1667.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN BELMONT AND TUSCARAWAS COUNTIES.

COLUMBUS, OHIO, February 3, 1928.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

1668.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN KNOX COUNTY.

COLUMBUS, OHIO, February 3, 1928.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

1669.

APPROVAL, BONDS OF THE CITY OF SALEM, COLUMBIANA COUNTY, OHIO—$4,521.96.

COLUMBUS, OHIO, February 2, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1670.

SCHOOLS—USE OF AUDITORIUM—MAY BE LET TO ANY RESPONSIBLE ORGANIZATION FOR BASKETBALL PLAYING—ADMISSION FEE MAY BE CHARGED.

SYLLABUS:

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."

COLUMBUS, OHIO, February 3, 1928.

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

GENTLEMEN:—I acknowledge receipt of your letter of recent date, reading as follows:

> "We respectfully request you to render this department your written opinion on the following:
>
> Question: May a board of education permit the use of the auditorium in a school building by a church basketball league, when such organization makes a charge for admission to the basketball games?
>
> We think this question involves the interpretation of paragraph 2 of Section 7622-3, G. C., which contains the provision that such meetings and entertainments shall be non-exclusive and open to the general public."

In addition to Section 7622-3, General Code, to which you refer, in determining the question set forth in your letter, the provisions of Sections 7622, 7622-1, 7622-1a and 7622-2 should also be considered. These sections read in part as follows:

> Sec. 7622. "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 schoolhouses for such purposes. The board of education of a school district in its discretion may authorize the opening of such schoolhouses for any other lawful purposes. But nothing herein shall authorize a board of education to rent or lease a schoolhouse 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."
>
> Sec. 7622-1. "That upon application of any responsible organization, or of a group of at least seven citizens, all school grounds and school houses, as well as all other buildings under the supervision and control of the state, or buildings maintained by taxation under the laws of Ohio, shall be available for use as social centers for the entertainment and education of the people, including the adult and youthful population, and for the discussion of all topics tending to the development of personal character and of civic welfare. Such occupation, however, should not seriously infringe upon the original and necessary uses of such properties. The public officials in charge of such buildings shall prescribe such rules and regulations for their occupancy and use as herein provided as will secure a fair, reasonable and impartial use of the same."
>
> Sec. 7622-1a. "Upon the application of a committee representing any candidate for public office or any regularly organized or recognized political party, the board of education having control of any school grounds mentioned in Section 7622-1 of the General Code, shall permit the same to be used as a place wherein to hold meetings of electors for the discussion of public questions and issues, provided that no such meeting shall be held during regular school hours. No charge shall be made for such use, but the candidate or

committee so holding a meeting shall be responsible for any damage done or expense incurred by reason thereof."

Sec. 7622-2. "The organization or group of citizens applying for the use of properties as specified in Section 7622-1 of the General Code shall be responsible for any damage done them over and above the ordinary wear, and shall, if required, pay the actual expense incurred for janitor service, light and heat."

Section 7622-3, General Code, provides as follows:

"The board of education of any school district shall, upon request and the payment of the proper janitor fees, 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:

* * *

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.

* * * "

Section 7622 was first passed on January 31, 1889, in an act entitled:

"An Act—To authorize the use of school houses for literary entertainments, school exhibitions, singing-schools and religious exercises." (87 v. 11).

As then enacted this section read:

"That when in the judgment of any 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, or religious exercises, the board of education shall, upon the application of the sub-district directors, authorize the opening of such school houses for the purposes aforesaid."

This section was amended on April 21, 1890 (87 v. 240), the word "shall" being changed to "may," the statute further providing that the board of education might authorize *and require* the opening of school houses for the purposes specified upon the application of a majority of the sub-district directors or parents actually sending children to the school involved. On March 24, 1892, the section was again amended (99 v. 369) the word "may" being changed to "shall," and the opening of the school houses for the purposes of holding "select or normal schools" being added to the purposes specified in the law before such amendment. In addition, the proviso was added that nothing contained in the section should be construed "to authorize any board of education to rent or lease any school house" when such rental or lease would in any wise interfere with the schools or for any purpose other than authorized by the act. This section was again amended on February 27, 1894 (103 v. 492) substantially to read as it now reads in the General Code, slight changes in the phraseology having been made by the codifying commission of 1910 and the word "chapter" being substituted for the word "act" at the end of the section.

