

thereof having an estimated life or usefulness of five years or more. Reconstruction for highway purposes shall be held to include the resurfacing but not the ordinary repair of highways."

A building may be enlarged or extended by the proceeds of a bond issue but work on a building such as repairing it and maintaining it in the same good condition as it originally was would not, in my opinion, come within the term "permanent improvement" as it is defined in the statute. It is my view, therefore, that these bonds cannot be issued for the purposes for which it is desired that they be issued.

It is my advice, therefore, that you do not purchase these bonds.

Respectfully,

JOHN W. BRICKER,

Attorney General.

5977.

GARAGE—BOARD OF EDUCATION AUTHORIZED TO BUILD
GARAGE FOR HOUSING SCHOOL BUS.

SYLLABUS:

A board of education which owns vehicles used for the transportation of school children, may lawfully expend public funds for the purpose of erecting a garage for the housing of those vehicles.

COLUMBUS, OHIO, August 18, 1936.

HON. D. H. JACKMAN, *Prosecuting Attorney, London, Ohio.*

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

"The Somerford Township Board of Education of Madison County, Ohio, has asked me whether or not it is within their power as a board of education, to build a garage of frame construction of about 24 feet by 36 feet, on school grounds, at a cost of some \$650.00. It will be approximately 300 feet from a contemplated school building and about 100 feet from the nearest private building.

Apparently, the only section of the General Code granting authority to school boards is Section 7620, and I note that several opinions have been handed down by the Attorney General ruling

that it is not within the power of a board of education to provide a residence for their superintendent or to provide a house for their janitor.

I am therefore anxious to have your official opinion as to whether or not it does come within the implied powers of Section 7620, to build a garage to house school busses."

It is a well recognized principle of law that administrative boards such as boards of education, have delegated powers only. They possess such powers only as are expressly delegated to them, together with such related and incidental powers as may be necessary to carry out those which are expressly delegated to them. It is equally well recognized that where express powers are granted to an administrative board and no direction is given as to the method and manner of carrying out those expressly delegated powers, discretion is vested in the board to exercise the power in any reasonable or proper manner. The incidental power vested in a public officer or board within its discretion, under such circumstances, is as definite and positive as though it had been delegated to the board or officer in express language. This principle of law has been sustained by the courts of this state. In the case of *State ex rel. Hildebrandt*, 93 O. S., page 1, the fourth branch of the syllabus reads as follows:

"Where an officer is directed by the Constitution or a statute of this state to do a particular thing in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed."

To the same effect is *State ex rel. Copeland v. State Medical Board, et al.*, 107 O. S., 20.

There is no express statutory authority granted to boards of education to purchase vehicles for the transportation of pupils to and from school, or to employ drivers for those vehicles, yet this power has always been recognized as being incidental to the express powers granted to boards of education to provide transportation without any express direction as to the manner or method of so providing it. In an opinion of a former Attorney General, found in the published Opinions of the Attorney General for 1928, at page 1570, it is held:

"A board of education may use its discretion as to whether or not it will provide transportation for pupils in the district by letting contracts therefor or by purchasing vehicles and hiring drivers."

In a later opinion by the same Attorney General it is said:

“Without quoting the several provisions of law empowering boards of education to provide transportation for pupils who attend the public schools, for our present purpose it is sufficient to say that boards of education are authorized by statute to furnish such transportation, and under certain circumstances are required to do so.

There are no specific directions to, or limitations upon boards of education as to how this transportation shall be furnished. The means of furnishing transportation is left to the discretion of the board, and in the absence of an abuse of this discretion the board may furnish the transportation in any way it sees fit, providing the general provisions of law with reference to the making of contracts and expending public funds are complied with.”

(See Opinions of the Attorney General for 1928, page 1733.)

It being well established that boards of education possess the power to purchase vehicles for the furnishing of school transportation, it follows, in my opinion, as an incident to this power they possess the power to preserve and protect them and keep them in repair. In the absence of any express direction as to the manner of doing so, it may be done in such manner within the discretion of the board as is thought proper.

This principle is elemental, and has been extended to the power without express direction to afford protection by insurance against fire. In the case of *French v. Mayor, et al. of the City of Millville*, 66 N. J. Law, 392, 49 Atl., 465, which case is cited with approval by the Supreme Court of Ohio, in the case of *Insurance Company v. Wadsworth*, 109 O. S., 440, at page 451, it is said:

“The city charter empowers the city to erect and maintain a city hall, school houses and other public buildings as may be necessary in the city. As incidental to this power thus granted the city acquired the right to contract for indemnity against loss by the burning of such buildings.”

It certainly cannot be said that a public board or a public officer is not charged with the duty as an incident to the offices which they hold, to prevent waste of public property and public funds. To fail to take such steps as may reasonably be necessary to protect public property in their possession and under their jurisdiction would, in my opinion, be a clear dereliction of duty, and it is my opinion that boards of education not

only have the power, but are charged with the duty of providing shelter for school busses which they may own, so far as it is possible to do so within the limits of available funds. To do otherwise, would be shocking to the sense of any prudent business man. The legislature will not be held to have been so improvident as to delegate to boards of education the power to acquire and own school busses and at the same time withhold the power to preserve and protect them, by providing for them when not in use.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5978.

APPROVAL—BONDS OF JOHNSVILLE-NEW LEBANON
RURAL SCHOOL DISTRICT, MONTGOMERY COUNTY,
OHIO, \$10,000.00.

COLUMBUS, OHIO, August 20, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5979.

APPROVAL—BONDS OF MINGO-JUNCTION CITY SCHOOL
DISTRICT, JEFFERSON COUNTY, OHIO, \$16,700.00.

COLUMBUS, OHIO, August 20, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5980.

APPROVAL—BONDS OF VILLAGE OF DEER PARK, HAMIL-
TON COUNTY, OHIO, \$1025.00.

COLUMBUS, OHIO, August 21, 1936.

Industrial Commission of Ohio, Columbus, Ohio.