one city is permitted to maintain unsanitary conditions that will breed contagious and infectious diseases, its business and social relation with all other parts of the state will necessarily expose other citizens to the same diseases. With the wisdom or folly of withholding from the local authorities final discretion over these matters, we are not concerned. It is beyond question the right of the general assembly to do so, and the court need not, and ought not to, inquire what motives moved it in withholding such power."

Consistent with the theory that the state has the final approval as to the installation of any appliances for the disposition of wastes or sewage of municipalities, it is provided in Section 3891 as follows:

"A municipal corporation may purchase and hold land outside of the corporate limits, to be used as a sewerage farm, to construct and maintain thereon all the necessary appliances for the proper dispositions of the sewage of such corporation, under such rules and regulations as shall be prescribed by council and approved by the state board of health."

Section 3649, General Code, being contained in Chapter 1, Title XII, Division II, which is the chapter enumerating the powers of municipal corporations, is as follows:

"To provide for the collection and disposition of sewage, garbage, ashes, animal and vegetable refuse, dead animals and animal offal and to establish, maintain and regulate plants for the disposal thereof."

I find nothing inconsistent in this section with the other sections of the General Code hereinabove quoted and commented upon, placing the final approval as to appliances or works for the disposition of waste matter of municipalities, both liquid and solid, upon the State Board of Health. There is no question but that the authority and power to dispose of such waste is vested in the first instance in the municipalities themselves, subject, however, to the approval of the State Board of Health.

In view of the foregoing, it is my opinion that a municipality may not acquire, erect or construct any plant or works for the treatment, purification or disposal of either liquid or solid wastes of such municipality without first securing the approval of the State Board of Health.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2012.

BOARD OF EDUCATION—AUTHORITY TO PERMIT USE OF SCHOOL BUILDING FOR KINDERGARTEN SCHOOL CONDUCTED BY A BOARD MEMBER—CONDITIONS NOTED.

SYLLABUS:

A board of education may lawfully permit the use of a building owned by such board for the conducting of a private school therein whether such private school is conducted by a member of the board and a tuition fee charged or not, so long as such use does not interfere with the primary use of the building for which it was con-

structed, upon request and the payment of the proper janitor fees, subject to such regulations as may be adopted by such board.

COLUMBUS, OHIO, June 23, 1930.

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

GENTLEMEN:—This acknowledges receipt of your letter requesting my opinion on the following questions:

> "Question 1. May a board of education permit the use of an abandoned building, owned by the board, for the purpose of conducting a kindergarten school by a person not under the employ of the board of education, the board furnishing heat, light and janitor service, for such building, the person conducting the school receiving her compensation by a tuition charge against the parents of the children?
>
> Question 2. Would there be any difference in your opinion, if the person so conducting the school, is a member of the board of education owning the building?"

By an "abandoned" school building, I presume is meant a building in which the school formerly conducted therein has been suspended by authority of Section 7730, General Code, or a building not now used for school purposes by reason of the centralization of the schools of the district under and by virtue of Section 4726, General Code. It is probably meant to be a building abandoned for the reason that a new building has been built to take its place.

Such buildings may be sold by the board of education of a district wherein they are located under certain circumstances, but the board is not required in any case to sell such buildings. School buildings are provided primarily for public school purposes, and their use is not permitted for any other purpose except as the authorities in charge thereof may be authorized to and do permit their use for some incidental purpose other than a public school building as provided by law. In the absence of statute, it would seem to be very doubttful at least whether a board of education would be permitted to allow the use of a school building for any other purpose than for strictly public school purposes.

Statutes authorizing the use of school buildings for other than public school purposes are Sections 7622 et seq. of the General Code. The statutory authority there extended is applicable to any school buildings whether at the time they are being utilized for public school purposes or not.