Section 7622-1, 7622-2 and 7622-3 were enacted on May 27, 1915, in an act in part entitled:

"An act * * * to supplement Section 7622 by Sections 7622-1 to 7622-7, inclusive, providing for the use of school buildings and other public buildings and grounds for educational and recreational purposes." (106 v. 552).

Section 7622-1a was enacted on March 20, 1917 (107 v. 449) in an act to "supplement Section 7622-1 of the General Code by the enactment of supplemental Section 7622-1a providing for a more complete use of school grounds as a place of holding public meetings." And on March 21, 1917, Section 7622-3 was amended by the same General Assembly, the word "may" in the first clause of the first sentence being changed to "shall" and the words "upon request and the payment of the proper janitor fees" being inserted immediately thereafter (107 v. 607).

Upon consideration of Section 7622, et seq., of the General Code, in the light of their history as outlined above, there is revealed a clear legislative intent to constitute school buildings and school grounds to be community centers in furtherance of the educational, civic, social and recreational activities of the community in which they are located, it being provided that responsible organizations or groups of citizens and certain other agencies have the right to the use of the school buildings and grounds for certain purposes, if such organizations meet the requirements of the statutes and conform to the rules of the board of education in the use of the premises.

It will be observed that Section 7622, supra, as originally enacted in 1889, did not contain the provision that the "board of education of a school district in its discretion may authorize the opening of such school building for *any other lawful purpose.*" This provision was inserted at the time of the amendment made in 1894.

At that time there reposed in the board of education full discretion to determine whether or not permission would be granted for the use of school premises for other than strictly school purposes. Even though by the amendment of 1892 the word "may" was changed to the word "shall," the board still retained the right to pass judgment on the question of whether or not the contemplated use of a school house for any one of the five purposes expressly enumerated in the statute would be for the advantage of the children residing in the district. In addition, the use for any lawful purpose other than the five mentioned in the statute after the amendment of 1894, for which permission might be given, was expressly made discretionary with the board.

The effect of the language used in the later supplementary sections is to limit the discretionary powers of the board and to grant to responsible organizations or groups of citizens and governmental agencies the absolute right to the use of the buildings for *certain enumerated purposes,* if they comply with the provisions of the statute and abide by the reasonable and proper rules of the board of education in the occupancy of the building. The board has not, however, by reason of the terms of Sections 7622-1, 7622-1a, 7622-2 and 7622-3 been divested of all discretionary powers in permitting the use of the school building for the several purposes set forth in the statute. It is clearly within the board's power to say whether or not an organization or group of citizens desiring to use the school building is responsible and whether or not the proposed use is educational or entertaining in its scope, or the proposed meeting or entertainment is educational, civic, social or recreational in its nature, or whether topics to be discussed at any such meeting tend to the development of personal character or civic welfare. The board also in its discretion may prescribe such rules and regulations for the occupancy of the building as will secure a fair, reasonable and impartial use of the same.

This discretion reposed in the board but must not be exercised arbitrarily or in such a manner as to amount to its abuse. The board can not arbitrarily say that an organization or group of seven citizens applying for the use of the building is not

responsible, when in fact such organization or group is responsible, or that a proposed meeting is not educational unless the facts so warrant. If a responsible organization or group desires the use of the school building for one of the purposes enumerated in the statute and offers to pay for janitor service and other necessary expenses incidental to the use of the building and to comply with the rules and regulations of the board in the use of the building, the application can not be denied, provided, of course, the proposed use does not interfere with the use of the school property for school purposes.

A former Attorney General, in considering the question of whether or not a grange organization was entitled as a matter of right to use the school building for meetings of the organization, held that it had such right, although he expressly stated in the opinion that he was "not passing upon the constitutionality of the act in its entirety." It will be observed that Section 7622-3, supra, specifically mentions the holding of grange and similar meetings as among the purposes for which school buildings shall be opened. In the opinion of the Attorney General, which is reported in Opinions, Attorney General, 1917, Vol. III, page 2439, it was said:

> "I advise you * * * from the fact that the language of said Section 7622-3, was changed from that which is directory in its nature, I must advise you that the grange organization of your county has a right under the provisions of said act to hold their regular sessions in the auditorium of the school building and that the clause 'shall be non-exclusive and open to the general public' does not so modify or change the effect of such mandatory language in reference to grange meetings as to prevent the same."

It seems clear that the playing of basketball games are recreational entertainment, and I am assuming from the context of your inquiry that the church basketball league in question is a responsible organization. The only question to be determined is, whether or not the fact that an admission fee is charged is violative of the requirements that "such meetings and entertainments shall be non-exclusive and open to the general public."

It is a matter of common knowledge that the maintenance of a basketball league necessitates the use of funds not only for the purpose of procuring the required equipment to play the games, but for the payment of other necessary expenses, such as expenses for janitor service and light, if the game be played in school buildings, boards of education usually requiring these expenses to be taken care of before permitting the use of the building for such entertainments. Such funds must be secured either by private subscriptions or by the charging of admission fees for witnessing the games. The fact that an admission fee is charged does not in my opinion render the entertainment exclusive or not open to the general public. The entertainment is open to all, and any member of the general public may attend upon the payment of the required admission fee. To say that the charging of an admission fee renders the entertainment exclusive and not open to the public would be as illogical as to contend that, since all members of the public do not own motor vehicles, the roads and highways of the state are not public.

The case here presented is entirely different from that passed upon in an opinion of this department rendered under date of April 3, 1915, to the Prosecuting Attorney at Batavia, Ohio, reported in Opinions, Attorney General, 1915, Vol. 1, page 369, the syllabus of this opinion reading as follows:

> "The board of education has no authority in law to rent a school building, or part thereof, to a secret society for the purpose of holding lodge sessions and such social functions and entertainments of such society as are not

open to all persons in the community on equal terms or which will not, in the judgment of the board of education, benefit the people of the community."

In this opinion the Attorney General was construing Section 7622, General Code, after its amendment authorizing the opening of school houses "for any other lawful purposes," and it was said as follows:

"It was evidently the intent of the Legislature in adding this provision, to give to a board of education the authority to open a school building or part thereof for any lawful public purpose of a similar nature to those above mentioned, providing its use for that purpose does not in any way interfere with its use for public school purposes. In other words, the school building is a social center of the school district for educational purposes and, in addition to its use for public school purposes, it may be used for any other lawful purpose which, in the judgment of the board of education, will be for the advantage of the people of the community.

The use of a school building, or part thereof, by a fraternal order for the holding of lodge sessions and such social functions and entertainments of the order as are not open to all persons in the community on equal terms, is not public in its nature and meets with the objection that the benefits resulting from such use are confined to the purposes of the order and to such other persons as may be permitted by the order to enjoy said benefits. Such a use is not within the meaning of the above provision of the statute and there is no other statutory provision authorizing such use."

I am therefore of the opinion that a board of education may permit the use of the auditorium in a school building for the purpose of playing basketball, under the auspices of a 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 that such meetings and entertainments shall be non-exclusive and open to the general public.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1671.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF GEORGE C. MATTHES AND ETHEL N. MATTHES, CITY OF SANDUSKY, ERIE COUNTY.

COLUMBUS, OHIO, February 3, 1928.

HON. CHAS. V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of abstract of title relating to the following described premises:

"Situated in the City of Sandusky, in the County of Erie, and State of Ohio, and being in that part of water lots thirty-seven (37) and thirty-eight (38) lying northerly of the northerly line of Railroad Street in said city, more particularly described as follows: