

of maintenance and repair and it is the duty of the township trustees, in so far as funds are available, to discharge their duties with respect thereto. It is, however, a well recognized principle that a public board of this character, with limited funds, may use its discretion as to the application thereof, for the purpose for which the funds were made available. The road levy should be expended by the township trustees upon those roads which, in the judgment of the board, are of the most importance from the standpoint of use. At the same time, if funds are available, it is the duty of the trustees to maintain properly all roads, including those here under consideration.

It may be well to direct your attention to Sections 6973 et seq., of the General Code, granting power to boards of county commissioners to improve roads, streets or alleys within platted land situated without a municipal corporation. While the power to improve and also to maintain such public highways is thereby given to the county commissioners, there is no mandatory duty imposed with respect to such improvement. In fact, Section 6988 of the Code states in part:

“No road, street or alley improved under the provisions of this act, shall by reason of such improvement become a county road.”

This makes the purpose clear to retain the original status of such highways while at the same time the authority to improve is given to the county commissioners.

It follows from what has been said that it would not be illegal for the trustees to expend township moneys for the maintenance of the roads and streets in such allotted territory.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2682.

SCHOOL FUNDS—LUNCH ROOM FUND—HOW DEPOSITED.

SYLLABUS:

Moneys in the school lunch room fund established under authority of Section 4762-1, General Code, are to be considered as a part of the school funds of the district and deposited in the depositories provided for such school funds and paid out upon warrants signed by the clerk and president of the board of education.

COLUMBUS, OHIO, October 6, 1928.

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

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

“Under the provisions of Section 4762-1 of the General Code is the lunch room fund therein provided to be considered as a part of the school funds of the district and deposited in the depositories provided for such school funds and paid out upon warrants signed by the clerk and president of the board of education, or may such lunch room funds be considered as entirely separate from the regular funds of the school district and be deposited in a bank to be selected by the board of education and be paid out in a manner designated by the board of education?”

In this connection, we call your attention to an opinion of Attorney General C. C. Crabbe to be found at page 49 of the 1926 Opinions. On account of the multiplicity of small items of expense and on account of the difficulty in auditing these funds, it seems rather impracticable to include these funds in the regular depositories and pay out the same on warrants signed by the President and Clerk. For this reason and for the reason that the section in question seems to be subject to almost any sort of construction or interpretation, we are again submitting the same question to you."

Section 4762-1, General Code, reads in part as follows:

"The board of education of any school district may provide facilities in the schools under its control for the preparation and serving of lunches to the pupils, the teachers, and to other employes therein, and may provide for the operation and management of such lunch rooms, which shall not be operated for profit. * * * The accounts of earnings and expenses of school lunch rooms shall be kept in a lunch room fund, separate from other transactions of the board of education. A fund of operating capital for lunch rooms may be provided either by appropriation from the contingent fund or by accumulation from lunch room earnings."

The foregoing section of the Code provides not only that the accounts pertaining to the operation of a school lunch room shall be kept separate from the other transactions of the board of education, but that a separate fund shall be established, known as the lunch room fund.

The later provisions contained in Section 5625-9, General Code, enacted in 1927, wherein the several funds to be established by each subdivision are enumerated, and wherein no mention is made of a lunch room fund to be established by a board of education, do not serve to repeal the provisions of Section 4762-1, General Code, with reference to the establishment of a separate lunch room fund by a board of education, for the reason that the provisions of Section 4762-1, General Code, are special in their application to boards of education, whereas the provisions of Section 5625-9, General Code, are general in their application to all subdivisions, and therefore do not repeal the special provisions of Section 4762-1, General Code, by implication.

The purpose of providing that separate accounts be kept of the earnings and expenses of school lunch rooms is obvious. The statute provides that such lunch rooms shall not be operated for profit, and unless the transactions relating to lunch rooms are kept separate from other transactions of the board, no means would be available whereby it might be conveniently determined whether or not the lunch room was being operated at a profit. It perhaps would not have been necessary to have provided for establishing a separate lunch room fund only for convenience in accounting, but the Legislature has seen fit to do so, just as it has provided for the establishment of other specific funds.

This does not mean, however, that the moneys in the lunch room fund are to be treated any differently from moneys in other funds. In fact, this fund is to be made up from appropriations from other funds of the board if the earnings of the lunch room are not sufficient to provide operating capital. There is nothing in the statutes to indicate any intention on the part of the Legislature that the lunch room fund has any different status than other funds, or that the fund is not subject to the general laws pertaining to funds under the jurisdiction of the board of education. Sections 4767 et seq. and 7604 of the General Code provide for the manner of handling and disbursing the moneys in the hands of a board of education and for their deposit in a school district depository. In my opinion, these provisions of law apply to the school lunch room funds as well as to others.

This question was considered by the Attorney General in an opinion reported in the Opinions of the Attorney General for 1926, at page 49, wherein it was held:

“The lunch room fund provided in Section 4762-1, General Code, shall be considered as a part of the general school fund, to be deposited in the usual depositories, and paid out on warrant properly signed by the president or clerk of the board of education, as provided in Section 4768, General Code.”

I see no reason to disagree with the former Attorney General in his holding in the opinion above referred to.

In view of the foregoing, and answering your question specifically, I am of the opinion that moneys in the school lunch room fund established under authority of Section 4762-1, General Code, are to be considered as a part of the school funds of the district, and deposited in the depositories provided for such school funds, and paid out upon warrants signed by the clerk and president of the board of education.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2683.

VACANCY—JUDGE OF COURT OF COMMON PLEAS—WHEN SUCCESSOR IS TO BE ELECTED—HOW BALLOT IS PREPARED.

SYLLABUS:

1. *Where a vacancy occurs in the office of Judge of the Court of Common Pleas, a successor to fill his unexpired term should be elected at the first general election occurring in an even numbered year more than thirty days after such vacancy may have occurred.*

2. *Where a Judge of the Court of Common Pleas died subsequent to the August primary and more than thirty days prior to the November election, a party controlling committee is without authority to nominate a candidate for such office for the unexpired term, nor can such a nomination be made by petition, for the reason that Section 5004, General Code, requires a nominating petition for offices to be filled by the electors of a district lying within a county to be filed with the board of deputy state supervisors of such county “not less than sixty days previous to the date of election.”*

3. *Where a vacancy in the office of Common Pleas Judge is caused by death less than sixty and more than thirty days previous to the date of the November election in an even numbered year, a successor to such Judge for his unexpired term may be elected by writing in the name of the person desired by the voters, and a blank space for such purpose should be provided on the ballot, indicating the duration of the unexpired term for which the election is to be made.*

COLUMBUS, OHIO, October 8, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“We desire your opinion as to the method to be followed in electing a successor to fill the vacancy of Common Pleas Judge occasioned by the death of Hon. C. A. Reid at Washington C. H., Ohio, recently, as provided for in Section 10 of the General Code of Ohio.