4327.

APPROVAL, BONDS OF CITY OF CANTON, STARK COUNTY, OHIO, $25,000.00.

COLUMBUS, OHIO, June 10, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4328.

APPROVAL, BONDS OF CENTER RURAL SCHOOL DISTRICT, CARROLL COUNTY, OHIO, $3,950.00.

COLUMBUS, OHIO, June 10, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4329.

BOARD OF EDUCATION—UNAUTHORIZED TO EXPEND PUBLIC SCHOOL FUNDS FOR ANNUAL DUES IN "OHIO STATE ASSOCIATION OF BOARDS OF EDUCATION".

SYLLABUS:

A board of education is without authority to expend public school funds for the payment of annual dues to "The Ohio State Association of Boards of Education" or any similar organization.

COLUMBUS, OHIO, June 11, 1935.

HON. T. B. WILLIAMS, *Prosecuting Attorney, New Lexington, Ohio.*

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

> "The Board of Education of Bearfield Township Rural School District this county, has sent me the enclosed letter, requesting an opinion as to whether or not under Section 7620, General Code, the Board of Education can legally appropriate money to pay their annual dues to 'The Ohio State Association of Boards of Education', providing in return for such annual dues, bulletins and the magazine of said association are issued to them, which bulletins and magazines they claim come under the following part of Section 7620: 'A board of education of a district may * * make all other provisions for the convenience and prosperity of the schools within the sub-district.' "

Section 7620, General Code, reads as follows:

> "The board of education of a district may build, enlarge, repair and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable school rooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control. It also shall provide fuel for schools, build and keep in good repair fences enclosing such schoolhouses, when deemed desirable plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the subdistrict."

For many years the courts of this state have recognized and applied the principle that boards of education being creatures of statute, have such powers only as are expressly granted to them by statute, together with such so-called implied powers as are necessary to carry out the powers so expressly granted. This rule is stated by the Supreme Court of Ohio, in the case of *Board of Education* vs. *Best,* 52 O. S., 152, as follows:

> "The authority of boards of education like that of municipal councils, is strictly limited. They both have only such power as is expressly granted or clearly implied, and doubtful claims as to the mode of exercising the powers vested in them are resolved against them."

In the case of *State ex rel Clarke* vs. *Cook,* 103 O. S., 465-467, it is stated:

> "That boards of education are purely the creatures of statute is an old and uniformly accepted doctrine. * * As administrative boards created by statute their powers are necessarily limited to such powers as are clearly and expressly granted by the statute."

In the comparatively recent case of *Schwing* vs. *McClure,* 120 O. S., 335, this rule was reaffirmed and drastically applied. The first branch of the syllabus of this case is as follows:

> "Members of a board of education of a school district are public officers whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given."

Another rule of law which has the sanction of the Supreme Court of this state, is stated in the third branch of the syllabus of *State ex rel. A. Bentley & Sons Co.* vs. *Pierce, Auditor,* 96 O. S., 44, 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."

The question here presented is whether or not the broad statutory grant of power contained in the last few lines of Section 7620, General Code, where it is provided that, "A board of education of a district may * * make all other provisions for the convenience and prosperity of the schools within the subdistricts" is sufficient to permit a board of education to pay from public funds, the dues incident to membership in "The Ohio State Association of Boards of Education" in return for which the board would be entitled to receive the magazine and bulletins issued by the Association should the board in its discretion determine that the magazine and bulletins were in furtherance of the "convenience and prosperity of the schools" under its jurisdiction.

Admittedly the power granted by the clause of the statute referred to is very broad. Standing alone, this clause would no doubt be susceptible of the interpretation that a board of education has unlimited discretion, subject only to an abuse thereof, and the limitations of other statutes, in determining what would amount to a contribution to the convenience and prosperity of the schools of its district, and having so determined possessed the power to provide it and expend public funds therefor, regardless of the character or kind of that contribution.

It is a well settled rule of law that in the construction and application of statutory law, the intention of the law-making power in enacting the statute is the guiding principle and that intention in so far as it may be ascertained, must prevail. As sometimes expressed, "the intent of the statute is the law." This rule was first stated in a reported case of this state—*Pancoast* vs. *Ruffin, etc.,* 1 Oh., 381, as follows:

> "Statutes should be so construed as to give effect to the intention of the legislature, and if possible, render every section and clause effectually operative."

