

superintendents is to assist the superintendent in the furtherance of the academic interests of the schools and not to assist boards of education in their financial or business affairs. The qualifications for the one are quite different from those for the other.

While Section 4739 of the General Code gives to county boards of education the power to appoint as many assistant superintendents as they may deem necessary they could not appoint more of such assistants than are needed for the purposes for which assistant superintendents are to be appointed, and thus circumvent the law with the idea of having such extra assistant superintendents act as financial advisers or business managers for the several local boards of education. Such a subterfuge would be doing indirectly what could not be done directly and would be illegal.

Respectfully,
EDWARD C. TURNER,
Attorney General.

134.

DEPARTMENT OF AGRICULTURE—HAS AUTHORITY TO COOPERATE
WITH U. S. DEPARTMENT OF AGRICULTURE FOR THE PURPOSE
OF ERADICATING EUROPEAN CORN BORER.

SYLLABUS:

Under the provisions of Sections 1122 to 1140-6 of the General Code, the Department of Agriculture of Ohio has authority to cooperate with the United States Department of Agriculture for the purpose of eradicating the European corn borer.

COLUMBUS, OHIO, March 2, 1927.

HON. CHARLES V. TRUAX, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated February 28, 1927, which reads as follows:

“Some question has arisen in regard to the authority of the various states interested in the European corn borer clean up campaign to co-operate with the U. S. Department of Agriculture, and to carry out the inspection and clean up program which is provided for in the so-called Purnell Act. Your opinion is asked as to the Ohio Department’s authority under Section 1128 of the General Code and subsequent sections dealing with the control of plant pests.”

You have furnished this department with a copy of the act (H. R. 15649), to which you refer in your letter as “the so-called Purnell Act,” which is as follows:

“AN ACT

To provide for the eradication or control of the European corn borer.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the Secretary of Agriculture to apply such methods of eradication or control of the European

corn borer as in his judgment may be necessary, including the employment of persons and means in the District of Columbia and elsewhere and all other necessary expenses, the sum of \$10,000,000 is hereby authorized to be appropriated, out of any money in the treasury not otherwise appropriated, to be expended in cooperation with such authorities of the states concerned, organizations, or individuals, as the secretary may deem necessary to accomplish such purposes: Provided, that in the discretion of the Secretary of Agriculture no expenditures shall be made hereunder until the states wherein the European corn borer exists shall have provided necessary regulatory legislation and until a sum or sums adequate to state cooperation shall have been appropriated, subscribed, or contributed by states, county, or local authorities or individuals or organizations: Provided, further, that expenditures from the appropriation for any necessary farm clean-up incidental to such eradication or control shall include only such as are, in the judgment of the Secretary of Agriculture, additional to those normal and usual in farm operations: Provided further, that no part of this appropriation shall be used to pay the cost or value of corn or other farm crops or other property injured or destroyed."

Section 1128 of the General Code and the subsequent sections mentioned in your letter are part of an act found in 108 Ohio Laws, Part I, 358, the title of which is as follows:

"To provide for the protection of agriculture and horticulture; to prevent the introduction into and the dissemination within the state of insect and disease pests injurious or harmful to plants or plant products; providing for inspection of nurseries; providing for quarantines necessary to the enforcement of this act; imposing penalties; and repealing original sections * * * of the General Code."

This act includes Sections 1122 to 1140-6 of the General Code.

Sections 1125, 1127, 1128 and 1130, General Code, respectively, read as follows:

"Section 1125. *The secretary of agriculture shall have the power to prescribe, modify, and enforce such rules, regulations, and orders as may be needed to carry out the provisions of this act, and may publish an annual report describing various phases of the inspection, or may publish such other information as may seem desirable concerning the inspection and such insects and diseases as are covered by this act. Such rules and regulations shall be printed from time to time and furnished free to interested persons.*"

"Section 1127. *The secretary of agriculture through the inspector or deputies shall have the authority to inspect any field or farm crop, orchard, fruit or garden plantation, park, cemetery, private premises, public place, and any place which might become infested or infected with dangerous or harmful insects or plant diseases. He shall also have the authority to inspect or reinspect at any time or place any nursery stock shipped in or into the state and to treat it as hereinafter prescribed in Sections 11 and 12 respectively.*"

"Section 1128. *The secretary of agriculture through the inspector and deputies is hereby empowered to investigate outbreaks of dangerous insect or plant diseases occurring within the state and to prescribe and enforce such preventive and remedial measures as he may deem necessary to the control or eradication of such outbreaks, and for such purposes shall have free access to any property or premises within the state.*"

(Italics the writer's.)

"Section 1130. It shall be unlawful for any person in this state knowingly to permit any destructive or dangerous or harmful insect or plant disease to exist in or on his premises. * * * "

The penalty section of the act as amended in 110 Ohio Laws, 8, (Section 1140-5, General Code,) is as follows :

"Any person violating any of the provisions of this act, or any rule or regulation of the Director of Agriculture promulgated under this act shall be guilty of a misdemeanor and on conviction thereof shall be fined not exceeding the sum of one thousand dollars, or imprisoned in the county jail for not more than ninety days, or both."

Section 1122 of this act as amended in 110 Ohio Laws, 8, defines insects, insect pests, diseases and plant diseases as follows :

"The term 'insects,' 'insect pests,' 'diseases,' or 'plant diseases' mentioned in this act are defined as those insect pests and diseases injurious and harmful to plants and plant products of this state, including any of the stages of development of such pests or diseases."

The above quoted sections of the General Code provide, among other things, authority for the Department of Agriculture to make rules, regulations and orders and to cause suitable measures to be taken for the prevention and eradication of insect pest and plant diseases within the state. The language of the sections evidences and expresses a clear legislative intent to vest in the Department of Agriculture a general authority to take necessary measures to combat invasions or outbreaks of destructive insect pests within the state.

In this connection your attention is called to two former opinions of this office, the first of which appears in Vol. II, Opinions of the Attorney General for 1915, page 1206, the syllabus of which reads as follows :

"Under the provisions of the agricultural commission act, particularly Sections 1122, 1123 and 1134 of the General Code, the agricultural commission is authorized to make regulations and cause suitable measures to be taken for the prevention and eradication of insect pests and plant diseases within the state. *This authority extends to the taking of such measures as are reasonable and necessary to prevent the development and spread of the gypsy moth from any premises which there is good cause to believe are infested with the eggs or larva of such insect.*"

(Italics the writer's.)

Although the sections of the General Code construed in the above opinion have been amended the substance thereof appears in the sections of the Code herein set forth. The amended sections, supra, are much broader in scope and give greater authority than the sections discussed in the above opinion.

The second opinion is found in Vol. II, Opinions of the Attorney General for 1920, page 1091, the first syllabus of which reads as follows :

"Section 1128, General Code, authorizes the Secretary of Agriculture, in cases of outbreaks of dangerous insects or plant diseases, to prescribe and enforce such remedial and preventive measures as he deems necessary. It is a valid exercise of the police power and not in conflict with the constitution."

Specifically answering your question, I am of the opinion that under our present laws you have authority to cooperate with the United States Department of Agriculture in a campaign to clean up the European corn borer in this state. While you could not turn your funds over to the federal authorities you could have your men and your department generally work right along with the federal employes and you could make and enforce the necessary rules, regulations, inspections and quarantines as you may deem proper for the purpose of eradicating the particular pest.

Respectfully,

EDWARD C. TURNER.

Attorney General.

135.

APPROVAL, BONDS OF VILLAGE OF PARMA HEIGHTS, CUYAHOGA COUNTY, OHIO—\$12,132.50.

COLUMBUS, OHIO, March 2, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

136.

DISAPPROVAL, CONTRACT BETWEEN STATE OF OHIO, THROUGH DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS WITH THE LORD & BURNHAM COMPANY.

COLUMBUS, OHIO, March 2, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR MR. SCHLESINGER:—I am in receipt of your letter of February 23, 1927, with which you enclose a contract between the State of Ohio, acting by the Department of Highways and Public Works, and The Lord & Burnham Company. I am in receipt of information that the work contemplated in this contract has been accomplished by the contractor previous to the time of submitting the same for my approval.

Section 2319 of the General Code in part provides:

“ * * * no contract shall be entered into until * * * and until the contract and bond shall be submitted to the Attorney General and his approval certified thereon.”

In view of the fact that the contractor could not properly enter upon the work and complete the same until the approval of this department as to the contract under which he was working had been obtained, I am therefore returning this contract to you without my approval entered thereon.

Respectfully,

EDWARD C. TURNER.

Attorney General.