

The second branch of the syllabus of an opinion appearing in Opinions of the Attorney General for 1917, Vol. II, p. 1833, is as follows:

"2. Inasmuch as the Socialist party had not cast at the last preceding election a sufficient number of votes for governor to qualify it for recognition as a political party under section 4949 G. C., it is not entitled to the use of an emblem under section 5014 G. C."

Neither Section 4785-100 nor Section 4785-105 has been amended since the decision in the case of *State, ex rel. vs. Butterfield, supra*. It is accordingly my opinion that an independent group of candidates which has nominated a list of candidates as provided in Section 4785-91, et seq., General Code, is not entitled to have an emblem at the head of the ballot containing its list of candidates.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4588.

BOARD OF EDUCATION—UNAUTHORIZED TO RENT OR LEASE  
SCHOOL PROPERTY—EXCEPTION WHERE SUCH PROPERTY IS  
NOT NEEDED FOR SCHOOL PURPOSES.

*SYLLABUS:*

1. *Except as the power may be implied as being necessary to carry into effect some expressly granted power a board of education is not authorized to rent or lease property held by it for the public school purposes of its district.*

2. *When a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may lawfully permit the temporary use of said property for some purpose other than a school purpose, and it may lawfully accept money for such use. Any agreement whereby third parties are permitted to use said premises under circumstances as mentioned, should contain a limitation to the effect that at any time the school board might determine that the property was needed for school purposes, or that it should be sold, the right to the use of the premises by said third parties would terminate.*

COLUMBUS, OHIO, September 1, 1932.

HON. GEO. W. McDOWELL, *Prosecuting Attorney, Hillsboro, Ohio.*

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

"The School Board of Paint Township, Highland County, Ohio, has consulted me in regard to the purchase by said board of a two story building in said township to be used as a recreation hall, etc., for the school.

The second story could not be utilized by the board except to rent or lease the same to a lodge.

They said that the building would be a bargain at the price offered but unless they are in a position to rent the second floor they would not care to purchase same.

I have advised the board that they are unauthorized by law to rent or lease school property but they say that Mr. V., examiner of this territory, informs them that such is being done over the state.

That being the case the board is not entirely satisfied and request that I write to you and ascertain if there is any way in which they can legally lease or rent the second floor of the building if purchased by them."

Speaking generally, a board of education is a quasi public corporation existing only under statute, having only the powers given by statute and such incidental powers as are absolutely necessary to execute such express powers. It cannot engage in business or make contracts outside its functions as an administrative agency with respect to the laws providing for the maintenance of schools and the carrying out of the provisions of law enacted for the purpose of the functioning of the public school system of the state.

The powers of a board of education with respect to the acquiring, holding, possessing and disposing of real and personal property are set forth in Section 4749, General Code. The powers and duties there enumerated are supplemented to some extent by the terms of Sections 7622 to 7622-6, inclusive, of the General Code. Nowhere in these sections is there granted any specific authority to a board of education to lease schoolhouses or school grounds. The board is authorized to permit the use of schoolhouses and school grounds for certain educational and recreational purposes and for public meetings and social centers. By authorizing the use of school premises for certain purposes mentioned in Sections 7622 to 7622-6, inclusive, it is not contemplated that the buildings and grounds be leased for these purposes, but merely that permission may be granted for their use for the purposes mentioned.

In an opinion of a former Attorney General, published in the Annual Report of the Attorney General for 1913, Volume 2, page 1508, it is held:

"Section 4749, General Code, which enumerates the power of a board of education with reference to acquiring, holding, possessing and disposing of real and personal property, does not include any provision for the leasing of such property by the board, and as the statutes nowhere prescribe the manner of executing such a lease, the board cannot be held to possess such power."

A similar conclusion was reached in an opinion reported in Opinions of the Attorney General for 1918, Volume 2, page 1354, and again in an opinion reported in Opinions of the Attorney General for 1927, at page 101. See also Opinions of the Attorney General for 1930, page 1871, and Opinion No. 2886, rendered under date of January 30, 1931.

In the absence of any specific or statutory authority therefor, it is clear that a board of education does not possess the power to acquire and hold property which is not necessary for school purposes, with the intention and for the purpose of leasing the same with a view to profit.

There are circumstances, however, which, in my opinion, justify a board of education in leasing property where such leasing is a mere incident to the ownership of the property. When a board of education finds itself in possession of

property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may be said, in my opinion, that the power to lease that property temporarily, until it may be advantageously sold, is an incident to the possession of the property. If such property cannot be advantageously sold, and may be leased so that the school district receives some benefit from the ownership of the property which it would not receive if it lay idle, it certainly cannot be said that the board exceeds its powers in so leasing the property. This often happens where a new school building is erected on a new location, leaving the board in possession of a school lot and building which are not needed at that time for school purposes and which, on account of business conditions, may not at that time be advantageously sold. This often happens, especially in city school districts. Any such lease should, in my opinion, be limited so that it would terminate at any time the school board might determine that the property was needed for school purposes, or that it should be sold.

To acquire property, however, which the board does not intend to utilize for school purposes, and which is not needed for school purposes, merely for the purpose of renting or leasing the same is, in my opinion, wholly unauthorized, and beyond the powers of the board.

In the instance cited by you in your inquiry it may be possible that the board needs a building for a recreational hall and that the building in question may be the only one available and may be acquired for less money than a new building might be erected. The mere fact that it is larger, and has more space than the board needs at this time, should not stand in the way of the board's power to purchase it if the location is suitable and the price right, under the circumstances. It is possible that it would be good business on the part of the board to acquire this building rather than construct one which is merely large enough for its present purpose. These are questions of fact and have such bearing on the matter that I would not be prepared to say, as a matter of law, that the board may not, in the lawful exercise of its powers, purchase this building. Having purchased it, the second story of course could not be separated from the rest of the building and sold. The mere fact that the board has no use at the present time for the second story would not require the board to allow the second story to remain idle if it might utilize it to the advantage of the school district permitting its use for some purpose by third parties who were willing to and do pay for such use.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4589.

MEMBER—BOARD OF TRUSTEES OF PUBLIC AFFAIRS OF VILLAGE—  
MAY NOT HOLD POSITION AS SEWER INSPECTOR AND RECEIVE  
COMPENSATION.

*SYLLABUS:*

\* *A member of a board of trustees of public affairs of a village may not be employed as a sewer inspector by the village council and receive compensation for*