Section 7622, General Code, reads as follows:

> 'When, in the judgment of a board of education, it will be for the advantage of the children residing in any school district to hold literary societies, school exhibitions, singing schools, religious exercises, select or normal schools, the board of education shall authorize the opening of the school-houses for such purposes. The board of education of a school district in its discretion may authorize the opening of such school-houses for any other lawful purposes. But nothing herein shall authorize a board of education to rent or lease a school-house when such rental or lease in any wise interferes with the public schools in such district, or for any purpose other than is authorized by this chapter."

The above statute was enacted in its present form in 1894 (91 v. 44). In 1915 said Section 7622, General Code, was supplemented by the enactment of Sections 7622-1, 7622-2 and 7622-3 (106 v. 552), making school buildings and grounds avail-

able for social center purposes upon the application of a responsible organization or a group of at least seven citizens, so long as such use did not seriously infringe upon the original and necessary uses of such buildings, and upon the payment, if required by the board of education, of the actual expenses of janitor service, light and heat.

Section 7622-3, General Code, as enacted in 1915 (106 v. 552) read as follows:

> "The board of education of any school district may, subject to such regulation as may be adopted by such board, permit the use of any school house and rooms therein and the grounds and other property under its control, when not in actual use for school purposes, for any of the following purposes:
>
> 1. For giving instructions in any branch of education, learning or the arts.
> 2. For holding educational, civic, social or recreational meetings and entertainments, and for such other purposes as may make for the welfare of the community. Such meetings and entertainments shall be non-exclusive and open to the general public.
> 3. For public library purposes, as a station for a public library, or as reading rooms.
> 4. For polling places, for holding elections and for the registration of voters, for holding grange or similar meetings."

In 1917 said Section 7622-3 was amended (107 v. 607) by inserting in the second line after the word "shall," the words "upon request and the payment of the proper janitor fees," making the opening statement to read:

> "The board of education of any school district shall, upon request and the payment of the proper janitor fees, subject to such regulations as may be adopted by such board, permit the use of any school-house and rooms therein and the grounds and other property under its control, when not in actual use for school purposes, for any of the following purposes:"

As so amended the section is now in force.

Your inquiry involves the use of a school building for conducting therein a private school, and is clearly authorized by Section 7622-3, supra, under the clause authorizing the board of education, upon request and the payment of the proper janitor fees, to permit the school building to be used "for giving instructions in any branch of education, learning or the arts," and the fact that a tuition fee is charged does not, in my opinion, make any difference.

In an opinion rendered by my predecessor, found in Opinions of the Attorney General for 1928, at page 280, it is held:

> "A board of education may permit the use of the auditorium in a school building for the playing of basketball under the auspices of any responsible organization, including a church basketball league, even though a fee is charged for admission to the games. The charging of a fee for admission to such entertainments is not violative of the provision of Section 7622-3, General Code, that 'such meetings and entertainments shall be non-exclusive and open to the general public.'"

In a later opinion, found in Opinions of the Attorney General for 1928, at page 1913, it is held:

> "Boards of education may, subject to proper rules and regulations and

upon payment of the proper janitor fees, permit the use of its school buildings by private educational institutions for the purpose of conducting school therein."

Under the terms of Section 7622, General Code, before the enactment of Section 7622-3, General Code, boards of education were authorized to open a school house for the holding of a "select" school, and nothing is said therein about requiring the payment of janitor fees or the expenses of light and heat. The statutes contain no definition of a "select" school. I believe the general understanding of a "select" school as the term has been ordinarily used is that it might or might not be a private school. That is, a board of education might maintain such a school as a part of the common school system of the State or it might be a private school where tuition fees are charged. At any rate, while Section 7622-3 does not expressly, or by necessary implication, repeal Section 7622, General Code, it is a later expression of the legislature on practically the same subject and evinces a clear legislative intent to require the payment of janitor fees when by permission of a board of education a school house is used for any of the incidental purposes therein mentioned.

