3115.

COUNTY BOARD OF EDUCATION—SECTIONS 7622-4 AND 7622-7 G. C. HAVE NO REFERENCE TO SAID BOARD—COUNTY BOARD WITHOUT AUTHORITY TO PURCHASE MOVING PICTURE MACHINE UNDER ABOVE SECTIONS.

*Sections 7622-4 and 7622-7, supplemental sections appearing in House Bill 549 (106 O. L. 552) have no reference to the county board of education, but the sections refer to those local boards of education which have control of the use of school buildings. This being true as to general expenditures, it is at once apparent that the county board of education could not purchase, operate and maintain a moving picture machine under authority of sections 7622-4 and 7622-7 of the General Code.*

COLUMBUS, OHIO, May 18, 1922.

HON. J. F. VANDENBROEK, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR:—Acknowledgement is made of the receipt of your request for an opinion upon the following:

> "Section 7622-4 reads as follows: 'Supervision and conduct of social and recreational work.—Upon the nomination of the superintendent of any school district the board of education of such district may employ a person or persons to supervise, organize, direct and conduct social and recreational work in such school district. The board of education may employ competent persons to deliver lectures, or give instruction on any educational subject, and provide for the further education of adult persons in the community.'
>
> "Section 7622-7 reads as follows: 'Tax levy for social center fund.—The board of education of any school district or a municipality may levy annually upon the taxable property of such school district or municipality within the limitations of section 5649-2 of the General Code, not to exceed two-tenths of a mill for a social center fund to be used for social and recreational purposes.'
>
> "It is the desire of the county board of education to give instructive meetings and in the instructive meetings it will be necessary to have a moving picture machine to further them with their lectures.
>
> "Query: Does the expenditures relative to the obtaining and using the aforesaid moving picture machine come under recreational and social work as designated in the aforesaid mentioned sections?"

Your inquiry is upon the question as to whether the county board of education may use section 7622-4 and 7622-7 G. C. for the purpose of giving instructive meetings and whether the obtaining and maintaining of a motion picture machine by the county board of education would be authorized by either or both of these two sections quoted in your inquiry.

Bearing upon the authority of a board of education, your attention is invited to the opinion handed down by the Supreme Court of this state under date of November 22, 1921, in the case of Clark vs. Cook, the second branch of the syllabus reading as follows:

"2. Boards of education and other similar governmental bodies are limited in the exercise of their powers to such as are clearly and distinctly granted. (State ex rel Locher, Prosecuting Attorney vs. Menning, 95 O. S., 97, approved and followed.)"

As to the power of a county board of education, it was held as follows in the case of Mathews v. Board of Education, as decided by the Ohio court of appeals and reported in 30 O. C. A., p. 305:

"A county board of education is a creature of statute and the powers granted to it are limited to those expressly given and those contained by reasonable intendment in the act creating it."

The sections which you quote in your inquiry, viz., 7622-4 and 7622-7 G. C., appear in House Bill 549, being an act "to repeal sections 2457-1 and 2457-2, and to supplement 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. In the title of House Bill 549 (106 O. L., p 552) it will be noted that the legislation was for the purpose of providing "for the use of school buildings and other public buildings and grounds" and it is thus apparent that the language appearing in the various sections in House Bill 549 was intended to refer to those boards of education which had control of school buildings. It is a matter of common knowledge that the county board of education does not have control of any school buildings or other public buildings, since their own office is furnished to them by the board of county commissioners. The only circumstance under which a county board of education would have control of a school building would be where the county board of education was operating the schools of a particular district in accordance with section 7610-1 G. C., that is, where the local board of education had been derelict in the performance of its duty and it became necessary for the county board of education to carry on the school activities required by law in the district. As a further indication that House Bill 549 had no reference to the county board of education, examination shows that House Bill 549, relative to the use of school buildings, went into effect just about one year after the establishment of the county board of education in the Ohio School Code of 1914. House Bill 549, containing the sections which you quote, was filed in the office of the Secretary of State on June 5, 1915. House Bill 549 must be read as an entirety and such reading should be had in conjunction with section 7622 G. C., 91 O. L., 44, because the seven sections comprising H. B. 549 are to "supplement section 7622". Section 7622 G. C., which has been in force for a long time, provides that:

"When, in the judgment of the 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 school-houses for such purposes. The board of education of a school district in its discretion may authorize the opening of such school-houses for any other lawful purpose. But nothing herein shall authorize a board of education to rent or lease a school-house when such rental or lease in any wise interferes with the public schools in such district, or for any purpose other than is authorized in this chapter."

A careful reading of section 7622, supra, enacted as it was at a time long prior to the establishment of county boards of education, indicates that the board of education referred to in 7622 is the board of education in a local school district

which has control of local school houses and has the power to rent or lease its own property for certain purposes. The county board of education has no title under existing law in any of the school-houses in a county school district, the control of the latter being left entirely with local boards of education.

Following section 7622 in the General Code now appear sections 7622-1, 7622-2, 7622-3, 7622-4, 7622-5, 7622-6 and 7622-7. These latter supplemental sections constitute the whole of House Bill 549 (106 O. L., 552). At the time of the enactment of H. B. 549 in 1915, no provision had been made by the General Assembly for any county board of education fund with which to carry on the activities known as education and recreational purposes appearing in the act, nor was any authority granted by the General Assembly to the county board of education to levy a tax upon the property in the county school district for recreational purposes or for any other purpose, and unless such authority has been clearly given to the county board of education by the General Assembly, under the recent court decisions appearing at the beginning of this opinion, the county board of education would be wholly lacking in authority in cases of this kind. The only educational meetings that may be conducted by the county board of education are those mentioned in 4744-3a (107 O. L., p. 622), which reads in part as follows:

> "The county board of education is authorized to pay the expenses of its educational meetings required by law."

Bearing upon section 4744-3a, it was held in opinion 266, issued by this department May 9, 1919, appearing at page 464, Vol I, Opinions of the Attorney-General for 1919, that "educational meetings arranged by the school authorities voluntarily at various times would not come within those required by law".

If it were desired to organize and maintain civic and social centers throughout the county, there is another law bearing upon this subject, for section 2457-3 G. C. (103 O. L., 830) reads:

> "Boards of county commissioners shall be and are hereby authorized at their discretion to provide for the organization and maintenance of civic and social centers throughout the county, to employ an expert director who shall superintend and administer the same, and to levy a tax and create a fund for the payment of all expenses involved in the social, and educational work contemplated in this act; provided, however, that any municipality carrying on similar work shall, at the option of the city council or other governing body, be exempt from the operation of this act. The board of county commissioners at their option may, or, upon petition of ten per cent. of the qualified school electors of the county, shall refer the question of providing for this social, educational and recreational work to a vote of the aforesaid electors of the county or of such portions of the same as are affected by this act."

For an opinion of this department on the question of the county commissioners establishing a social center, and providing for the maintenance of the same, see opinion 532, appearing at page 1396, Vol. II, Opinions of the Attorney-General for 1913. It is thus apparent that the General Assembly, in enacting House Bill 549, 106 O. L., 552, from which you quote supplemental sections 7622-4 and 7622-7, had in mind those boards of education which have control of school buildings and their proper use and did not have in mind the county board of education estab-

lished shortly before. This view is further augmented by the fact that provision had already been made in section 2457-3 (103 O. L., 830) several years before for the organization and maintenance of civic and social centers throughout the county by the board of county commissioners, who have authority to levy taxes, and thus there was no occasion for a duplication of this county activity by the county board of education, and in none of the laws enacted since that time has authority been given to the county board of education to establish social and recreational work from a county standpoint or levy taxes for such purpose, and you are therefore advised that sections 7622-4 and 7622-7, supplemental sections appearing in House Bill 549 (106 O. L., 552) have no reference to the county board of education, but the sections refer to those local boards of education which have control of the use of school buildings. This being true as to general expenditures, it is at once apparent that the county board of education could not purchase, operate and maintain a moving picture machine under authority of sections 7622-4 and 7622-7 of the General Code.

Respectfully,
JOHN G. PRICE,
*Attorney-General.*

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3116.

TAXES AND TAXATION—WHERE AN INCORPORATED CHARITABLE INSTITUTION PURCHASES REAL ESTATE THE TITLE OF WHICH IS TAKEN IN NAME OF INDIVIDUAL TRUSTEE FOR PURPOSE OF FACILITATING MORTGAGE LOAN—SAME EXEMPT FROM TAXATION UNDER SECTION 5353 G. C.

*Where an incorporated charitable institution purchases property the title of which is taken in the name of an individual trustee for the purpose of facilitating a mortgage loan, the property is exempt from taxation under section 5353 of the General Code.*

COLUMBUS, OHIO, May 18, 1922.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—The commission submits a letter from the auditor of Cuyahoga county, together with an application for exemption of the property of The Good-Will Industries of Cleveland, and the declaration of trust under which the legal title to that property is held by an individual in trust for The Good-Will Industries, a corporation not for profit, which as recited in the preamble to the declaration of trust, furnished the purchase money. The commission requests advice on the question embodied in the letter of the auditor.

The facts stated in the application for exemption seem to disclose the public charitable nature of the enterprise conducted by this property. The letter of the county auditor does not seem to question this point, but does raise the question as to whether the manner in which the title is held precludes the allowance of the exemption under section 5353 G. C. which provides that "property belonging to institutions of public charity only shall be exempt from taxation".

This question seems to be settled in Ohio by Gerke vs. Purcell, 25 O. S. 229, followed in Waterson vs. Halliday, 77 O. S. 150. In both of these cases the ques-