

the language of the old, dealing specifically with the assessment of back taxes on account of omitted improvements, taken in connection with the form in which the sections appear as revised, establishes beyond doubt the conclusion that there is now no authority to do this.

Accordingly, the second question submitted by the auditor is answered in the negative.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3014.

BOARD OF EDUCATION—NO AUTHORITY TO EXPEND FUNDS FOR RENT OF HOUSE TO BE USED AS TEACHERS' HOME—WHEN BOARD MAY PURCHASE REAL ESTATE FOR PURPOSE OF ERECTING SUCH HOME—COST OF BUILDING CONTRIBUTED BY PRIVATE DONATIONS.

A board of education is without authority to expend its funds or advance money for the rent and the furnishing of a house to be used as a teachers' home; but a board of education may, under the provisions of section 7624 G. C., purchase real estate as a site for the purpose of erecting such a home for school teachers employed in the district, when the cost of the erecting of the building has been contributed by private donations.

COLUMBUS, OHIO, April 21, 1922.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of a letter from your office signed by Hon. E. J. Thobaben, assistant prosecuting attorney, requesting the opinion of this department upon the following statement of facts:

“The board of education of Dover township rural school district desires to know whether they would have the right to expend or rather advance money for the rent of and for furnishing a house to be used as a teachers' home. They are having great trouble in keeping teachers because of insufficient housing facilities. It is their intention merely to advance this money and get it back by having the teachers pay the equivalent of the rent plus a proportion of the cost of the furnishing so that this will eventually be paid for.”

In reply to your inquiry you are advised that all that appears in the statutes upon the question of “teacherages” or buildings to be used as homes or houses for public school teachers, occurs in section 7624 G. C., which reads as follows:

“When it is necessary to procure or enlarge a school site, or to purchase real estate to be used for agricultural purposes, athletic field or playground for children, or for the purpose of erecting and maintaining buildings to be used as homes or houses for public school teachers, when the cost of such erection has been contributed by private donations or for the purpose of providing an outlet to dispose of sewage from a school building or grounds, and the board of education and the owner of the property needed for such purposes, are unable to agree upon the sale and purchase thereof, the board shall

make an accurate plat and description of the parcel of land which it desires for such purposes, and file them with the probate judge, or court of insolvency of the proper county. Thereupon the same proceedings of appropriations shall be had which are provided for the appropriation of private property by municipal corporations."

In your inquiry you indicate it is the desire of the board of education in question "to advance this money and get it back by having the teachers pay the equivalent of the rent plus a proportion of the cost of the furnishing, so that this will eventually be paid for." That is to say, the board of education desires to rent and furnish a house not for the purpose of school rooms, but to be used as a teachers' home in the district where the teachers are employed. If the board of education is to advance this money, as you indicate, and get it back by having the teachers pay rent to the board of education, apparently the board of education would be investing its funds for a purpose other than that which is authorized by law. Investigation shows that the question of "erecting and maintaining buildings to be used as homes or houses for public school teachers" was the real subject in House Bill 761, as passed by the 83d General Assembly on February 4, 1920, and filed in the office of the Secretary of State on February 19, 1920. This bill amended section 7624 in the manner in which it is quoted above, but it will be noted that the authority of the board of education under section 7624, as it now reads, is only that a board of education may appropriate private property by process of law

"when it is necessary * * * to purchase real estate * * * for the purpose of erecting and maintaining buildings to be used as homes or houses for public school teachers, *when the cost of such erection has been contributed by private donations* * * *."

The effect of this is that in a community where the building has been furnished or the cost of erecting such building has been furnished by private donations, the board of education, desiring to use such building as a teachers' home for that district, may purchase real estate to be used as a site for such building, the cost of which has been contributed by private donations. A board of education is not permitted to invest its funds unless authorized to do so by specific grant appearing in the law. Thus it was held in Opinion 1111, issued on April 2, 1918, appearing at page 497, Vol. I, Opinions of the Attorney-General for 1918, that:

"A board of education is not authorized to invest funds at its disposal."

While the necessity for a teachers' home of this kind in a certain district might be great and it is commendable for a board of education to consider proper housing facilities for its employed personnel, the General Assembly, so far has not given any authority to a board of education to go beyond the limits appearing in section 7624 G. C., and if proper authority for action of this kind were desired, it is the subject for future legislative enactment.

Bearing upon the authority of boards of education, your attention is invited to the very recent decision of the Supreme Court in the case of State of Ohio ex rel. Clark vs. Cook, decided November 22, 1921, the second branch of the syllabus reading as follows:

"2. Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (State ex rel. Locher, Prosecuting Attorney, vs. Menning, 95 Ohio State, 97, approved and followed.)"

In reply to your inquiry you are advised that it is the opinion of this department that a board of education is without authority to expend its funds or advance money for the rent of and the furnishing of a house to be used as a teachers' home; but a board of education may, under the provisions of section 7624 G. C., purchase real estate as a site for the purpose of erecting such a home for school teachers employed in the district, when the cost of the erecting of the building has been contributed by private donations.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3015.

COUNTY BOARD OF EDUCATION—TRANSFER OF TERRITORY FROM ONE SCHOOL DISTRICT TO ANOTHER—SECTION 4692 G. C. APPLIES—NO PROVISION IN SAID SECTION FOR PETITION OF ELECTORS FOR TRANSFER EXCEPT REMONSTRANCE.

Where it is desired to transfer certain territory from one school district to another school district in the same county school district and within the jurisdiction of the same county board of education, the provisions of section 4692 G. C. apply. There is no provision in section 4692 G. C. for any petition on the part of the electors, the only provision in such section being that a remonstrance and not a petition can be filed with the county board of education.

COLUMBUS, OHIO, April 21, 1922.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the following:

"1. A petition has been filed with the county board of education of Fairfield county praying that certain territory be transferred from a township rural school district to a village school district, both districts being a part of the Fairfield county school district and within the jurisdiction of the Fairfield county board of education. The village school district above mentioned does not belong to that class of school districts which have a population of 3,000 or more and which are known as *exempted village school districts*. Under what section of the General Code can such a transfer be made by the county board of education?

"2. If seventy-five per cent of the electors in the territory sought to be transferred in the above case petition the county board, asking that such transfer be made, is it mandatory upon the county board to make such transfer; or in other words, do any of the provisions of section 4696 G. C. apply in making such a transfer as the one mentioned above?"

Section 4692 G. C. (106 O. L., 396) reads in part as follows:

"The county board of education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. * * * * nor shall such transfer take effect