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EDUCATION—HEATING SYSTEM—ACQUISITION BY MEANS  
OF LEASE-PURCHASE CONTRACT NOT PERMITTED BY LAW  
—§3313.37 R.C.

## 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.

Columbus, Ohio, October 1, 1958

Hon. Philip D. Brumbaugh, Prosecuting Attorney  
Darke County, Greenville, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"May a board of education of a local school district lawfully acquire a heating system for a school building by lease-purchase contract?"

"I have enclosed a Thermo-fax copy of the proposed contract for your information and will appreciate its return.

"I advised the board of education that it must purchase its heating system for cash. Thereafter, I was informed that other prosecuting attorneys in Ohio had approved similar contracts. My investigation has disclosed no statutory provisions or judicial determinations on this subject, and am requesting this opinion to obtain a standard for uniform practice."

Section 3313.37, Revised Code, provides :

“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.”

Section 3313.37, *supra*, set forth above, clearly authorizes a board of education to purchase a heating system for a school building. See *Dunn v. Freed*, 10 C. C., 294, for a definition of apparatus.

Your inquiry concerns the nature of the contractual relationship surrounding a purchase authorized by Section 3313.37, *supra*. In the particular you ask whether a board of education can lawfully purchase a heating system by a “lease-purchase contract.”

On examination, it is apparent that although your inquiry designates the proposed contract a “lease-purchase contract,” it is, in essence, merely an attempt to purchase the heating system on an installment plan. By tagging the proposed contract a “lease-purchase contract,” the real nature of the transaction is not changed, and if a board of education is prohibited by law to acquire property on an installment plan, then that which cannot be done directly cannot legally be effected by an indirect and circuitous means.

Boards of education possess only such powers as are expressly conferred or necessarily implied from statute. *Verberg v. Board of Education of the City School District of Cleveland*, 135 Ohio St., 246; *Schwing v. McClure, et al., Trustees*, 120 Ohio St., 335; *Perkins v. Bright*, 109 Ohio St., 14; *The State, ex rel. Clark v. Cook*, 103 Ohio St., 465.

In the *Clark* case, *supra*, cited above, the court, at page 467, said :

“\* \* \* in *State, ex rel. Locher, Pros. Atty., v. Manning*, 95 Ohio St., 97. The following appears in a *per curiam* opinion concurred in by all the members of the court :

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such au-

thority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.'

"This doctrine as applied to boards of county commissioners in their financial transactions must in principle be equally obligatory upon boards of education in their financial transaction."

In my examination of the authorities, I have been unable to find any extension to a board of education of any power, either expressed or implied, to acquire property of any description in pursuance of an agreement to pay for it on the installment plan; the single exception is the authority given by Section 3327.08, Revised Code, to purchase school buses in that manner.

Since Section 3327.08, Revised Code, is the only instance in the law of Ohio where a board of education is *expressly* granted the authority to enter into an installment purchase agreement, it can be concluded, that it was not the legislative intent to confer such power by implication in statutes which in general terms authorize the purchase of other property.

Under the principle of the *Clark* case, *supra*, even if no other limitation upon the contractual relationship existed, it is clear that in the absence of statutory authority, a board of education does not possess such powers as to purchase a heating system pursuant to the provisions of Section 3313.37, *supra*, on an installment plan. The same result has been reached in Opinion No. 1604, Opinions of the Attorney General for 1958 p. 22; Opinion No. 398, Opinions of the Attorney General for 1957 p. 118; Opinion No. 143; Opinions of the Attorney General for 1945, p. 110; Opinion No. 1267, Opinions of the Attorney General for 1939, p. 1867.

There are, however, other statutory limitations on the powers of a board of education or other similar board to make contracts involving the expenditure of money.

Section 5705.41, Revised Code, provides in part:

"No subdivision or taxing unit shall:

"(A) Make any appropriation of money except as provided in sections 5705.01 to 5705.47, inclusive, of the Revised Code; provided that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the same for the purpose for which such bonds were issued, but no expenditure shall be made from any bond fund until first authorized by the taxing authority;

“(B) Make any expenditures of money unless it has been appropriated as provided in such sections;

“(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn;

“(D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. \* \* \*”

The limitation contained in Section 5705.41, *supra*, set forth above, makes it imperative that the board pay cash when purchasing property of any kind, or at least fix the time for payment when making a contract to purchase property or incur a financial obligation within a period not further in the future than for which funds to meet the obligation of the contract might be collected or be in process of collection.

Accordingly, it is my opinion, and you are so advised, as follows:

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.

Respectfully,  
WILLIAM SAXBE  
Attorney General