

4. Public officers who expend or authorize the expenditure of public funds on void contracts, agreements, obligations or orders contrary to the provisions of Section 5625-33, General Code, are liable to the taxing district whose funds have been so expended for all damages or loss sustained by such taxing subdivision in an amount equal to the full amount of such funds paid on or on account of any such void contract, agreement, obligation or order.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2017.

SCHOOLS—AUTHORITY OF LEGISLATURE TO ESTABLISH SCHOOLS
AND COLLEGES—AUTHORITY OF BOARDS OF EDUCATION—
JUNIOR COLLEGES.

SYLLABUS:

1. *The authority vested in the Legislature to provide a thorough and efficient system of common schools throughout the state includes authority to establish colleges and universities.*

2. *With the exception of the authority vested in county and city boards of education to establish normal schools, and the authority vested in city boards of education, by virtue of Section 7650-1, General Code (112 v. 115), to contract with a college or university for the purpose of obtaining in the school district instruction in special, technical, professional or other advanced studies, boards of education are not authorized to establish schools of a higher grade than high schools, which require for the taking of the course of study therein more than thirteen school years, including one year of kindergarten work, regardless of whether said proposed schools are to be maintained from public school funds or from tuition fees charged the attendants.*

3. *Boards of education may, subject to proper rules and regulations and upon payment of the proper janitor fees, permit the use of its school buildings by private educational institutions for the purpose of conducting school therein.*

COLUMBUS, OHIO, April 26, 1928.

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

GENTLEMEN:—I am in receipt of your communication requesting my opinion in answer to the following questions:

“Question 1: Can a Junior College be legally established in connection with the public school system in the State of Ohio?

Question 2: If Question 1 is answered in the affirmative, would the funds for its support be a separate tax levy outside of the fifteen mill limitation and would such a levy have to be a voted levy?

Question 3: The city board of education contemplating the establishment of a Junior College now enjoys a three mill levy outside of the fifteen mill limit, would it be possible to ask the voters to approve an additional levy of from two to four mills outside of the fifteen mill limitation without

specifying the uses to which it should be put, and if approved by the voters to use such proceeds for the establishing and maintaining of a Junior College?

Question 4: Would it be legal to set up a Junior College in connection with a city high school and charge fees sufficiently high to cover the expenses of such an institution outside of the light, heat, etc.?

Question 5: Would it be legal to allow an educational institution, such as an established university, to establish a Junior College, holding its sessions in the high school building and charging and retaining such fees as they might choose to assess?"

The first consideration to be given to your inquiry is to determine just what the board of education of the school district in question proposes to do. It is not clear what is meant by a "Junior College." By the terms of Section 7650, General Code, a college is defined as follows:

"A college is a school of a higher grade than a high school, in which instruction in the high school branches is carried beyond the scope of the high school and other advanced studies are pursued, or a school in which special, technical or professional studies are pursued, and which, when legally organized, may have the right to confer degrees, in agreement with the terms of the law regulating its practices or its charter; or in the absence of legislative direction, in agreement with the practices of the better institutions of learning of their respective kinds in the United States."

The word "junior" is defined by lexicographers as "younger" or "lower in rank." Schools of a lower grade than colleges or universities authorized to confer degrees are sometimes popularly called "prep. schools", "academies", or "university schools", and authority is given by statute for the use of one or more of the words "academy", "college" and "university" interchangeably, in the corporate name of a private corporation formed for the promotion of academic, collegiate or university education under religious influences or connected with a religious sect, association, or denomination. See Section 9955-1, General Code. The term "junior college" has no special significance so far as our statutory law is concerned; nor is it in current use as a designation of any particular class of schools.

Whether or not it is desired to establish a school with special, technical, or professional courses and with authority to confer degrees is not clear, but apparently it is proposed to provide courses of instruction of a higher grade than those given as regular high school work, requiring the pupil, who desires to take advantage of such facilities, to attend school after he has completed the regular high school course.

