

or as modified by the ultimate determination of the complaint or 'petition in error' remains as the predicate of a penalty."

It appears from the facts stated in your communication that during the pendency of the various proceedings filed by the taxpayer therein referred to to secure a reduction in the assessed valuation of his property, he regularly tendered to the county treasurer taxes upon a valuation of \$300,000.00 and that such tender of taxes was from time to time accepted by the county treasurer. In this situation, it would seem clear, that while no penalty can be assessed on the taxes which from time to time were due and payable on said assumed \$300,000.00 valuation, the taxpayer under the provisions of Section 5611-3, General Code, above quoted, is liable for the payment of the penalty provided by law for the non-payment of taxes on that part of the valuation of the property in question as finally determined by the Common Pleas Court which is over and above the valuation upon which taxes were paid and accepted by the county treasurer.

By way of specific answer to your question, I am of the opinion, therefore, that the county treasurer is authorized to collect the unpaid taxes upon the property here in question based upon the difference between said sum of \$460,000.00 and the sum of \$300,000.00, upon which the taxes have been paid, and that he is likewise authorized to collect from said taxpayer the penalty provided by Section 5678, General Code, for the non-payment by such taxpayer of taxes upon the difference between \$460,000.00, the determined value of the property and said sum of \$300,000.00, the valuation upon which taxes were tendered and paid.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

906.

BOARD OF EDUCATION—LEASE OF SCHOOL LAND TO TOWNSHIP TRUSTEES FOR GARAGE PURPOSES UNAUTHORIZED.

*SYLLABUS:*

*There is no authority for a board of education to lease school land to township trustees as a site for a garage.*

COLUMBUS, OHIO, September 24, 1929.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date, which reads as follows:

"You are respectfully requested to submit your opinion on the following questions:

Have township trustees the power and authority under our statutes to construct and maintain a garage upon real estate owned by a centralized school district? This garage will be used for the township truck and township road machinery.

If in your opinion the township trustees would have the right to construct and maintain a garage on centralized school land, and the garage was constructed, then in such an event is it your opinion that the garage becomes

a part of the real estate and the property of the school district upon its completion? The school board favors its construction. The garage will be a permanent one with cement floors and a regular foundation.

It is my opinion that the trustees cannot construct a garage on centralized school land, and further, it is my opinion that if they have the power to construct this garage that immediately upon its completion it becomes a part of the real estate and therefore the property of the school district."

There is no doubt as to the authority of township trustees to construct and maintain a garage to accommodate township road equipment, this authority being clearly granted in Section 3373 of the General Code, the pertinent part thereof reading:

" \* \* \*

Township trustees are hereby authorized to purchase or lease such machinery and tools as may be deemed necessary for use in maintaining and repairing roads and culverts within the township. The township trustees shall provide suitable places for housing and storing machinery and tools owned by the township. \* \* \* "

The powers of the board of education of a centralized school district over its real property are governed by Sections 4749 and 7620, General Code.

Sec. 4749. "The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting, and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state."

Sec. 7620. "The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefore, 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. It also, shall provide fuel for schools, build and keep in good repair fences enclosing such school houses, when deemed desirable plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts."

The question naturally would arise whether it would be possible for a board of education to lease a portion of its real property not needed for school purposes to the township trustees as a site for a garage.

Section 4749, supra, does not include any provisions for leasing such property by the board. The board of education of each school district being a body corporate, such board has only such powers as are specifically granted by statute.

The Legislature has provided through Section 4757, General Code, how conveyances made by the board of education shall be executed.

In Section 4752, General Code, the Legislature has provided that a board of education, on motion, may adopt a resolution authorizing the purchase or sale of real or personal property, etc.

If the Legislature had intended to grant authority to a board of education to lease

its real property, it would have not only specifically provided for such power by including it in Section 4749, *supra*, but it would also have provided how such real property could be leased, and how the leases of such property should be executed, as it did in the cases of sale, and would have included the power to lease in Section 4752, General Code, by providing that such property would be leased by the board of education upon a motion to adopt a resolution authorizing the making of such lease as in the case of sale of real property. It was so held by a former Attorney General in Opinions of the Attorney General for the year 1913, Vol. II, page 1508.

In *Weir vs. Day*, 35 O. S. 143, it was held, as disclosed by the first branch of the syllabus :

“Under the act of May 1, 1873, entitled ‘an act for the reorganization and maintenance of common schools’ (70 Ohio L. 195), boards of education are invested with the title to the property of their respective districts in trust for the use of public schools, and the appropriation of such property to any other use is unauthorized.”

It was also held by a former Attorney General that real estate owned by a board of education could not be leased for oil or gas purposes. Opinions, Attorney General, 1918, Vol. II, page 1352.

Provision is made for the leasing of school and ministerial lands, that is, state school and ministerial lands, but that authority does not cover the property which is held by local boards of education.

It seems to be the universal rule followed by the courts of Ohio, that school property cannot be used for other than strictly school purposes, unless specific authority to the contrary is granted by statute. To this end the Legislature made provision in Sections 7622-1 and 7622-1a that schoolhouses might be used as recreation centers and for civic, social and grange meeting places, and for political meetings.

The general power of township trustees to acquire a place for storage of road equipment will include power to lease a garage from any person duly authorized to lease it.

However, because of lack of authority on the part of the board of education to permit such use, it naturally follows that township trustees should not erect a garage upon school board property.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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907.

APPROVAL, BONDS OF CITY OF WILMINGTON, CLINTON COUNTY—  
\$10,000.00.

COLUMBUS, OHIO, September 24, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*