individuals for such transportation, and some saving in addition to the acquisition of the bus be accomplished at the same time. In view of your recent opinion that contracts for transportation of pupils may extend over periods of two or more years, it has been suggested that such a purchase might be made by leasing the school bus for from two to three years with privileges of purchase at the expiration of such time at a nominal price. Under such a plan title would remain in the lessor until all payments were made, but exclusive use and control would be in the school board. Certificate of the fiscal officer could of course be made only for funds for current year payments on such lease.

Will you kindly advise me whether a board of education may lawfully lease a school bus for transportation of pupils for a period of two or three years with privilege of purchase at the expiration of such time?”

In response to your request, you were referred to Opinions of the Attorney

General for 1928, p. 2873, and Opinions of the Attorney General for 1922, p. 499. However, in your recent communication, you state that said opinions do not dispose of your problem, for the reason that they both consider statutes which require competitive bidding whereas there is no such requirement in connection with purchases made by school boards. In this connection, it may be observed that it has frequently been suggested that the practice of taking bids by school boards is a good one and should be encouraged.

The syllabus of the first opinion hereinbefore mentioned reads :

"1. Where a village enters into an arrangement with a company owning a fire truck and equipment, whereby the village agrees to pay \$300.00 cash on delivery and \$100.00 per month thereafter until the sum of \$5,700.00, with interest, is paid, at which time the lessor agrees to bargain and sell and transfer title to the equipment to the village, such an arrangement is a contract of sale.

2. Under such circumstances, such a contract cannot be entered into except in pursuance to competitive bidding after advertisement, as set forth in Section 4221 of the General Code, and no funds may be legally expended for such purpose where said statute has not been complied with."

The second opinion above mentioned held as disclosed by the syllabus that :

"A contract purporting to have been entered into by a road machinery company with township trustees which is in form a lease, but which is in substance and practical operation a contract of sale, in that at the end of the third year of the lease the township trustees have the option of purchasing the machinery for a trivial sum in addition to the three years rental which they already will have paid in yearly installments under the contract, is not authorized by the terms of Section 3373, G. C., or otherwise; and such purported contract, because of its obvious tendency to destroy the principle of competitive bidding in the purchase of road machinery as required by said Section 3373, is void as being contrary to public policy."

While, as you state, both of said opinions dealt with statutes which require competitive bids, both of them clearly held that public boards may not take such actions as will amount to a circumvention of the law, and may not do indirectly that which they cannot do directly.

Without undertaking to review the various sections of the General Code which relate to the powers of boards of education, it may be stated that there are no express provisions which authorize such a board to either purchase or lease school busses. However, it is a well established rule that such boards have such implied power as is necessary to carry into effect the express powers granted to it. It is well known that the statutes make it the duty under certain circumstances for such boards to provide for the transportation of pupils; therefore it would seem that it may either contract for such purpose, or it may purchase busses and operate them itself, or if it chooses it is believed it may lease the same. However, each of the three methods above mentioned is complete in itself and where any one is employed, the board of education must proceed in good faith.

There would appear to be no authority to purchase a school bus or other equipment on the installment plan. While such method is universally employed by individuals, it has not been the practice insofar as public officials are concerned. The power to purchase an article implies the power to pay for the same. In some instances the Legislature has expressly authorized the purchasing upon the installment

plan, such as in the case of township trustees in the purchase of road machinery equipment. However, the fact that the Legislature has specifically authorized such purchases in certain instances would indicate that in other instances the power does not exist. Of course, it is recognized that the practice is different with reference to leases. That is, the common practice in connection with leases is to provide for payment at stipulated intervals.

It is clearly the law that a board of education has no power to purchase a school bus unless the certificate required under Section 5625-33, General Code, is obtained to cover the entire purchase price. In the case you present, it is clear that the board under consideration desires to purchase a bus and does not have the available money. It follows that it may not do indirectly that which it cannot do directly. Of course, a board of education may lease a bus, with an option to purchase, if the stipulated rentals are commensurate with the use of the bus and it is not a purchase under the guise of a lease.

In view of the foregoing and in specific answer to your inquiry, you are advised that a board of education may legally lease a school bus for a two or three year period if in its judgment such action is for the best interest of the schools under its control. Such a contract of lease may contain a provision granting the board the option to purchase at expiration of lease. However, such a lease must provide for the payment of a rental commensurate with the use of such bus, and such a contract may not be in fact a contract of purchase under the guise of a lease.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2105.

APPROVAL, LEASE BETWEEN STATE OF OHIO AND OHIO STATE SAVINGS ASSOCIATION OF COLUMBUS, FOR OFFICE SPACE IN OHIO STATE SAVINGS BUILDING, COLUMBUS, OHIO, FOR USE OF OHIO STATE MEDICAL BOARD.

COLUMBUS, OHIO, July 18, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a lease between the Ohio State Savings Association of Columbus, Ohio, as lessor, and the State of Ohio, acting by and through yourself, as Superintendent of Public Works, for the Ohio State Medical Board, as lessee. By the terms of this lease, the State is granted the use for office purposes of Suite 202, 203 and 204 in the Ohio State Savings Building, Columbus, Ohio, for the period of two years beginning on the first day of February, 1930, and ending on the thirty-first day of January, 1932, in consideration of a total rental of six thousand dollars, payable monthly in installments of two hundred and fifty dollars.

You have also submitted encumbrance records bearing the certificate of the Director of Finance to the effect that there is legally appropriated an unencumbered balance sufficient to pay the first year's rental for the above mentioned premises in the sum of three thousand dollars.

You have further submitted a copy of the proceedings of the board of directors, certified to by the secretary of the association, authorizing the president and secretary to enter into the lease herein considered.