amount of the purchase exceeds the sum of five hundred dollars such purchase must be made by competitive bidding. It is elemental that a public official may not do indirectly that which he may not do directly. The limitation of two hundred dollars contained in such section is applicable only when it is determined to make the repairs by contract. If the contract price is more than two hundred dollars the contract must be let by competitive bidding.

In specific answer to your inquiry, it is my opinion that:

1. Boards of township trustees are granted no authority to construct or resurface a township highway by force account. Section 3373, General Code, grants authority only to repair or maintain a township highway as therein prescribed.

2. A board of township trustees has no authority to make a purchase of highway materials at a cost in excess of $500.00, without competitive bidding.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1546.

BOARD OF EDUCATION—LOCAL SCHOOL DISTRICT—MAY BY RESOLUTION FIX NAME OF DISTRICT—DESIGNATION UNDER WHICH BUSINESS OF DISTRICT IS TO BE CONDUCTED—CORPORATE NAME—SHOULD REFLECT CLASS OF SCHOOL DISTRICT—NOT ABSOLUTELY NECESSARY SUCH BE THE CASE.

SYLLABUS:

1. A board of education of a local school district under its general power as extended by statute to manage and control the affairs of its district, may by resolution fix the name by which the district shall be known and under which designation the business of the district is to be conducted.

2. Although the corporate name fixed or used by a board of education under which its official corporate business is conducted for practical reasons should reflect the class of school district as provided by law for which the board acts, it is not absolutely necessary that such be the case.

3. A variation from the strict legal designation of a school district as to whether it is a city, village, exempted village or rural district as provided by law, in the transaction of official business for the district, will not render invalid the business so conducted.

4. The misnomer of a school district in contracts made on behalf of the district is not fatal or effectual to avoid such contracts, if the identity of the district so contracting may otherwise be established.

5. Mere change in corporate form of a political entity does not constitute change in identity.

COLUMBUS, OHIO, December 8, 1939.

HON. LEO M. WINGET, *Prosecuting Attorney, Shelby County, Sidney, Ohio.*

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

> "In May, 1927, a school district consisting of the Village of Jackson Center, in this county, and some territory adjacent thereto, was formed and named 'Jackson Rural School District'.
>
> On March 21, 1933, by resolution of the Board of Education of said district, the name was changed from 'Jackson Rural School District' to 'Jackson Center Village School District'.
>
> September 18, 1934, Miss D., State Examiner, ordered them to discard the name of 'Jackson Center Village School District', and continue to use the name of 'Jackson Rural School District'.
>
> November 1, 1936, bonds were issued by said school district in the name of 'Jackson Rural School District' under instructions of the Prosecuting Attorney.
>
> October 6, 1937, Miss R., State Examiner, ordered that the name of 'Jackson Center Village School District' be used and that the name of 'Jackson Rural School District' be discarded.
>
> All taxes during the period referred to above have been collected under the name of 'Jackson Rural School District' and all deeds and insurance policies have been carried in the name of 'Jackson Rural School District'.
>
> What is the correct name for the school district hereinbefore referred to?"

To avoid confusion and for practical purposes in distinguishing one school district from another, it is no doubt desirable and proper that each school district like other public entity, should bear and be known by some distinguishing official name. The statutes unlike those applicable to municipal corporations, are not clear as to how a school district is to acquire a name in the first place or change a name once acquired, and make no provision whatever with respect thereto except the implication that may be gathered from the statute classifying school districts. In Ohio Jurisprudence, Volume 28, page 47, Section 15, it is stated:

> "It is elementary, of course, that a name is essential to the existence, as a legal entity, of a municipal, as well as a private corporation."

In the same volume, at page 45, Section 11, it is said:

> "Boards of education, while political corporations in some sense, are in no sense municipal corporations. Owing to the very limited number of corporate powers conferred on them, boards of education rank low in the grade of corporate existence, and hence are properly denominated quasi corporations. This designation distinguishes this grade of corporation from municipal corporations, such as cities and towns acting under charters or incorporating statutes, which are vested with more extended powers and a larger measure of corporate life."

Sections 3516 et seq., General Code, wherein provision is made for the incorporation of new villages within rural territory, provides that application to the county commissioners shall be made for such proposed incorporation by petition, and Section 3519, General Code, provides that a petition filed for the said purpose shall contain among other things "the name proposed" for such a new village. Under the terms of Section 3531, General Code, it is provided that, if the incorporation of a village is granted, after a hearing on a petition praying therefor, "the corporation shall then be a village under the name adopted in the petition."

No similar statutory provision will be found with respect to the creation of new school districts. New school districts may be created from territory outside the limits of city and exempted village districts by county boards of education under and by authority of Section 4736, General Code, and it is customary and proper, I believe, for a county board of education upon the creation of a new district in pursuance of this statute, to give to the new district a name, although the statute makes no mention of the matter, and the name so given to the district upon its creation would no doubt be the name by which it would be known at least until it is changed in some proper manner.

Section 3541, General Code, provides for proceedings to change the name of a city or village when such change is deemed advisable. This statute, however, does not of course, apply to school districts, and there is no similar statutory provision providing for a change of name which is applicable to school districts.

In Section 4679, General Code, it is provided that the school districts of the state shall be *styled,* respectively, city school districts, exempted village school districts, village school districts, rural school districts and county school districts and the name by which a district is known and under which the corporate business is conducted should perhaps reflect the class of district to which it belongs, although the law does not expressly so provide. At least, it would do no harm, and would perhaps be more practical if the official name of a school district did reflect or indicate the class to which the district belonged. Usually, and perhaps

universally, city districts are known by the name of the city in which the district is located, followed by the words "City School District." The same is true quite generally, of village school districts, and if a village district has become exempted from county supervision that fact is usually reflected in the name. Rural districts usually bear some neighborhood or township name, followed by the word "rural" to show its classification although that is not always the case. Some rural districts have for years borne the name of some old family or teacher or some name reflecting memorable or historical associations or events.

Whatever name a district is known by, whether it reflects the classification as fixed by statute or not, is usually one of use and adoption by common consent rather than one that is fixed officially, except perhaps those that are named by a county board of education when a new district is created in pursuance of Section 4736, General Code, although there is nothing, in my opinion, to prevent a local board of education as the governing body of a school district, from adopting a name officially by resolution of the board, and if that is done the name so adopted would, in my opinion, be the official name of the district and would continue to be until it is changed by a later resolution.

It is not always possible to designate the proper classification of a district in its name continuously over a period of years without changing the name at times as the classification oftentimes changes with conditions. This is particularly true with respect to village and rural districts although it is also true to some extent as to city districts. Section 4680, General Code, provides that each city, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes shall constitute a city school district. Section 4686, General Code, provides, however, that when a city is reduced to a village the city school district shall thereby become a village school district and, vice versa, when a village is advanced to a city, the village district shall thereby become a city school district.

Section 4681, General Code, provides that each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district. Section 4682, General Code, provides that a district containing an incorporated village may by vote of the electors in the district become a village district even though its tax duplicate is less than $500,000. In Section 4687, General Code, it is provided that upon the creation of a village it shall thereby become a village school district *"as herein provided."* Section 4682-1, General Code, provides that a village school district containing a population of less than fifteen hundred may vote at any general or special election to dissolve and join any contiguous rural district.

From the foregoing it will be seen that what particularly distinguishes a village school district is that it contains within its boundaries an incorporated village and has a tax duplicate of at least $500,000 although even so, a village district might have existed and it may have voted in pursuance of Section 4682-1, General Code, to join a contiguous rural district or a vote may have been had within a district containing an incorporated village with a tax duplicate of less than $500,000, to become a village district by force of Section 4682, General Code.

The tax valuation within a district is of course not always the same, and it clearly follows, from the foregoing that because of this fact, a district may in one year be a village district and in the next a rural district, as all districts which are not city districts or exempted village districts or village districts are rural districts. See Opinions of the Attorney General for 1928, page 129; Ohio Jurisprudence, Vol. 36, page 95, Section 58. Again, a city district may automatically become a village district, and vice versa, by reason of a change in population as shown by a federal census. Section 4686, General Code.

In all the legislation pertaining thereto, no mention is made of the official name by which a school district shall be known for the purpose of the transaction of its official business. After all, in the light of judicial pronouncements, the name of a public entity of a class to which school districts belong is not vital or particularly material so far as the transaction of official business is concerned, or the making of contracts. This is true even as to the issuance of corporate bonds or similar evidences of indebtedness. The residents within the district are the same whether the district is officially or popularly known as a city district, a village district, an exempted village district or a rural district. In the case of *State, ex rel.* vs. *Village of Perrysburg,* 14 O. S., 472, it is held as stated in the fifth branch of the syllabus:

> "The issuing of bonds in the name of 'The Town of Perrysburg' instead of 'the incorporated village of Perrsyburg' when the latter would have been its proper legal designation, is merely a misnomer, which does not affect the validity or obligation of such bonds."

To the same effect is the holding of the court in the case of *Cornell University* vs. *Village of Maumee,* decided by the Circuit Court of the Northern District of Ohio, in 1895, 68 Fed., 418. In the syllabus of this case it is stated as follows:

> "Bonds duly and lawfully issued by a municipal corporation cannot be rendered invalid in the hands of a bona fide holder by the fact that such corporation, though properly a city, has issued such bonds under the name of a village, it having pre-

viously been recognized as a village in an act of the legislature changing its name, and having levied and collected taxes, passed ordinances, and otherwise acted as a village.

In the course of the opinion in this case, it is said by Judge Ricks:

"Whatever may have been the facts concerning the name by which the territory was known as a corporation, the people within the territorial boundaries of that corporation remained the same."

To the same effect is a late case decided in 1936, by the United States Circuit Court of Appeals, of the Sixth Circuit. City of Oakwood, Ohio, vs. Hartford Accident and Indemnity Company, 81 Fed. 2d, 717. In this case it was held:

"Corporate entity of Ohio village raised to status of city was not substantially effected when boundaries and territory remained the same.

* * * * * * * * *

Municipality is not dissolved when identity effected by transition from hamlet, village or town to city, or vice versa, or passing from one class or grade to another.

* * * * * * * * *

When classification of municipality is changed or municipality is reorganized, new municipality has both property rights and liabilities of old municipality.

* * * * * * * * *

Surety held liable in action at law by city on bond covering public deposit of village after village becomes city, where city had same boundaries, territory, and substantially the same population without reforming contract, since case was one of mere misnomer."

See also:

Broughton vs. Pensacola, 93 U. S., 266; Mobile vs. Watson, 116 U. S., 289; Comanche Co. vs. Lewis, 133 U. S., 198; Vilas vs. City of Manila, 220 U. S., 345; Mobile Transportation Co. vs. Mobile, 128 Ala., 335; Carrell vs. Fullerton, 215 Ky., 558; City of Olney vs. Harvey, 50 Ill., 453; West vs. City of Columbus, 20 Kans., 633.

The general rule with respect to such matters as applicable to both public and private corporations is stated in Ohio Jurisprudence, Volume 10, page 215, as follows:

> "It is the general rule, therefore, that in case of a misnomer of a corporation in a grant, obligation, or written contract, if there is enough expressed to show that there is such an artificial being, and to distinguish it from others, the body corporate will be considered well named, although there is a variation of words and syllables. So a variation from the strict legal designation in a devise or conveyance to a corporation, will not make void the devise or grant, provided that the identity of the corporation meant can be sufficiently ascertained from the terms used."
> See also McQuillin on Municipal Corporations, Section 2444.

In the case of Athern vs. Independent School District, 33 Ia., 105, it was held that the misnomer of a school district in contract for the hiring of a teacher was ineffectual to avoid the contract.

Inasmuch as no provision is made by statute with respect to the designation of a name for a school district it is my opinion that it is within the power of the board of education as administrator of the affairs of the district, to fix by resolution a definite distinctive name under which the board will transact official business for the district, and that the name may be changed from time to time as seems in the judgment of the board to be for the best interests of the district. For practical reasons the name fixed for a school district or assumed and used for such district should be such as to reflect the class of district to which it belongs, but the law does not definitely so provide.

Jackson Center, the village referred to in your inquiry, has been an incorporated village since 1895, and had a population in 1930 of 526 persons. I do not have the data as to the tax duplicate of the school district in which it was situated in May of 1927 or on March 21, 1933, or any of the other dates mentioned in your inquiry, nor do I have any information as to whether or not, if at any of those times the tax duplicaate for the district was less than $500,000 a vote had ever been taken under and by authority of Section 4682, General Code, referred to above, to constitute it a village school district. I therefore cannot say whether the school district at any of those times was or now is in fact and in a strictly legal sense a village or rural school district as provided by law. Be that as it may, however, it appears that the last official action taken by the board of education, and in fact the only such action so far as the recitals of your inquiry show, to designate officially a name for the district, was the action taken on March 21, 1933, at which time the board of education for the district by resolution adopted the name "Jackson Center Village School District" and for that reason, I am of the opinion that the proper official name of the district at this time is the "Jackson Center Village School District."

In view of the rulings of courts referred to above, the question of what is the proper name of the district becomes largely academic as there

is no doubt but that the bonds issued by the district on November 1, 1936, in which the issuer was designated "Jackson Rural School District" would in the hands of bona fide holders be held to be valid providing they met all requirements of law with respect to the issuance of such bonds.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1547.

CONTRACT—STATE WITH CLINTON WEST CO., ACOUSTIC TREATMENT, WOMEN'S PHYSICAL EDUCATION BUILDING AND NATATORIUM, BOWLING GREEN STATE UNIVERSITY, BOWLING GREEN.

COLUMBUS, OHIO, December 9, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a contract by and between The State of Ohio acting through you as Director of the Department of Public Works, for the Board of Trustees of Bowling Green State University, Bowling Green, Ohio, with Clinton West Co., for the construction and completion of Contract for Acoustic Treatment for a project known as Landscaping, Equipment, Bronze Tablets, Painting and Acoustic Treatment, Women's Physical Education Building and Natatorium, Bowling Green State University, Bowling Green, Ohio, as set forth in Item 17, Contract for "Group K"—Acoustic Treatment and Item 18, Alternate "C" Acoustic Treatment to Ceilings of Main Gymnasium and Auxiliary Gymnasium, of the Form of Proposal dated October 12, 1939, all according to Plans and Specifications, which Plans, Specifications and Proposal are made a part of this Contract.

You have submitted in this connection along with other documents the form of proposal containing the contract bond conditioned upon the faithful performance of the contract and providing for the payment of an amount not to exceed $3,000.00 in event of failure to so complete the contract according to the provisions thereof.

In view of the fact that the contracts amount is $3,755.00 and the contract bond is for an amount not to exceed $3,000.00, I find that I cannot approve this contract, said contract bond in my opinion being insufficient in law, and I am accordingly returning said contract, contract bond and all papers submitted in this connection.

Respectfully,
THOMAS J. HERBERT,
Attorney General.