

transcript relative to the above issue was approved by this office in an opinion rendered to the State Teachers Retirement Board under date of September 8, 1931, being Opinion No. 3542.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

1309.

---

BONDS—CITY OF AKRON, SUMMIT COUNTY, \$1,000.00,  
DATED JANUARY 1, 1921.

COLUMBUS, OHIO, October 18, 1939.

*Retirement Board, School Employes' Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of the City of Akron, Summit County,  
Ohio, \$1,000.

The above purchase of bonds appears to be part of a \$1,000,000 issue of sewer bonds of the above city dated January 1, 1921. The transcript relative to the above issue was approved by this office in an opinion rendered to the State Employes Retirement Board under date of August 21, 1935, being Opinion No. 4564.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

1310.

---

LEAVE OF ABSENCE—WITH PAY—PUBLIC HEALTH NURSE  
—LOCAL BOARD OF HEALTH MAY NOT GRANT—PUR-  
POSE—ATTEND SCHOOL FOR INSTRUCTION IN DUTIES  
OR ANY OTHER PURPOSE.

SYLLABUS:

*A local board of health is not authorized to grant a leave of absence with pay to a public health nurse in its employ, for the purpose of attending a school for instruction in the duties of her position, or for any other*

*purpose, during which time she renders no service whatever to or for the health district.*

COLUMBUS, OHIO, October 18, 1939.

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

GENTLEMEN:

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

"We are inclosing herewith copy of letter received from our Examiner engaged in examining accounts and records of the City of Steubenville, Ohio, which is self-explanatory.

In the light of circumstances outlined in the attached letter, will you please consider the following question, and give us your opinion at an early date?

Question 1. Has the Board of Health authority to allow Miss S. compensation when attending school for instruction?"

In the letter of your examiner to you, to which reference is made, he quotes from the minutes of a meeting of the city board of health of the city in question, held on September 20, 1938, as follows:

'Board of Health minutes September 20, 1938:

'Health Commissioner reported Miss S., R. N., left for Ann Arbor, Michigan, to attend University of Michigan for four months (scholarship awarded by U. S. Public Health Service and State Department of Health), and was to be replaced October 1, 1938, by Miss A., R. N.

Upon motion by W., seconded by M., the secretary was authorized to notify the City Auditor of Miss S.'s absence and to instruct him to pay Miss A. \$125.00 per month starting October 1, 1938, and the balance of the nurse's salary of \$143.00 per month, or \$18.00, to be paid to Miss S. Motion carried.'

And then he states further:

'The records indicate that through like motion Miss S.'s time at University of Michigan was extended to June 15, 1939. During the period October 1, 1938 to June 15, 1939, Miss S. received \$18.00 per month and Miss A. \$125.00.

Has the Board of Health authority to allow Miss S. compensation when attending school for instruction?

Prior to October 1, 1938, Miss S. received a salary of \$143.00 per month as public health nurse.' ”

Boards of health for city health districts are created by Section 4404, General Code, for purposes of local health administration within the districts. Being creatures of statute, these boards are amenable to the same rule as are other statutory boards, such as boards of education, boards of library trustees, county commissioners, and other administrative boards, so far as the extent of their powers is concerned. This rule, which has been applied by the courts in many cases and referred to by this office on innumerable occasions is well stated by the Supreme Court of Ohio in a per curiam opinion in the case of *State ex rel. Locher v. Menning*, 95 O. S., 97, at page 99, as follows:

“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 authority 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.”

In a later case, *State ex rel. Clarke v. Cook*, 103 O. S., 465, Judge Wanamaker, after referring to and quoting from the *Menning* case, *supra*, said, with respect to boards of education, on page 467 of the opinion:

“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 transactions.”

Many such cases might be cited wherein the principle was invoked to illustrate the limited powers possessed by administrative boards created by statute. Without a doubt, this principle is directly applicable to boards of health. Boards of health are expressly authorized to appoint and pay public health nurses, and it will be presumed that when they appoint such nurses they are qualified for the position else they would not have been appointed. At no place in the law will be found any authority either express or implied, for a board of health after employing a nurse or other employee to expend any public funds to build up or add to their education or experience to better qualify them for the position to which they have been appointed.

Similar questions have been ruled upon by former Attorneys General and in each instance it has been held that what has been done in this

case is unauthorized. In 1931 it was held by the then Attorney General in an opinion which will be found in the published Opinions of the Attorney General for that year, Volume II, page 772, as follows:

“The board of trustees of a school district library is without authority to grant a leave of absence with pay, to the librarian or his assistants, for the purpose of study in a library school or college, or for any other purpose, during which time he renders no service whatever, even though such leave of absence is granted in the guise of compensation for services rendered.”

A similar question was considered by this office in Opinions of the Attorney General for 1929, page 1906, with reference to the granting of a sabbatical leave to a teacher in what was then Kent State University. It was held with respect thereto:

“The Kent State College has no authority to grant an extended leave of absence to an instructor and pay him for such period when such leave is for the purpose of rest, recreation and education of the instructor. Such a procedure would result in expending the public funds for the benefit of the individual.”

To the same effect is an opinion of the Attorney General found in the published Opinions of the Attorney General for 1926, page 386, where it is held:

“A board of education of a city school district has no authority to establish a rule permitting teachers leave of absence for a semester upon half salary where during such period said teachers render no services whatsoever.”

In the 1931 opinion referred to above, the Attorney General said with reference to the subject under discussion:

“It is axiomatic that public office or public employment should not be regarded as a sinecure. The service rendered is presumed at least to be commensurate with the compensation, and it would clearly be an illegal expenditure of public funds to pay an employe for doing nothing.”

In this connection there might well be noted the case of State of Ohio, ex rel. Marani v. Wright, Auditor of the City of Cleveland, 17 O. C. C., N. S., 396. In this case it was sought by procedure in mandamus to compel the Auditor of the City of Cleveland to allow for payment by the said city the necessary traveling expenses incurred by the

building inspector of said city on a trip to Columbus to attend a convention of building inspectors of various municipalities for the ostensible purpose of acquiring information and knowledge with reference to the duties of a building inspector. Mandamus was refused. In the course of the opinion of the court it was said:

“Here, \* \* \* the purpose of the journey was to acquire such information in regard to the duties of his office as the building inspector might reasonably acquire while in attendance upon a convention of officials holding like positions, in various cities. We are unable to see how such an object relates itself either directly or with reasonable necessity to the duties of the relator’s office. He was presumably appointed to his present position because of his fitness by experience and education to discharge the duties of the place, and the salary paid him is presumably adapted to secure the degree of efficiency in these respects which the city desires that its building inspector shall possess. If a person relatively uneducated, inexperienced and inefficient in the discharge of the duties of the position of building inspector were appointed at a salary proportioned to his fitness, it might as well be argued that his deficiencies may thereafter be supplemented at the charge of the municipality which he serves by directing him to attend an architectural school and to render his bills for board and tuition to the city. The salary attached to the office of building inspector is presumed to be sufficient to enable him to maintain his professional or official efficiency at proper standard.”

The United States Public Health Service and the State Department of Health no doubt were empowered to grant a scholarship to the nurse in question and the local health board was fully justified in granting a leave of absence to the nurse so that she might take advantage of the scholarship, but the granting of the scholarship did not impliedly empower the local board of health to pay the nurse’s salary or any part of it during her absence, assuming of course, that the nurse in question rendered no service whatever while she was attending the University of Michigan.

I am therefore of the opinion, in specific answer to your question that the board of health of the city in question was not empowered under the law to pay Miss S. compensation while she was attending school for instruction.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*