

4752.

BLIND AND DEAF, THE STATE SCHOOLS FOR AND WELFARE INSTITUTIONS — COMMISSION FOR RE-LOCATION — APPROPRIATION, \$5,000.00, AMENDED SENATE BILL 368, 94 GENERAL ASSEMBLY — SOLE PURPOSE, TO COVER REASONABLE EXPENSES, COMPENSATION OF APPRAISERS, STENOGRAPHIC, CLERICAL AND OTHER TECHNICAL ASSISTANTS EMPLOYED — NO AUTHORITY TO TAKE OPTIONS ON TRACTS OF LANDS FOR SCHOOLS OR INSTITUTIONS OR EXPEND ANY PART APPROPRIATED TO OBTAIN OPTIONS.

SYLLABUS:

The Commission for The Re-Location of The State Schools for the Blind and Deaf and Welfare Institutions created in Amended Senate Bill No. 368, 94th General Assembly, is without authority in any manner to take options on tracts of land for such schools or institutions, or expend any part of the five thousand dollars appropriated by Section 4 of said act for the purpose of obtaining options, the appropriation being for the sole purpose of covering the reasonable expenses of the commission and the compensation of appraisers, stenographic, clerical and other technical assistants employed by said commission.

Columbus, Ohio, January 29, 1942.

Honorable Walter G. Nickels, Chairman, The Commission for The Re-Location of The State Schools for the Blind and Deaf and Welfare Institutions,
New Philadelphia, Ohio.

Dear Sir:

This acknowledges receipt of your request for my opinion, your letter reading as follows:

“Under the provisions of Senate Bill No. 368, 94th General Assembly, a Commission is appointed to recommend new locations and buildings for the State Schools for the Blind and Deaf. It is expected that the Commission have plans and specifications, estimates of costs for new buildings and furnishings, new sites, and a plan for disposition of the present properties in a complete recommendation.

Inadvertently the bill that was passed providing for this Commission did not include authority to take options on tracts of land which the Commission would recommend as the new sites for the schools. In conversation with real estate brokers the Commission learned that options on the land now occupied by the State Office Building was taken in the names of various

persons and when completed they were turned over to the Commission which supervised the erection of the office building.

This Commission desires to ascertain, if in your opinion, they have the authority to have options taken on tracts of land they are interested in securing for these schools, in the name of persons other than the Commission or the State, and use any part of the fund appropriated to the Commission for this purpose. If such options can be obtained now and turned over to such authority that is appointed to build the new schools under legislation passed at the next General Assembly, it would be advantageous to the State so far as price and location are concerned."

Section 1 of Amended Senate Bill No. 368, as passed by the 94th General Assembly and effective on September 2nd, 1941, 119 v. 679, provides in part as follows:

"There is hereby created a commission consisting of nine members to study proposals for the purpose of making recommendations for the disposal of the present sites of the state school for the blind and the school for the deaf, and all the institutions under the supervision of the department of public welfare, the acquisition of new sites therefor and the construction thereon of new buildings for such institutions. * * *"

Section 2 of this Act prescribes the powers and duties of the commission created in Section 1, supra, which may be summarized as follows:

(a) To hear proposals and determine by what means, methods and manner the present sites named in Section 1, supra, can be disposed of, and after due and careful appraisal of such sites, for which expert appraisers may be appointed, to determine "the approximate yield in moneys from the sale, lease or other disposition of such sites and all buildings thereon."

(b) To make a careful survey to determine the best possible site or sites upon which the institutions named in Section 1, supra, can be located, after giving due consideration to the factors set forth in paragraph (b), Section 2, including utility services; nearness to highways; water supply; drainage and sewerage facilities; "and all other matters which would affect the health, welfare and general well-being of the pupils of such schools and the inmates of such institutions."

(c) To give most careful consideration to plans and specifications for the construction of the different kinds and types of buildings to be used for such institutions, in accordance with the provisions of subparagraph (c).

(d) To make a full report of its findings and recommendations with respect to its duties as outlined in sub-paragraphs (a), (b) and (c), supra, to the Governor and the 95th General Assembly not later than January 10, 1943, the report to include the amount of money which may be realized from the present sites, recommendations as to new sites, and plans and specifications for the erection of new buildings on such sites.

Section 3 of the Act here involved provides inter alia that the members of the commission shall serve without compensation; authorizes the allowance of their reasonable expenses in carrying out the objects and purposes of the Act; empowers the commission "to employ such stenographic, clerical and other technical assistance as may be necessary to carry out the objects and purposes of the Act."

Section 4 of the Act under consideration provides:

"There is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund and not otherwise appropriated the sum of five thousand dollars for the use of the commission created in section one of this act."

Three fundamental rules of statutory interpretation and construction require that your question be answered in the negative. These are:

(1) Statutory officers, boards and commissions have such powers, and only such powers as are expressly granted by statute, and such implied powers as may be necessary to carry the powers expressly granted into effect. This fundamental proposition has been so many times stated by the courts of Ohio, in the opinions of this office and by authorities everywhere that I forbear citing specific cases, opinions or texts.

(2) Where powers are conferred by the Legislature upon a statutory officer, board or commission, the statute granting such powers is to be construed as both a grant and limitation. That is to say, the limits of the powers conferred are to be ascertained from the statutes granting such powers. As held in the first and fifth branches of the syllabus of the case of *Frisbie Company v. The City of East Cleveland*, 98 O. S., 266, 120 N.E., 309 (1918), quoted with approval in the case of *Hommel & Company v. Village of Woodsfield*, 122 O. S., 148, 171 N.E., 23, (1930):

"1. Where a statute prescribes the mode of exercise of the power therein conferred upon a municipal body, the mode specified is likewise the measure of the power granted, and a

contract made in disregard of the express requirements of such statute is not binding or obligatory upon the municipality. * * *

5. It is incumbent upon persons dealing with public officers to ascertain whether their proposed action falls within the scope of their authority, and whether the requirements of law affecting a contract proposed to be entered into have been complied with."

(3) Public funds may be disbursed only by clear authority of law, and upon compliance with statutory provisions relating thereto, and "in case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power." See 32 O.Jur. 734, 735, citing the cases of *State, ex rel. The A. Bentley & Sons Company v. Pierce, Auditor*, 96 O.S., 44, 117 N.E. 6 (1917) and *The State, ex rel. Smith, Pros. Atty. v. Maharry*, 97 O.S., 272, 119 N.E. 822 (1918).

The third branch of the syllabus of the Bentley case reads as follows:

"In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.";

while the first branch of the syllabus in the Maharry case reads:

"All public property and public moneys, whether in the custody of public officers, or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. Said trust fund can be disbursed only by clear authority of law."

A cursory examination of the Act under consideration shows that the Legislature has expressly and with great particularity prescribed the authority, powers and duties of your Commission. Nowhere in the Act is there any grant authorizing your Commission to take options and the very fact that it is expressly made the duty of the Commission to submit its report and recommendations to the Governor and the 95th General Assembly clearly negatives the idea of any such intended grant. Moreover, while the sum of five thousand dollars is appropriated to your Commission, it is patent that such appropriation was made for the purpose of covering the necessary expenses of the Commission in carrying out the objects and purposes of the Act and the compensation of such appraisers, clerical and other technical assistants as the Commission may deem necessary.

In view of the rules of statutory interpretation and construction above set forth and the plain wording of the Act about which you inquire, it is my opinion that:

The Commission for The Re-Location of The State Schools for the Blind and Deaf and Welfare Institutions created in Amended Senate Bill No. 368, 94th General Assembly, is without authority in any manner to take options on tracts of land for such schools or institutions, or expend any part of the five thousand dollars appropriated by Section 4 of said Act for the purpose of obtaining options, the appropriation being for the sole purpose of covering the reasonable expenses of the commission and the compensation of appraisers, stenographic, clerical and other technical assistants employed by said commission.

Respectfully,

THOMAS J. HERBERT
Attorney General.