This brings us to the question as to whether or not under our constitution and laws public funds may be expended to provide educational facilities of a more advanced type and which require additional expenditures to those authorized by law for the promotion of the several grades of elementary and high school work. In other words, does the maintenance of the public school system of the state, in the manner authorized by law, extend to the establishment and maintenance of schools of a higher grade than high schools, requiring for the taking of the course of study therein the attendance of pupils for more school years, thus necessitating the maintenance of such schools so as to permit the attendance of pupils for more school years than is allotted by statute for the taking of the regular elementary and high school work; and if so, has authority for establishment and maintenance of such schools been delegated to boards of education in said school districts?

The Constitution of Ohio, as it exists at the present time in Sections 1, 2 and 3 of Article VI, contains provisions which fully commit the Legislature of the State of Ohio to the obligation to make such provision, by taxation or otherwise, as, with the income arising from the school trust fund will secure a thorough and efficient system of common schools throughout the state, and requires provision to be made by law for the organization, administration and control of the public school systems of the state.

The term "common school" is synonymous with public school, and while the term "school" is a generic term and in its broad sense must be held to include all schools or institutions of learning whether of high or low degree, some courts have held the term "common school", as used in constitutions and statutes, to be of a limited meaning, which does not include the higher institutions of learning such as colleges and universities and applies only to schools of the lower grades. Many courts, however, have held otherwise. See Ruling Case Law, Vol. 24, pages 556 and 557.

So far as I know, this question has never been directly presented to the courts in this state, and while the only specific constitutional authority authorizing the expenditure of public funds for educational purposes is that contained in Article VI of the Constitution of Ohio, wherein educational institutions of any other class than "common schools" are not mentioned, yet it has long been the policy of the state to foster the means of higher education by the establishment and maintenance of institutions of learning of a higher grade than high schools, by making large biennial appropriations for the use of such institutions as the Ohio State University, Ohio University, Miami University, the normal schools at Kent and Bowling Green, and the combined normal and industrial department in connection with Wilberforce University. The establishment of county normal schools and municipal universities supported either in whole or in part from public funds has long been authorized, and no one has ever questioned the constitutional authority of the Legislature in providing for the support of these institutions by taxation.

As to the power of local boards of education to establish such institutions, the question arises whether or not the Legislature has delegated or granted to such local boards of education the power and authority to establish colleges and universities as the Legislature itself has an undoubted right to do.

It has long been recognized that boards of education being creatures of statute, are limited in their powers by the statute creating them. This rule is stated by the Supreme Court in *State, ex rel. Clark vs. Cook, Auditor*, 103 O. S. 465, as follows:

"Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted."

The powers granted to boards of education to establish and maintain schools are found in Sections 7644, et seq. and related sections of the General Code, pertinent portions of which read as follows:

Sec. 7644. "Each board of education shall establish a sufficient number of *elementary schools* to provide for the free education of the youth of school age within the district under its control * * *."

Sec. 7644-1. "The board of education in any city school district may establish such *special elementary schools* as it deems necessary for youth of school age who are afflicted with tuberculosis * * *."

Sec. 7647. "The board of education in any city school district may establish and maintain a *normal school* within its district, and also establish and maintain such summer or vacation schools, school gardening and play grounds as to it seems desirable."

Sec. 7617-1. "The board of education of any school district may establish and maintain *part-time schools* or classes for the further education of children who are employed on age and schooling certificates. * * * Boards of education shall have power to provide for the expenses of *such schools and classes the same as for the expense of ordinary elementary schools.*"

Sec. 7648. "An elementary school is one which instruction and training are given in spelling, reading, writing, arithmetic, English language, English grammar and composition, geography, history of the United States including civil government, physiology and hygiene and any other subjects required by law, primarily to students of the first to eighth school years inclusive. If, however, a junior high school is maintained the elementary schools in that district may include only the work of the first to sixth school years inclusive. Moreover, an elementary school may include a preparatory kindergarten year; and, under such restrictions as may be prescribed by the director of education, it may include high school branches and may extend beyond the eighth year. Boards of education may cause instruction and training to be given in elementary schools in vocal music, drawing and other branches which they deem advisable for the best interests of the schools under their charge. In rural and village school districts agriculture shall be included in the curriculum of elementary schools."

Sec. 7649. "A high school is one of higher grade than an elementary school, in which instruction and training are given in approved courses in the history of the United States and other countries; composition, rhetoric, English and American literature; algebra and geometry; natural science, political or mental science, ancient or modern foreign languages, or both, commercial and industrial branches, or such of the branches named as the length of its curriculum makes possible. Also such other branches of higher grade than those to be taught in the elementary schools, with such advanced studies and advanced reviews of the common branches as the board of education directs."

Sec. 7651. "The high schools of the state shall be classified by the director of education into high schools of the first, second and third grades and junior high schools upon such standards consistent with Sections 7652, 7652-1 and 7653, General Code, as he may formulate. He shall issue certificates of grade to such schools when their ratings are determined after inspection and such shall be the grades of such schools until the grade is changed or certificate revoked after a subsequent inspection or evident failure to meet standards."

Sec. 7652. "A high school of the first grade is a school in which the courses normally require for completion four years beyond the eighth grade of the elementary school.

High schools of the second and third grades are schools in which the courses require normally three and two years respectively beyond the eighth grade.

A junior high school in the meaning of this act, shall consist of the seventh, eighth and ninth grades and shall be so organized as to present an articulated program beyond the sixth grade. In such schools the elementary grades shall include the work through the first six grades, and the senior high school shall include the tenth, eleventh and twelfth grades. * * *

Sec. 7654-1. "A county normal school may be established by a county board of education, with the approval of the superintendent of public in-

struction in any school of the county which maintains a first grade high school, provided the board of education of the city, exempted village, village or rural school district in which the county normal school is proposed to be established agrees by resolution to furnish rooms, seats, heat, light, janitor service, and as far as possible, opportunities for practice teaching and observation necessary for the school * * *."

Sec. 7633. "A board of education may establish one or more *high schools*, whenever it deems the establishment of such school or schools proper or necessary for the convenience or progress of the pupils attending them, or for the conduct and welfare of the educational interests of the district."

Sec. 7669. "The boards of education of two or more adjoining school districts, by a majority vote of the full membership of each board, may unite such districts for high school purposes. * * *" (Italics the writer's.)

In addition to the powers granted to boards of education to establish and maintain schools as set forth in the foregoing quoted sections of the Code, authority is given by Section 7679, General Code, to establish evening schools for pupils who for reasons satisfactory to the board, are unable to attend day school; by Section 7755, General Code, schools for blind, deaf and crippled children are authorized, and by Section 7761-2, General Code, the establishment of Americanization schools is provided for.

The several sections of the Code above noted contain all the authority that is vested in district boards of education for the establishment and maintenance of schools except that authorized by virtue of Sections 387-1, et seq., General Code, which relate to vocational education and which will be noted later.

Nowhere in the above quoted sections is there authority for boards of education to establish and conduct schools of a higher grade than high schools or to maintain schools covering a longer period than thirteen school years, including one year of kindergarten work, except as normal schools may be established by city or county boards of education.

Because of the flexibility of the high school curriculum, it is, of course, possible that high schools may be maintained in which the courses of study in the higher grades are similar to those of the lower grades in some colleges, but that does not change the character of the school and make a college or a "junior college" of a high school. Whatever courses of study are prescribed in a high school, there is no authority for their being such that they will require for their presentation more than four school years.

By virtue of Section 7650-1, General Code (112 v. 115), boards of education in city school districts are authorized to provide for obtaining in such districts instruction in special, technical, professional or other advanced studies beyond the scope of their high school curriculum, by contracting for such instruction with a college, university or another city board of education, but the authority thereby conferred does not authorize the establishment of a college or university. Said Section 7650-1, General Code, reads as follows:

"The board or boards of education of any city school district or districts may enter into contract for a term not exceeding one year upon such terms and conditions as each board may deem expedient with each other, or with the trustees or other duly authorized officials of any college or university legally organized within the meaning of the provisions of Section 7650 of the General Code of Ohio, for the purpose of obtaining in such school district instruction in the special, technical, professional or other advanced studies which may be pur-

sued in such college or university beyond the scope of the public high school. In like manner such board or boards of education may contract for a term not exceeding one year with each other or with a private corporation or association not for profit, maintaining and furnishing a museum of art, science or history, or providing musical instruction, for the purpose of obtaining in such school district such instruction or other educational services as can be rendered to the schools by such private corporation or association."

By the terms of Section 367-1, et seq., General Code, co-operation with the Federal Government is authorized in carrying out the provisions of what is known as the Smith-Hughes Act, providing for vocational education, and boards of education are thereby authorized to do all things necessary to carry out the purposes of the act.

The terms of the act itself confine schools established by virtue thereof, to those of lower grade than colleges. 20 U. S. C. A., Sections 20 and 21, provide in part as follows:

Section 20. "* * * That the controlling purpose of such education shall be to fit for useful employment; that such education shall be less than college grade and be designed to meet the needs of persons from fourteen years of age who have entered upon or who are preparing to enter upon the work of the farm or of the farm home. * * *"

Section 21. "* * * That the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and shall be designed to meet the needs of persons over fourteen years of age who are preparing for a trade or industrial pursuit or who have entered upon the work of a trade or industrial pursuit. * * *"

Inasmuch as boards of education are limited in their powers to those granted to them, and no authority has been granted to them to establish and maintain schools other than one year of kindergarten, eight years of elementary schools and four years of high school, I am of the opinion that they have no authority to establish schools of the grade of a college, either of high or low degree, whether such proposed school be maintained from public funds or from tuition fees charged the attendants. The exceptions to this rule, of course, are normal schools authorized by law either as established by county or city boards of education.

Coming now to the question of the right of a board of education to permit the use of its school buildings by private educational institutions, Section 7622-3, General Code, provides in part 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 schoolhouse 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:

1. For giving instructions in any branch of education, learning or the arts. * * *"

It is my opinion that the authority granted by the foregoing statute is sufficiently broad to permit a board of education to lease, or permit the use of its school buildings under proper rules and regulations and upon payment of the proper janitor fees, for the use of an established college or university desiring same for the purpose of conducting school sessions therein. Such use, however, must not interfere with the actual requirements of the district or the use of the building for the proper conduct of the

schools of the district, nor would it be proper for a board of education to construct buildings for the ostensible purpose of permitting their use for purposes other than the promotion of the regularly authorized district schools.

In specific answer to your first question I am of the opinion that a college may not be established and maintained in connection with the public school system of the state, unless the same be done by the state Legislature, and that boards of education as such, have no authority to establish and maintain schools of higher grade than high schools, whether the same are maintained from public school funds or from tuition receipts received from the attendants at the school, except as city and county boards of education may be authorized to establish normal schools.

In view of the answer which I have given to your first question, I do not deem it necessary to answer the second, third and fourth question.

In answer to the fifth question, I am of the opinion that it is lawful for a board of education to permit the use of its school buildings by an established university for conducting schools therein, so long as the use by the university does not interfere with the primary purpose for which the buildings are constructed, that is, for use in connection with the maintenance of the public schools of the district.

Respectfully,
EDWARD C. TURNER,
Attorney-General.

2018.

MUNICIPAL COURT—"SUITABLE ACCOMMODATIONS"—WHAT CONSTITUTES SAME—MADISON TOWNSHIP, RICHLAND COUNTY, BEAR EXPENSE EQUALLY—NO AUTHORITY FOR MADISON TOWNSHIP TRUSTEES TO ISSUE BONDS TO PAY FOR ACCOMMODATIONS.

SYLLABUS:

1. *Section 1579-1023, General Code, does not authorize the trustees of the township of Madison, Richland County, Ohio, to issue bonds to provide money in order that such trustees may comply with the provisions of Section 1579-1019, General Code, to the effect that the "council of the city of Mansfield and trustees of the township of Madison shall provide suitable accommodations for the municipal court and its officers."*
2. *What constitutes suitable accommodations, as these words are used in Section 1579-1019, General Code, is a matter within the discretion of the council of the city of Mansfield and the trustees of Madison Township.*
3. *The cost of providing "suitable accommodations" for the municipal court of the city of Mansfield should be borne by the city of Mansfield and the township of Madison, Richland County, Ohio, in equal proportions; although should the city council and the township trustees enter into an agreement, providing that such cost be paid upon a different basis, payments made by such subdivisions in accordance with such agreement would not constitute an unwarranted use of public funds.*
4. *In pro rating between the city and the township, the cost of providing suitable accommodations for the municipal court of the city of Mansfield, the rental value of any permanent structure belonging to either one of the political subdivisions, used as a part of the "suitable accommodations", should be determined by the city council and township*