

taxes, in accordance with the advice and opinion of the Attorney General, I do not feel that I should depart from this construction which the Tax Commission has placed upon these sections of the General Code, unless it is done in a formal opinion to the Tax Commission of Ohio pursuant to a request for such opinion made by the Commission itself.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

1041.

BOARD OF EDUCATION—UNAUTHORIZED TO CONTRACT FOR PURCHASE OF SCHOOL BUSES UNLESS CLERK THEREOF HAS CERTIFIED THAT LAWFUL APPROPRIATION THEREFOR HAS BEEN MADE AND MONEY IS IN TREASURY OR IN PROCESS OF COLLECTION—AUTHORIZED TO PROCURE LIABILITY AND PROPERTY DAMAGE INSURANCE FOR SCHOOL BUSES AND PUPILS TRANSPORTED THEREIN.

SYLLABUS:

1. *A contract made by a board of education for the purchase of school busses may not be lawfully made unless the clerk of said board of education certifies at the time said contract is made, that the money to meet the expenditure has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund, free from any previous encumbrances.*

2. *After the effective date of House Bill 314, of the 90th Genral Assembly, to wit, September 25, 1933, boards of education may lawfully procure liability and property damage insurance covering each school bus or motor van and all pupils transported under the authority of such board of education.*

COLUMBUS, OHIO, July 18, 1933.

HON. JAMES M. HOWSARE, *Prosecuting Attorney, Preble County, Eaton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion in answer to two questions which may be stated as follows:

(1) May a board of education purchase school busses at a cost of \$6,000.00 or more, to be paid for on the installment plan? It is proposed to purchase these busses and arrange for the payment therefor, over a period of eighteen or twenty-four months.

(2) May a board of education purchase liability and property damage insurance covering school busses and pupils transported by means of those busses?

In the consideration of your first question it should be noted that a board of education may not make a contract for the expenditure of money unless its clerk first certifies that moneys to meet the expenditure have been lawfully

appropriated for such purpose and are in the treasury of the school district or in process of collection. Section 5625-33, General Code, provides in part:

“No subdivision or taxing unit shall:

* * * *

(b) Make any expenditure of money unless it has been appropriated as provided in this act (G. C. §§ 5625-1 to 5625-39).

* * * *

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon.”

Penalties are imposed by the terms of Section 5625-37, General Code, for the non-observance of the provisions of Section 5625-33, General Code, in the making of contracts or the giving of orders involving the expenditure of money.

If a purchase of school busses were to be made, the fact that arrangements to pay for them in the future were made at the same time would not postpone the time of the making of the contract or cause it to be a “continuing contract” as the term is used in Section 5625-33, General Code. The contract for the purchase would be made as of the date when the arrangements for credit were made, and it is at that time that the fiscal officer’s certificate must be made. It is also at that time that the appropriation on which the fiscal officer’s certificate is based, must exist, and that the money as certified must be actually in the treasury or in process of collection.

Appropriations, if properly made in accordance with Sections 5625-29 and 5625-30, General Code, shall not exceed the total of the estimated revenues available for expenditure therefrom as certified by the budget commission or, in case of appeal by the Tax Commission of Ohio as provided by Sections 5625-26, 5625-27 and 5625-28, General Code.

Unless a proper appropriation, free from any previous encumbrances, in the sum of \$6,000.00 exists, no contract for the expenditure of that sum can lawfully be made, regardless of any arrangements that might be made as to the time of the actual payment under the contract unless it is a continuing contract to be performed in whole or in part in an ensuing fiscal year. If such an appropriation exists the fiscal officer may make the certificate provided for by Section 5625-33, General Code, even though the funds are not actually in the treasury. Any sum of money within the limits of estimated resources as certified by the budget commission, or in case of appeal by the Tax Commission may be regarded as being in the process of collection. (See Opinions of the Attorney General for 1931, p. 871.)

The school busses mentioned can not be lawfully purchased unless the fiscal officer of the district can truthfully certify that the amount of money to meet the contract of purchase has been lawfully appropriated for the purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from previous encumbrances. If that can be done truthfully, the amount so

certified becomes at once encumbered for the purpose of meeting the contract and cannot be spent or certified against for any other purpose, and there would be no object in postponing payments over a period beyond the fiscal year in which the contract is made.

Moreover, there is no exception made by statute, authorizing boards of education in the purchasing of school busses, to make such purchases on the installment plan and exempting deferred payments from the requirements of existing appropriations and fiscal officers' certificates, as there is with respect to county commissioners and township trustees when purchasing road machinery, in Section 7201, General Code.

It may be suggested that bonds may be issued by a school district within the limitations of net indebtedness fixed by law, to purchase motor vehicles. Section 2293-2 and Section 2293-9 (Class F) General Code.

Your second question may be answered by reference to Section 7731-5, General Code, as enacted in House Bill 314, of the 90th General Assembly. As so enacted, said Section 7731-5, General Code, reads as follows:

"The board of education of each school district may procure liability and property damage insurance covering each school wagon or motor van and all pupils transported under the authority of such board of education. This insurance shall be procured from a recognized insurance company authorized to do business of this character in the state of Ohio, and shall include compensation for injury or death to any pupil caused by any accident arising out of or in connection with the operation of such school wagon, motor van or other vehicle used in the transportation of school children. The amount of liability insurance carried on account of any school wagon or motor van shall not exceed one hundred thousand dollars."

Said House Bill 314, of the 90th General Assembly, was filed in the office of the Secretary of State on June 27, 1933, and therefore becomes effective on September 25, 1933.

Prior to the effective date of said House Bill 314, a board of education was without power to procure liability and property damage insurance covering school busses and pupils transported therein. After September 25, 1933, such insurance may be effected as provided by said act.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

1042.

PUBLIC FUNDS—SECURITIES MAY NOT BE DEPOSITED WITH TRUSTEES UNDER TRUST AGREEMENT TO SECURE DEPOSITS OF POLITICAL SUBDIVISIONS.

SYLLABUS:

A county, city, city school district, other school districts within the geographical limits of the county, townships within the geographical limits of the county,