

Note from the Attorney General's Office:

1945 Op. Att'y Gen. No. 45-143 was overruled by 2004 Op. Att'y Gen. No. 2004-012.

143

1. AGRICULTURAL SCHOOL—SCOPE OF AUTHORITY, BOARD OF EDUCATION—CITY, EXEMPTED VILLAGE OR LOCAL SCHOOL DISTRICT—MAY LAWFULLY ESTABLISH AND MAINTAIN AGRICULTURAL SCHOOL IN CONNECTION WITH PUBLIC SCHOOL SYSTEM—MAY PURCHASE FARM AND OTHER AGRICULTURAL EQUIPMENT FOR SUCH PURPOSE—PROVISO, FUNDS AVAILABLE—MAY PAY CASH FOR FARM AND EQUIPMENT.
2. NO AUTHORITY TO PURCHASE PROPERTY ON AGREEMENT TO PAY ON INSTALLMENT PLAN—EXCEPTION SCHOOL BUSES AND TRANSPORTATION EQUIPMENT—SECTION 4855-5 G. C.
3. NO AUTHORITY TO PURCHASE FARM UPON AGREEMENT TO PAY ANY PART OF PURCHASE PRICE, OR TO REPAY MONEY BORROWED FROM PAYMENTS WHICH ARISE FROM SALE OF PRODUCTS OF FARM, SUCH DEFERRED PAYMENTS TO BE SECURED BY MORTGAGE ON PROPERTY.
4. BONDS MAY BE ISSUED, PROCEEDS OF WHICH ARE TO BE USED FOR ACQUISITION OF FARM FOR AGRICULTURAL SCHOOL TO BE MAINTAINED IN CONNECTION WITH PUBLIC SCHOOLS—UNIFORM BOND ACT, SECTION 2293-1 ET SEQ., G. C.

SYLLABUS:

1. A board of education of a city, exempted village or local school district may lawfully establish and maintain an agricultural school in connection with its public school system and may purchase a farm and other agricultural equipment for such purpose, and if funds are available therefor, may pay cash for such farm and equipment.

2. No authority exists for a board of education to purchase property of any kind other than school busses and transportation equipment as provided by Section 4855-5, General Code, upon an agreement to pay for the same on the installment plan.

3. No authority exists for a board of education to purchase a farm for the purpose of establishing and maintaining an agricultural school, upon an agreement

to pay any part of the purchase price for said farm, or to repay money borrowed to purchase said farm from payments to be made from time to time, which arise from the sale of products of the farm, the said deferred payments to be secured by a mortgage on said property.

4. Subject to the provisions and limitations contained in what is known as the Uniform Bond Act (Section 2293-1, et seq., General Code), a board of education of a city, exempted village or local school district may issue bonds, the proceeds of which are to be used for the acquisition of a farm for an agricultural school to be maintained in connection with its public schools.

Columbus, Ohio, February 23, 1945

Hon. Kenneth M. Robbins, Prosecuting Attorney
Circleville, Ohio

Dear Sir:

I am in receipt of your request for my opinion with respect to the following state of facts:

“The Perry Township School Board of Pickaway County, Ohio, a rural school board under the direct supervision of the Pickaway County, Ohio, School Board, has been renting for the past three or four years a farm from the UNITED STATES GOVERNMENT RESETTLEMENT PROGRAM for the purpose of teaching the subject of agriculture to its school pupils. The farm has been operated by the said Perry Township School Board and the Perry Township school officials in such a manner that the receipts received by the said Perry Township School Board from the sale of products produced on the said farm have been more than sufficient to pay the cost of the rent for the said farm. For some reason or other the UNITED STATES GOVERNMENT RESETTLEMENT PROGRAM is now disposing of all of its land holdings in the county of Pickaway, Ohio. The Perry Township School Board desires to purchase the farm that it has been renting for purposes aforesaid. I have three legal questions pertaining to the above statement of facts. The first of which is can said Perry Township School Board borrow money and purchase this farm, which it has been renting by the process of giving a mortgage on the said farm to secure the money borrowed when its only means of paying back the said money borrowed to purchase the said farm is from the sale of products sold from the said farm? The second of which is can the Board of Education purchase the said farm, if it should be able to pay cash from its general revenue fund for the farm? The third of which is can the School Board purchase the said farm by floating a bond issue for the purpose of raising money to purchase the said farm?”

By authority of Sections 4834-10 and 4836-4, General Code, boards of education of city, exempted village and local school districts may establish and maintain agricultural schools in connection with the public school systems of their respective districts and may make such provisions in their schools as may be necessary for such purposes.

Section 4836-4, General Code, provides as follows:

“The board of education of any city, exempted village or local school district may establish and maintain manual training, industrial arts, domestic science, and commercial departments; agricultural, industrial, vocational and trades schools, also kindergartens, in connection with the public school system; and pay the expenses of establishing and maintaining such departments and schools from the public school funds, as other school expenses are paid.”

Section 4834-10, General Code, reads as follows:

“The board of education of any school district, except a county school district, may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, 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.”

Under the terms of the statutes quoted above the Perry township local school board clearly is authorized to acquire the farm in question for the purpose of maintaining it as an agricultural school, and, of course, if funds are available from its general revenue fund to pay cash for the property, it may be acquired in that manner. If, however, the school board does not have the money to pay cash for the property its only means of lawfully acquiring the property is by the issuance of bonds in the manner and within the limitations fixed by the law, as no place in the law will be found any authority for a board of education to acquire property or incur any financial obligation in pursuance of an agreement to pay for it on the installment plan except the authority extended by Section 4855-5, General Code, to purchase transportation equipment and school buses in that manner; nor will any authority be found for a board of education to obligate itself by the giving of a mortgage on any property

it owns or attempts to acquire, and it has been held in numerous cases that public corporations which do not have the power to encumber their property by a mortgage, may not lawfully purchase property and assume an existing mortgage on the property. *McQuillin on Municipal Corporations*, 2d Ed. Sec. 1208; *Fidelity Trust and Guaranty Co. v. Water Co.*, 113 Fed., 560; *Stripe v. Yoeger*, 348 Ill., 362, and *Van Veuth v. Baltimore*, 165 Md., 651.

In addition to the common law rule that boards of education have such powers only as are extended to them by statute, and the fact that no power has been extended to them to purchase property such as is here involved on the installment plan or by the giving of a mortgage, express statutory limitations exist on the powers of a board of education or other similar public authority to make contracts involving the expenditure of money. This limitation is contained in Section 5625-33, General Code, making it imperative that such boards and public authorities pay cash when purchasing property of any kind, or at least fix the time for payment when making a contract to purchase property or incur a financial obligation within a period not farther in the future than for which funds to meet the obligation of the contract might be collected or be in "process of collection", as the phrase is used in the statute. The pertinent part of Section 5625-33, General Code reads as follows:

"No subdivision or taxing unit shall:

(a) * * *

(b) Make any expenditure of money unless it has been appropriated as provided in this act.

(c) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn.

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. * * * "

A farm to be acquired and maintained by a school district as an agricultural school clearly is a "permanent improvement" under the terms of the so-called Uniform Bond Act (Section 2293-1, et seq., General Code), and may be acquired through the issuance of bonds under the terms and within the limitations of said Act.

Section 2293-1, General Code, *inter alia*, provides:

"(e) 'Permanent improvement' or 'improvement' shall mean any property, asset or improvement with an estimated life or usefulness of five (5) years or more, including land and interests therein, and including reconstructions, enlargements and extensions thereof having an estimated life or usefulness of five years or more."

Section 2293-2, General Code, provides in part:

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct."

Section 2293-15, General Code, reads as follows:

"The net indebtedness created or incurred by any school district without a vote of the people shall never exceed one-tenth of one per cent of the total value of all property in such school district as listed and assessed for taxation."

The net indebtedness created or incurred by any school district shall never exceed six per cent of the total value of all property in any such school district as listed and assessed for taxation, provided that bonds shall not be submitted to popular vote in an amount which will make the net indebtedness after the issuance of such bonds exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, unless the department of taxation of Ohio consents thereto.

In ascertaining the limits of this section, the bonds specified in Section 2293-13 and the following bonds shall not be considered:

(a) Bonds issued prior to April 29th, 1902, or to refund, extend the time of payment of, or in exchange for bonds issued prior to April 29th, 1902.

(b) Bonds heretofore issued to meet deficiencies in the revenue which at the time of issuance were not required by law to fall within any debt limitation.

(c) Bonds heretofore issued under the provisions of Section 7630-1 or hereafter issued for the purpose of rebuilding or repairing a schoolhouse wholly or partly destroyed by fire or other casualty, or for the purpose of building a new school house in lieu of repairing or rebuilding such schoolhouse destroyed by fire or other casualty; provided that any insurance moneys received as a result of any such destruction are first applied to reduce the amounts of bonds issued for such repair, rebuilding or new construction, but bonds excepted from the limitation of this section under the provision of this paragraph (c) shall never exceed three per cent of the total value of all property in any such school district as listed and assessed for taxation.

(d) Bonds issued for replacements of, additions or improvements to buildings within a school district, following the declaration of an emergency by the local board of education pursuant to the provisions of Section 5 (G. C. §2293-15a) of this act."

Very much the same situation which is the subject of your inquiry existed in Meigs County in 1939 and was the subject of an opinion by the then Attorney General in response to a request therefor from the prosecuting attorney of said county. In that case one of the rural boards of education in Meigs County desired to purchase a farm to be operated by said board in connection with the teaching of agriculture. There was not sufficient money currently available to pay cash for the property and the then prosecuting attorney of the county desired to know whether or not title to the property might be secured by executing a mortgage, payable in certain installments for twenty years; or, as an alternative, whether the school board might lawfully lease the land in question for a term of twenty years, paying an annual rental therefor which would be approximately the same as the suggested mortgage payment, and on the expiration of the said twenty years the board would thereby acquire title to the property. The question was whether or not the board might acquire and operate the said farm for the said purpose by either of the proposed methods. In response to the inquiry of the prosecuting attorney with respect to the matter involved therein, the Attorney General held:

"A board of education may not lawfully purchase a site for school buildings or other school purposes upon an agreement to pay for the property in installments payable over a period of years.

No authority exists for a board of education to encumber property which it owns by a mortgage or to purchase property

encumbered by a mortgage by the terms of which agreement of purchase the board of education assumes the mortgage and agrees to pay the same in the future as payments thereon become due.

A board of education may not lawfully lease property for any purpose in such manner and upon such terms that the transaction when viewed in its proper light is in fact a purchase of the property under the guise of a lease."

This opinion is reported in Opinions of the Attorney General for 1939, Vol. III, page 1867.

In the light of what has heretofore been discussed, I am of the opinion in response to the specific questions submitted in your inquiry that:

1. The board of education of a city, exempted village or local school district may lawfully establish and maintain an agricultural school in connection with its public school system and may purchase a farm and other agricultural equipment for such purpose, and if funds are available therefor may pay cash for such farm and equipment.

2. No authority exists for a board of education to purchase property of any kind other than school busses and transportation equipment as provided by Section 4855-5, General Code, upon an agreement to pay for the same on the installment plan.

3. No authority exists for a board of education to purchase a farm for the purpose of establishing and maintaining an agricultural school, upon an agreement to pay any part of the purchase price for said farm, or to repay money borrowed to purchase said farm from payments to be made from time to time, which arise from the sale of products of the farm, the said deferred payments to be secured by a mortgage on said property.

4. Subject to the provisions and limitations contained in what is known as the Uniform Bond Act (Section 2293-1, et seq., General Code), a board of education of a city, exempted village or local school district may issue bonds, the proceeds of which are to be used for the acquisition of a farm for an agricultural school to be maintained in connection with its public schools.

Respectfully,

HUGH S. JENKINS

Attorney General