

**Note from the Attorney General's Office:**

1986 Op. Att'y Gen. No. 86-031 was overruled by  
2004 Op. Att'y Gen. No. 2004-012.

**OPINION NO. 86-031****Syllabus:**

A board of education of a local school district may not acquire a building through a lease-purchase agreement.

---

**To: Robert L. Becker, Licking County Prosecuting Attorney, Newark, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, May 21, 1986**

I have before me your request for my opinion on two questions concerning the authority of a board of education of a local school district in regard to the construction of a building to be used for educational purposes. I understand that the school board desires to have a building constructed on land which is already owned by the school district. In your first question you ask whether the school board may enter into a lease-purchase agreement whereby real property owned by the school board is leased to a building contractor who would construct an educational building on the property and lease back the ground and the building to the board of education. The proposed period of the lease is twenty years, at the completion of which time the board of education would regain possession of the real property and have the right to purchase the building for the sum of one dollar. In your second question you ask whether a board of education may convey title to real estate with a right of reversion to a contractor, who would build an educational building on such land. The school board would then lease the land and the building from the contractor. The building would be acquired pursuant to a lease-purchase agreement, as described above. Pursuant to the deed conveying the land to the contractor, ownership of the real property would revert to the school board upon completion of the lease-purchase payments for the building.

Both of your questions involve the basic issue whether a board of education may acquire a building through means of a lease-purchase agreement. A board of education is a creature of statute, possessing only such powers as are expressly granted by statute, and those which may be necessarily implied from the powers which are express. Schwing v. McClure, 120 Ohio St. 335, 166 N.E. 230 (1929); 1983 Op. Att'y Gen. No. 83-076.

R.C. 3313.37(A) governs the acquisition of school buildings by providing in part as follows:

The board of education of any school district, except a county school district, may build, enlarge, repair, and furnish the necessary schoolhouses, 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, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control. (Emphasis added.)

See also R.C. 3313.17 (authorizing a board of education to acquire, hold, and possess real and personal property); 1932 Op. Att'y Gen. No. 4588, vol. II, p. 1006 (a board of education is authorized to acquire and hold property only in connection with the performance of its statutory duties). R.C. 3313.37(A) provides that a board of education may build schoolhouses or rent schoolrooms. Sites for the schoolhouses may be purchased or leased. Pursuant to R.C. 3313.46, when a board of education determines to build a schoolhouse, and the cost will exceed fifteen thousand dollars, there must be a period of public advertisement, after which the board is required to accept the lowest responsible bid for construction of the building.

There is no express provision, however, for the acquisition of a building by means of a lease-purchase agreement. In contrast, R.C. 3313.37(B)(2) grants boards of education the express authority to acquire land by means of a lease-purchase agreement. It is also worthy of note that other governmental bodies have been granted the express statutory authority to acquire buildings through lease-purchase arrangements. See, e.g., R.C. 307.02 (board of county commissioners). Thus, it is clear that, if the legislature had intended that a board of education have the authority to acquire buildings through lease-purchase agreements, it would have expressly so provided, and that such authority may not be implied.

This point is illustrated by 1974 Op. Att'y Gen. No. 74-002, in which my predecessor addressed the authority of a board of education to divide property into smaller parcels to be offered separately at a public auction. Op. No. 74-002 concluded that a board of education has no such authority, reasoning at 2-9 as follows:

While I find no specific prohibition against such action, it appears that the principle of expressio unius est exclusio alterius must be applied to preclude it. That maxim states that the mention of one thing implies the exclusion of all others, "\*\*\*\* [W]hen a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner." Transportation Co. v. Glander, 155 Ohio St. 471, 480 (1951). "The force of the maxim is strengthened by contrast where a thing is provided in one part of the statute and omitted in another." 2A Sutherland on Statutory Construction 123, Section 47.23 (4th ed. 1973).

Because other governmental bodies possess the express statutory power to acquire buildings through lease-purchase agreements, and since R.C. 3313.37(B)(2) expressly grants a board of education the authority to enter into a lease-purchase agreement for the purchase of land, I conclude that the power to purchase buildings through lease-purchase agreements may not be implied from a board of education's authority to build schoolhouses and rent schoolrooms, R.C. 3313.37(A), or to acquire and hold property, R.C. 3313.17. See 1958 Op. Att'y Gen. No. 2820, p. 597 (syllabus) ("[a] board of education of a local school district may not lawfully acquire a heating system for a school building pursuant to Section 3313.37, Revised Code, by a 'lease-purchase contract,' where such transaction is in effect nothing more than an agreement to pay for such system in installments payable over a period of years"); 1958 Op. Att'y Gen. No. 1604, p. 22 (pursuant to R.C. 3313.37 a board of

education may lease a building with either an option or a firm contract to purchase; however, none of the lease payments may apply to the purchase price of the property). 1939 Op. Att'y Gen. No. 1267, vol. III, p. 1867 (syllabus, paragraph four) ("[a] board of education may not lawfully lease property for any purpose in such manner and upon such terms that the transaction when viewed in its proper light is in fact a purchase of the property under the guise of a lease"). Cf 1964 Op. Att'y Gen. No. 64-1522 (syllabus) ("[s]chool [d]istricts are without authority [express or implied] under the provisions of Section 3313.42, Revised Code, to enter into a lease purchase contract [in conjunction with an adjacent school district of another state] for the purchase of a school building by the terms of which the building would become the property of the School District at the expiration of the lease term").

There are also constitutional limitations on the power of a board of education to act in the instant situation which support my conclusion that there is no basis upon which to find that the authority to lease-purchase a building may be necessarily implied. Ohio Const. art. XII, §11 provides that when bonded indebtedness is created by the state or a political subdivision, the enabling legislation must provide for a tax levy for the liquidation of the debt. See State ex rel. Kitchen v. Christman, 31 Ohio St. 2d 64, 285 N.E.2d 362 (1972) (holding that since the lease agreement in question was an installment purchase contract obligating the city to make future payments, the entire contract price constituted a present indebtedness for the city for purposes of Ohio Const. art. XII, §11); 1985 Op. Att'y Gen. No. 85-008; 1980 Op. Att'y Gen. No. 80-042. See also 1939 Op. No. 1267. R.C. 3313.37(B)(2), which authorizes a school board to lease-purchase land, specifically addresses this issue by providing for a special levy when land is acquired by a lease-purchase and the purchase price is to be paid over a period of time. Implication of the authority to lease-purchase buildings would raise this issue without providing the necessary legislative resolution. Furthermore, transactions between governmental and private entities are subject to the limitations of Ohio Const. art. VIII, §6, which prohibits certain governmental bodies from lending credit or aid to any private entity. Public and private interests must be legally separate, and publicly owned property may not be used to benefit private interests. See 1977 Op. Att'y Gen. No. 77-047 (the leasing of county-owned lands in conjunction with the lease-purchase of a building pursuant to R.C. 307.02 does not violate Ohio Const. art. VIII, §6; however the subordination of such county land in conjunction with a lease-purchase agreement represents a lending of credit in violation of art. VIII, §6).

In sum, I conclude that a board of education has no authority to acquire a building by means of a lease-purchase agreement.

In your letter of request, you have asked whether a board of education may, as part of its plan to lease-purchase a building, either lease real property it owns to a building contractor who would construct the building to be acquired on such property or whether the board may convey the real property with a right of reversion to the contractor for the same purpose. In light of my conclusion that a board of education has no authority to acquire a building through a lease-purchase agreement, it is unnecessary for me to discuss the

circumstances under which a board of education may alienate or dispose of its property.

Therefore, it is my opinion, and you are advised, that a board of education of a local school district may not acquire a building through a lease-purchase agreement.