

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

681.

BOARD OF EDUCATION—NOT EMPOWERED TO JOIN WITH OTHER BOARDS TO ESTABLISH OR MAINTAIN VOCATIONAL OR TRADE SCHOOL—CITATIONS AS TO DUTY, POWER AND AUTHORITY—SUCH BOARD CREATURE OF STATUTE.

SYLLABUS:

A board of education is not empowered to join with another board or other boards of education in the establishment or maintenance of a vocational or trade school.

COLUMBUS, OHIO, June 1, 1939.

HON. E. N. DIETRICH, *Director of Education, Columbus, Ohio.*

DEAR SIR: You have requested my opinion with respect to the following:

“Several school districts—for example, Martins Ferry, Bridgeport, Bellaire, St. Clairsville, and Tiltonsville—desire to provide a vocational school building for the youth of their several communities.

The question arises: Does Section 7620, of the Ohio School Laws permit boards of education to use funds to erect and equip a vocational school building in such a joint effort? If not, is there other legal authority that would permit such joint expenditure?”

Section 7620, General Code, referred to by you is the statute upon the terms of which the power of boards of education to provide the physical equipment for the housing and equipping of the public schools which they are authorized and directed to establish and maintain, is based. The power and authority there extended is expressed in general terms, and is quite broad and extends to the building, enlarging, repairing and furnishing schoolhouses, purchasing or leasing sites therefor or rights-of-way thereto, purchasing or leasing real estate to be used as playgrounds for school children, renting suitable school rooms when necessary, providing necessary apparatus and doing all other things necessary by way of providing the physical needs for the convenience and prosperity

of the schools under their control. This statute does not in terms or otherwise extend authority to a board of education to join with or cooperate with other boards of education or other public authorities in the doing of any of the things which the statute authorizes a board of education to do.

Boards of education being creatures of statute, have always been held strictly to have no powers not expressly extended to them by statute or included within such express powers. Courts have jealously guarded this rule with respect to all public boards which are created by statute and derive their powers from the statutes creating them and other statutes extending power to them. In the case of *Perkins, et al., vs. Board of Education*, 109 O. S., 14, it was said by the Supreme Court of Ohio:

“Boards of education are creatures of statute and their duties and authority are marked by legislation.”

In the case of *Board of Education vs. Best*, 52 O. S., 138, it is said at page 152:

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

This rule has been most drastically applied to situations involving the expenditure of money or the acquisition and holding of property. In the case of *State ex rel. Locher vs. Menning*, 95 O. S., 97, it is said:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited power, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. Authority to act in financial transactions must be clearly and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

Again, in the case of *State, ex rel., vs. A. Bentley & Sons Co. vs. Pierce, Auditor*, 96 O. S., 44, the court said:

“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.”

And in the case of *Schwing vs. McClure*, 120 O. S., 335, it is held :

“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.”

Each school district or other political subdivision of the state is a separate entity and a separate individual unit of the state for governmental purposes and its governing authority or administrative agency created by statute for that purpose is limited in the exercise of the power and authority granted to it to exercising those powers and authority for and on behalf of the subdivision only unless power to join with or co-operate with some other subdivision or agency is expressly conferred upon it by statute.

In an opinion of a former Attorney General, found in the published *Opinions of the Attorney General for 1927*, page 219, it is said :

“Each school district is a separate taxing subdivision and entity by itself and in the expenditure of its funds boards of education are confined to expenditures for its own district independent of each and every other district unless by statute authority is given for joint action as in the case of the establishment of joint high schools. No part of the funds belonging to it could be used for the school purposes of any other district and the board could not act jointly with some other district in the employment of clerks or for any other purpose involving the expenditure of money.”

In many instances where the legislature intended the co-operation of governmental agencies or the joint action of administrative boards to accomplish a desired purpose, specific provision is made therefor by statute. For instance, by the terms of Sections 7669 et seq., authority is extended to the boards of education of two or more adjoining school districts to join in the establishment and maintenance of a joint high school; by Section 7622-6, General Code, boards of education are authorized to co-operate with commissioners, boards or other public officials in providing for educational, social, civic and recreational activities; boards of county commissioners of adjoining counties are authorized by Sections 6930 et seq., General Code, to act as a joint board in connection with the location and maintenance of county roads, where the proposed road or improvement is along or upon a county line or crosses such county line or extends as a continuous road from one county into

or through one or more adjoining counties; similar authority is extended to county commissioners to act jointly with other county commissioners with respect to joint county ditches by Section 6536, General Code, and with respect to interstate county ditches by Sections 6564 et seq., General Code; municipal authorities and county commissioners may co-operate in the establishment of sewer districts by Sections 6602 et seq., General Code; a town hall may be erected and maintained jointly by a board of township trustees and the village authorities of a village within the township by force of Section 3399, General Code; libraries may be jointly owned by two or more school districts as provided by Section 7633, General Code; under the terms of Section 7620-1, General Code, a school district adjacent to one in another state may agree to construct and maintain a school jointly. The co-operation of two or more political subdivisions is authorized by statute in the organization of sanitary districts (§§ 6602-34 et seq., G. C.), conservancy district (§§ 6828-1 et seq., G. C.), joint sewer districts (§§ 662-10 et seq., G. C.), park districts (§§ 2976-1 et seq., G. C.), and Section 3148, General Code, provide that the commissioners of two or more counties not to exceed ten may, upon the favorable vote of the electors thereof form themselves into a joint board for the purpose of establishing and maintaining a joint district tuberculosis hospital.

The legislature clearly recognized the necessity for special statutory enactment authorizing joint action in each of the instances noted above for the accomplishment of the several intended purposes.

Had these several special statutory extensions of power not been made, joint action as authorized could not legally have been taken, although in each instance the co-operating governmental agency could, acting alone, have accomplished the same purpose for its own governmental unit, as could be accomplished by the joint action although in most instances not to the same extent or to so effectual an extent.

By the terms of Section 7722, General Code, boards of education are empowered to establish and maintain vocational and trade schools in connection with the public schools but at no place will be found any authority for them to join with the board of another district or boards of another district either in the erection of a building for vocational or trade school purposes or for the joint maintenance of such a school.

In the absence of statutory authority, the only possible conclusion is that such joint action can not lawfully be taken.

Respectfully,

THOMAS J. HERBERT,
Attorney General.