Whether or not a board of education must require payment for heat and light when permitting a school house to be sued for conducting a private school, is more difficult to determine. While there is no direct authority for a board of education to expend public funds for such incidental purposes as the uses, other than public uses, to which a school building may be permitted to be put, there is apparently implied authority to do so, at least, when the board permits the building to be used as a social center for entertainment and education of the people.

Section 7622-1 authorizes the board to permit the use of a school building for social center purposes when the use does not interfere with its primary use, and Section 7622-2 provides that any organization or group of citizens applying for the use of the school building as authorized by Section 7622-1, General Code, shall be responsible for any damage done to the building over and above the ordinary wear, and shall, *if required,* pay the actual expenses incurred for janitor service, light and heat. It would seem from this that the board need not necessarily require of such a group of citizens that they pay for janitor service, light and heat, and this impliedly carries with it the authority of the board to pay those expenses under such circumstances.

Inasmuch as the legislature provided in Section 7622-3, General Code, that when it permits a school building to be used for any of the purposes therein mentioned it shall require the payment of janitor service, but did not specify that the board should require the payment of the cost of light and heat, I am of the opinion that the board may lawfully pay for such light and heat when permitting the building to be used for the purpose of a private kindergarten school.

Coming now to your second question, that is, whether or not the fact that the person conducting such a kindergarten school is a member of the board of education would make any difference with respect to the board's right to permit the building to be used for that purpose, it is provided by Section 4757, General Code, that "no member of the board shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer." I am unable to see how when a board of education permits the use of a school building for the holding therein of a private school, even though the private school is conducted by a member of the board, it can be said that the member of the board is interested in a contract of the board. The board does not contract for the use of the building, but simply permits it to be used, and in my opinion, that permission may be granted to a member of the board as well as to any one else.

I am therefore of the opinion, in specific answer to your questions:

1. A board of education may lawfully permit the use of a building owned by

the board for the conducting of a private school therein, so long as such use does not interfere with the primary use of the building for which it was constructed, upon request and the payment of the proper janitor fees, subject to such regulations as may be adopted by the board.

2. The fact that the private school is to be conducted by a member of the board and a tuition fee charged does not, in my opinion, make any difference.

Respectfully,
GILBERT BETTMAN,
Attorney General

2013.

APPROVAL, LEASE EXECUTED BY SOPHIA M. ALTMAIER, TO SPACE IN REAR OF HARTMAN HOTEL BUILDING AND 142 EAST MAIN STREET, COLUMBUS, OHIO, FOR USE OF DEPARTMENT OF PUBLIC WORKS FOR AUTOMOBILE PARKING PURPOSES.

COLUMBUS, OHIO, June 23, 1930.

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

DEAR SIR:—This is to acknowledge receipt of your communication of recent date resubmitting for my examination and approval a certain lease and copies thereof, executed by one Sophia C. Altmaier, whereby she leases to A. T. Connar, Superintendent of Public Works, as Director of Public Works, for the use and benefit of the Department of Public Works, certain space in the rear of the Hartman Hotel Building and her place of business at 142 East Main Street, Columbus, Ohio, for automobile parking purposes.

An examination of the lease submitted shows that said lease has been corrected with respect to the matters pointed out in former opinion No. 2002 of this office, which caused the lease to be disapproved upon its first submission to this office. Said lease is, therefore, accordingly approved as to legality and form.

Encumbrance estimate, No. 369, submitted with said lease and the copies thereof, has been re-examined and found to be in proper form. Said encumbrance estimate shows that there is sufficient balance in the proper appropriation account to pay the rental for three and one-half months. Said encumbrance estimate is likewise returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2014.

TOWNSHIP ROAD CONSTRUCTION—GASOLINE TAX PROCEEDS APPLICABLE FOR SEWERS AND DRAINS.

SYLLABUS:

A township may use funds from its portion of the gasoline tax to pay the cost of such sewers and drains in connection with the construction of township roads, as are necessary for the drainage of such roads, as provided by Section 5541-8, *General Code.*