

not included therein. The authority for entering into such a contract is clearly granted to the municipality by Section 3809, General Code, which was in force at the time the contract was entered into, as well as by Section 9324, General Code. Neither of these statutes require that such a contract be ratified by a vote of the electors of the corporation.

I am therefore of the opinion that the contract in question is valid, and that the city of Marion is liable to the Marion Water Company for water furnished to the city from water hydrants, at the rates fixed in said contract.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2476.

BOARD OF EDUCATION—MAY CONTRACT FOR TRANSPORTATION OF PUPILS FOR ENTIRE SCHOOL YEAR OR LONGER PERIOD WHEN—UNAUTHORIZED TO ENTER INTO CONTRACT WHICH DOES NOT GO INTO EFFECT UNTIL AFTER EXPIRATION OF TERM OF OFFICE TO MEMBERS OF BOARD.

SYLLABUS:

1. *Boards of education may, in their discretion, contract for the transportation of pupils for an entire school year or for a longer period if they deem it advisable, provided the general provisions of law with reference to the making of contracts by boards of education are complied with, and provided further, that such contracts are made in good faith, in the interests of the public, and for a time reasonable, under the circumstances.*

2. *A board of education is without power to enter into contracts for the transportation of pupils, which contracts do not go into full effect until after the expiration of the term of office of a portion of the members of the board.*

COLUMBUS, OHIO, April 9, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“A board of education entered into contracts on August 1st, 1931, for the transportation of the children in the district, said contracts to run three years, to June 30, 1934.

At the November election in 1933, new board members were elected to take their offices in January, 1934.

The old board, on December 2, 1933, cancelled the original transportation contracts and made new contracts, extending to June 30, 1936.

QUESTION: Were the contracts made on December 2, 1933, legal contracts?”

A former Attorney General, in an opinion which will be found in the published Opinions of the Attorney General for 1927 at page 1472, held:

"Boards of education may, in their discretion, contract for the transportation of pupils for an entire school year or for a longer period if they deem it advisable, provided the general provisions of law with reference to the making of contracts by boards of education are complied with."

To the same effect is a later opinion rendered by the same Attorney General. This opinion will be found in the published opinions of the Attorney General for 1928 at page 1733.

These opinions are predicated to some extent, on the fact that public officials in the making of contracts for the employment of teachers and superintendents and contracts made by municipal councils to provide lighting, water and certain public necessities are limited by statute as to time, whereas, no similar statutory limitation is contained in the statutes authorizing boards of education to contract for the transportation of pupils.

The statements contained in the syllabi of the opinions referred to above are qualified somewhat in the text of these opinions. It is pointed out therein that such contracts must be made in good faith, in the interests of the public, and for a time reasonable under the circumstances, otherwise they would be regarded as against public policy and void. Inasmuch as the action of public officials is always presumed to be in good faith and in the interests of the public welfare, the burden of showing the contrary would be on the party attacking the contract.

Reference is made in the 1928 opinion to the case of *Commissioners of Franklin County vs. Ranck*, 9 O. C. C., 301, where it is held that contracts made by public boards for a period of time extending beyond the term of the officials making it, unless made in good faith, in the interests of the public and for a time reasonable under the circumstances, are against public policy and void. The comments of Professor Page in his work on the law of contracts, with reference to this question, are also noted. It is there said, in Section 1901, that:

"Unless specifically restrained by statute a public corporation may make a contract which by its terms is to last for a longer period of time. Contracts for water and lighting are the common examples of contracts of this sort. The time must, however, be reasonable. * *

The power of the officers of a public corporation to enter into a contract which is to be performed after the expiration of the term of office of the officers by whom the contract was made, depends in part upon the nature of the contract. Public officers can not make a contract which relates to the exercise of administrative, governmental or legislative functions which will bind their successors unless the power so to do is granted expressly. On the other hand, contracts which are in exercise of the public powers of a public corporation are governed by the same rules as those which govern the contracts of natural persons; and such contracts bind the successors in office of the officers by whom they were made. * *

Contracts which are entered into for the purpose of supplying the public with water, for furnishing lighting, and the like, are regarded as an exercise of the business power of the public corporation, and accordingly such contracts bind successive officers, but they must go into full effect during the term of the officers who enter into them. Under statutory authority to enter into a contract for public printing for a term of

two years, a board may make such contract just before the expiration of its term of office, although such contract will last during almost the entire term of the successors of such board."

It would therefore appear that unless it were shown that the contracts which were made on August 1, 1931, had not been made in good faith and in the public interests, the contracts were valid and binding contracts and that no power existed in the board to cancel them and make new contracts. As the district had in force contracts for the transportation of its pupils until June 30, 1934, any new contracts for the same service would necessarily start on June 30, 1934, and continue from that time. The board of education in office on December 2, 1933, had no power to make a contract for this service to begin on June 30, 1934, as such a contract would not go into full force until after the expiration of the term of office of a part of the members of the board.

It does not appear, however, that this board attempted to make a contract to begin at the expiration of the then existing contract, but on the other hand, attempted to cancel the then existing contract and make a new contract to run from December 2, 1933. To cancel the existing contract the board necessarily would have had to release the obligation of the contractor to carry out his contract. This they had no power to do unless it should be shown that some consideration existed for the release of this obligation and that it was done in good faith and in the public interest. In an opinion of a former Attorney General it is held:

"A public board or officer is not empowered to release without consideration an obligation owing to the public."

Contracts between public boards or officers and third persons are of a somewhat different status in many respects than are contracts between private persons. Contracts between private parties may ordinarily be dissolved and the mutual obligations thereof released by consent of the parties but even then ordinarily the dissolution requires consideration for the release of the mutual obligations of the contract so as to amount to an accord and satisfaction. No one is involved in such private contracts but the parties themselves. With public contracts, the public officers or boards making the contract act as mere agents or as it is sometimes expressed, as trustees for the public in whose behalf the contract is made. In those cases the board or officer acting for the public is strictly limited to the authority extended to him either expressly or impliedly by statute. A board of education is not authorized to cancel an existing contract and release the obligor thereon, unless it is done in good faith, in the public interest and for a proper and adequate consideration.

Although your inquiry does not so state, I am informed that the board in question attempted on December 2, 1933, to cancel the then existing contract without consideration therefor and immediately enter into a new contract with the same party on practically, if not precisely, the same terms as before, and extending two years beyond the terms of the original contract. This clearly shows that it was merely an attempt to tie the hands of the incoming board and clearly negatives the element of good faith in making the new contract. "Good faith", in the making of a contract by a public officer or board extending beyond the term of office, is an essential element in the making of such a contract to render it a valid and binding contract.

It appears that a part of the board of education in the district in question was defeated for reelection at the November, 1933, election, and an attempt, apparently, was made to foist on the new board a transportation contract extending for two years beyond the term of the original contract, and even beyond the entire life of the incoming board.

It is difficult to lay down precise rules by which it may be determined whether a public officer or board may enter into contracts beyond their terms, in the absence of express statutory regulation thereof, other than that such contracts if justified at all, must be made in good faith and in the public interest, thereby making that determination depend upon the facts peculiar to the situation. In the instant case the facts so clearly show lack of good faith and total disregard of the public interest and the rights of the succeeding board as to render the action of the board in cancelling the existing transportation contract and entering into a new contract on December 3, 1933, to be unauthorized and void.

I am therefore of the opinion that the contracts which the board attempted to make on December 2, 1933, were unauthorized and are not valid and binding contracts.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2477.

LIFE TENANT—WHERE TAXES UNPAID ON PROPERTY PRIOR TO DEATH OF LIFE TENANT TAXES PERSONAL OBLIGATION OF DECEDENT—DUTY OF ADMINISTRATOR OR EXECUTOR TO PAY TAXES FROM DECEDENT'S ESTATE.

SYLLABUS:

1. *When the life tenant died on the sixth day of February, 1932, without having paid the taxes assessed against the real estate in which he had a life interest for the tax year 1931, such taxes are a personal obligation of such decedent (Section 5680, General Code), and by reason of the provisions of Section 10509-170, General Code, it is the duty of the executor of such decedent's will or the administrator of his estate to file with the Probate Court, along with his account as such executor, certificates of the county treasurer and county auditor showing such taxes to have been paid. (Opinion No. 546 appearing in Opinions of the Attorney General for 1933, approved and followed.)*

2. *Since the amendment of Section 2658, General Code, by the 89th General Assembly, the county treasurer cannot maintain an action in the nature of a suit to recover such taxes, as distinguished from special assessments against a life tenant or his executrix.*

COLUMBUS, OHIO, April 9, 1934.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion on the following question: