

4228.

ATTACHMENT—MONEY HELD BY BOARD OF TOWNSHIP TRUSTEES
AND BOARD OF EDUCATION WHICH IS DUE THEIR EMPLOYEES
MAY BE ATTACHED.

SYLLABUS:

Money due and payable to employees of a board of township trustees, in the hands of such board, and money in the hands of a board of education due and payable to employees of such board or due and payable to a person under contract to transport children for a board of education, may be attached in proceedings in aid of execution.

COLUMBUS, OHIO, April 2, 1932.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“On July 7, 1930, you rendered Opinion 2062 to me, holding that county officials are not proper parties as garnishees in proceedings in aid of execution to attach money in their hands due a county employee.

“I would like to inquire whether or not money can be attached in the hands of a board of township trustees or school board due employees of said boards. Also, whether money due a person under contract to haul children for a board of education can be attached in the hands of the board of education.”

The opinion to which you refer, found in 1930 Opinions of the Attorney General, 1060, held as above stated. In the course of that opinion the case of *Raudabaugh vs. State*, 96 O. S. 513 was quoted; in that case it was held in the syllabus that (1) a state is not subject to suit in its own courts without its express consent, and (2) the provision of Section 16 of Article I of the Ohio Constitution as amended September 3, 1912, that “Suits may be brought against the state, in such courts and in such manner, as may be provided by law,” is not self-executing and statutory authority is required as a pre-requisite of bringing a suit against the state.

It is well settled that a proceeding in the aid of execution against the state is a suit within the meaning of the Constitutional provision above quoted. *Buzzeli vs. Larson*, 40 Ohio App. —, reported in “Ohio Law Bulletin” for December 14th, 1931. See also 1930 Opinions of the Attorney General, 1060, and cases cited therein.

Therefore, the question is presented as to whether or not the legislature has provided for suits against a board of township trustees or a board of education.

Section 11760, General Code, relative to proceedings in the aid of execution, reads:

“When a judgment debtor has not personal or real property subject to levy on execution sufficient to satisfy the judgment, any equitable interest which he has in real estate, as mortgagor, mortgagee, or otherwise, or any interest he has in a banking, turnpike, bridge, or other joint stock company, or in a money contract, claim, or chose in action, due or to become due to him, or in a judgment or order, or money, goods,

or effects which he has in the possession of any person, or body politic or corporate, shall be subject to the payment of the judgment, by action."

Section 3244, General Code, which is pertinent to your inquiry, reads in part as follows:

"Each civil township lawfully laid off and designated, is declared to be, and is hereby constituted, a body politic and corporate, for the purpose of enjoying and exercising the rights and privileges conferred upon it by law. It shall be capable of suing and being sued, pleading and being impleaded, and of receiving and holding real estate by devise or deed, or personal property for the benefit of the township for any useful purposes. * * *

It is apparent therefrom that there exists statutory authority for the bringing of a suit against a board of township trustees, and it follows that since a proceeding in aid of execution is a suit, money due and payable to employees of a board of township trustees in the hands of such board may be attached in a proper proceeding.

Bray vs. Wallingford, 20 Conn. 416; *Weeks vs. Hill*, 38 N. H. 199.

Coming now to the question of whether or not money due a person under contract for the transportation of children for a board of education may be attached in the hands of the board of education, your attention is called to Section 4749, General Code, which reads as follows:

"The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of the state."

It follows therefrom that money in the hands of a board of education due and payable to employees of such board or due and payable to a person under contract to transport children for a board of education, can be attached in the hands of such board of education.

In this respect it is interesting to note the case of *Belknap, Carpenter & Co. vs. Pearson*, reported in Volume 39, Weekly Law Bulletin, page 140, wherein the Common Pleas Court of Franklin County held that the salary of public school teachers in the hands of a board of education may be subjected to the payment of judgments against such teachers.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that money due and payable to employees of a board of township trustees, in the hands of such board, and money in the hands of a board of education due and payable to employees of such board or due and payable to a person under contract to transport children for a board of education, may be attached in proceedings in aid of execution.

Respectfully,

GILBERT BETTMAN,
Attorney General.