The rule has been referred to and followed in practically every case decided by our courts wherein a question of statutory construction was involved. See also Lewis' Sutherland Statutory Construction, 2nd Ed., Sec. 363; Corpus Juris, Vol. 59, p. 948.

As aids to the construction and interpretation of statutes there exist certain established rules and maxims the object and purpose of which is to discover the true intent of the law. Corpus Juris, Vol. 59, p. 943. One of these established rules is that a statute must be construed as an entirety or as sometimes expressed, "as a whole." In the opinion in *State* vs. *Rouch,* 47 O. S., 478, 485, Judge Spear said:

> "In giving construction to a statute all its provisions must be considered together. We must endeavor to get at the legislative intent by a consideration of all that has been said in the law, and not content ourselves with partial views, by selecting isolated passages, and holding them alone up to criticism. What is the whole scheme of the law? What object did the legislature intend to accomplish?"

This rule of construction was approved and followed in *State* vs. *Von Gunther,* 84 O. S., 172, 175, and Judge Johnson, in his opinion therein, quotes with approval and follows the rule declared in *State* vs. *Rouch,* supra. In Lewis' Sutherland Statutory Construction, 2nd Ed., Sec. 368, it is said:

> "The practical inquiry is usually what a particular provision, clause or word means. To answer it one must proceed as he would with any other composition—construe it with reference to the leading idea or purpose of the whole instrument. A statute is passed as a whole and not in parts or sections as is

animated by one general purpose and intent. Consequently each part or section should be construed in connection with every other part or section and so as to produce a harmonious whole."

Another rule or maxim of interpretation of universal application is what is known as the rule of maxim of ejusdem generis (literally, of the same nature or kind). This rule is stated in Lewis' Sutherland Statutory Construction, 2nd Ed., Section 422, as follows:

"When there are general words following particular and specific words, the former must be confined to things of the same kind. This is known as the rule or doctrine of ejusdem generis. Some judicial statements of this doctrine are here given. 'When general words follow an enumeration of particular things, such words must be held to include only such things or objects as are of the same kind as those specifically enumerated.' 'The rule is, that where words of a particular description in a statute are followed by general words that are not so specific and limited, unless there be a clear manifestation of a contrary purpose, the general words are to be construed as applicable to persons or things or cases of like kind to those designated by the particular words.' 'It is a principle of statutory construction everywhere recognized and acted upon, not only with respect to penal statutes but to those affecting only civil rights and duties, that where words particularly designating specific acts or things are followed by and associated with words of general import, comprehensively designating acts or things, the latter are generally to be regarded as comprehending only matters of the same kind or class as those particularly stated. They are to be deemed to have been used, not in the broad sense which they might bear if standing alone, but as related to the words of more definite and particular meaning with which they are associated. The general rule is supported by numerous cases.

The object of enumeration is to set forth in detail things which are in themselves so distinct that they cannot conveniently be comprehended under one or more general terms; there is believed to be no a priori presumption that the things enumerated are all of them of the same kind. When a specific enumeration concludes with a general term it is held to be limited to things of the same kind. It is restricted to the same genus as the things enumerated."

In the case of *Youngstown Park & Falls St. Ry. Co.* vs. *Tokus,* 4 App., 276, the court in referring to the maxim of ejusdem generis said: "This maxim is a well recognized rule of statutory construction." See also *Schultz* vs. *Bambridge,* 38 O. S., 659.

This latter rule has been directly applied to the construction and application of the clause of Section 7620, General Code, herein involved. In the reported Opinions of the Attorney General for 1915, Vol. I, page 456, appears an opinion wherein there was considered the question of whether or not a rural or village board of education might legally pay from school funds, the expenses of representatives whom they might send to inspect schools or school buildings, to the end that a report of conditions might be given said board so that the members might act more intelligently in planning for the betterment of the schools of the district. In the course of the opinion, after quoting the provisions of Section 7620, General Code, it is said:

"In consideration of your first question, a careful examination of the stat-

utes fails to disclose any authority for the payment of expenses of representatives of boards of education in making such inspections as are referred to by you, nor indeed for the appointment or designation of such representatives for making any such inspections, unless the same may be found within the terms of the statute above quoted. (Section 7620, General Code.)

It is a principle of law too familiar to require reference to authorities, that public officers may exercise only such authority as is specifically conferred by the statute, or is, of necessity, essential to a proper discharge of a duty so imposed or exercise of power so granted.

It is also a well established rule of statutory construction to be uniformly observed, that 'general words following particular words must be confined to things of the same kind as those specified.' *State* vs. *Johnson,* 64 O. S., 270.

While this rule is subject to that other familiar principle that where the reason altogether fails the rule does not apply, the facts must be sufficient to bring the case clearly within the latter that it may operate as an exception to the former.

In the application of the foregoing principles to the provisions of section 7620, G. C., and more properly to the last sentence of the same, since it is not anticipated that it would be contended that the first sentence is at all applicable to the first case, it cannot be maintained, in my opinion, that the legislature in the requirement that the board of education should provide fuel, build fences, and when deemed desirable plant trees, had in contemplation the appointment of representatives of the board to make inspection of schools and school buildings beyond the territorial jurisdiction of the board at public expense for any purpose.

My answer to your first question must, therefore, be in the negative."

Again, in 1918, the then Attorney General, in an opinion reported in the published opinions for that year, at page 742, held:

"A board of education for a township which has centralized its schools has no authority to build a 'central community building' for the accommodation of the teachers and superintendents of such schools, at which building teachers and superintendents may room and board during the school year."

In the course of the opinion it is said:

"There is no direct authority for a board of education to build a central community building for the accommodation of the teachers and superintendents. The only language contained in any of said sections which might be considered broad enough in any manner to permit a board of education to do other than build, equip and furnish school houses, would be that part of section 7620, which reads:

'And make all other necessary provisions for the schools under its control.'

and that part which provides:

'and make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts,'

and that part of section 7666 which provides:

'and make all other necessary provisions relative to such schools as may be deemed proper.'

> The maxim expressio unius est exclusio alterius, that is, the expression of one is the exclusion of the other, must be applied to matters of this kind, and applying the same to the first provision mentioned in 7620, that the board of education may make all other necessary provisions for the schools under its control, means the necessary arrangements to carry out the objects of building, enlarging, repairing and furnishing the necessary school houses or purchasing or leasing real estate to be used as playgrounds for children, or the renting of suitable school rooms and providing the necessary apparatus therefor, and the doing of all things incident to the carrying out of the above purpose, but not to add new purposes thereto, such as building a central community building. And so the making of all provisions necessary for the convenience and prosperity of the schools within the subdistrict means doing those things which are incident to the providing of fuel for schools, the building and keeping in repair of fences inclosing school houses, the planting of shade and ornamental trees on school grounds, and the doing of the things incident to said purpose, but not to add new purposes such as building central community buildings. And so with the language in section 7666, the making of all other necessary provisions relative to the high schools as the board deems proper means that in the building, repairing adding to and furnishing the necessary school houses for high schools, or the purchasing or leasing of sites therefor, or renting suitable rooms therefor, the other provisions would be only those incidental to the carrying out of the above purposes and would not authorize the adding to of new purposes such as building central community buildings."

In Opinions of the Attorney General for 1922, page 32, the then Attorney General in referring to the provisions of Section 7620, General Code, said:

> "It is true this section confers very broad powers upon boards of education, nevertheless it is not believed that the provisions of the same may be said to be broad enough to cover authority to purchase or provide accident insurance as an indemnity against personal accident or injury sustained by pupils of the schools."

In Opinions of the Attorney General for 1925, page 33, there appears an opinion of the then Attorney General, in which the provisions of Section 7620, General Code, were considered and the right of a board of education to publish a certain book for use in the schools was denied as not being authorized by the statute in question. In the course of the opinion reference was made to the unreported case of *Hanchild* vs. *Board of Education* of the city of Lakewood, in which the Supreme Court denied a motion to certify the record. The Court of Appeals, in the opinion of Middleton, Presiding Judge, considered the right of the city board of education of Lakewood to operate a cafeteria in the Lakewood High School, and said with reference thereto:

> "It is further urged that Section 7620, General Code, which relates to the powers and duties of a board of education, and, in addition to other provisions contains the following, 'and make all other provisions necessary for the convenience and prosperity of the schools within the subdivision' is also authority for the things done by the defendant board which are complained of here. It is sufficient answer to this argument to say that the provision referred to has been before the courts of this state in many cases, in none of which has the construction contended for been recognized."

The same Attorney General, in an opinion which will be found in the Opinions of the Attorney General for 1925, page 736 held that a board of education is without authority to expend public funds to install and maintain motion picture equipment in the schools or enter into contracts for films for entertainment purposes or for any purpose other than in connection with regular courses of study. Again, in 1926, this Attorney General held that a board of education does not have authority to establish a rule permitting teachers leave of absence for a semester upon half salary even though the board determined it to be for the best interests of the schools to do so. See Opinions of the Attorney General for 1926, page 386.

In each of the above opinions the provisions of Section 7620, General Code, were considered, but it was held that those provisions did not extend power to do the things mentioned. Many more similar opinions of this office might be cited.

That clause of Section 7620, General Code, here under consideration, was incorporated in the statutes in almost precisely the same form that it now appears in said Section 7620, General Code, in 1873 (70 O. L., 195, Sec. 55.) If it had been intended that this was to be blanket authority for a board of education to do anything that might in the judgment of the board be conducive to the welfare of the schools or "for the convenience and prosperity of the schools", regardless of its relation to physical requirements such as the providing of schoolrooms, playgrounds, fuel and school apparatus, and the planting of trees and the building of fences and similar things, it would not have been necessary to thereafter extend authority by statute to do any of the things which later statutes authorize, such as the furnishing of free textbooks, the employment of school physicians and nurses, and dentists and dental hygienists, and a number of other grants of power that might be mentioned. In the same act of the legislature wherein this provision was first enacted (70 O. L., 195, Sec. 55), authority is granted to a board of education to contract with the board of an adjacent district for the admission of its resident pupils into the schools of the adjacent district. (70 O. L., 195, Sec. 64.) This would have been entirely unnecessary if the blanket authority extended by the provision to make all other provisions necessary for the convenience and prosperity of the schools was broad enough to include everything the board in its discretion might think necessary, without regard to kind or character.

Even though municipalities are granted broad home rule powers under the Constitution, the Supreme Court of Ohio, in the case of *State ex rel. Thomas* vs. *Semple,* 112 O. S., 559, held that the city of Cleveland did not have the power to expend public funds for membership in the "Conference of Ohio Municipalities" especially in view of the fact that the charter of the city of Cleveland, broad as it is, did not either directly or indirectly sanction such an expenditure. The incidental benefits of such membership to the city of Cleveland would no doubt be as great, at least, as membership of a school district in "The Ohio State Association of Boards of Education."

In my opinion the proper construction of the clauses of Section 7620, General Code, empowering a board of education to "make all necessary provisions for the schools under its control" and to "make all other provisions necessary for the convenience and prosperity of the schools in the sub-districts" is that authority is extended thereby to boards of education to provide physical needs for the schools only, similar to schoolrooms and school apparatus, and fencing school lots, and planting shade and ornamental trees thereon. Authority is not extended to a board of education by force of these provisions to expend public school funds for the payment of annual dues incident to membership in an association or organization such as "The Ohio State Association of Boards of Education".

In the absence of any express or implied authority to do so, I am of the opinion that a board of education is not authorized to pay from public school funds, annual dues

to "The Ohio State Association of Boards of Education" even though some incidental benefit might accrue to the schools of the district by way of the receipt of the association's magazine and bulletins.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4330.

APPROVAL, BONDS OF NEW WATERFORD VILLAGE SCHOOL DISTRICT, COLUMBIANA COUNTY, OHIO, $4,050.00 (UNLIMITED).

COLUMBUS, OHIO, June 11, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4331.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO, $100,000.00.

COLUMBUS, OHIO, June 11, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4332.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DIVISION DEPUTY DIRECTOR OF HIGHWAYS—FRANK W. TURNER.

COLUMBUS, OHIO, June 11, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration a bond in the penal sum of Five Thousand Dollars ($5,000.00) conditioned for the faithful performance of the duties of the principal as Resident Division Deputy Director in Division No. 6, as follows:

Name	Division	Surety
Frank W. Turner	No. 6	The Fidelity and Casualty Company of New York

The above mentioned bond is undoubtedly executed pursuant to the provisions of Sections 1182 and 1182-3, General Code, which provide, so far as pertinent, as follows: