

OPINION NO. 69-012**Syllabus:**

A school board may not allow a private investor to erect a building on the school's property and to lease this building to the school board.

To: Vincent E. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio
By: Paul W. Brown, Attorney General, February 5, 1969

I have before me your predecessor's request for my opinion regarding whether it would be legally proper for the Boardman Local Board of Education to allow a private investor to erect a school-bus-storage-and-maintenance building upon school lands and for the Board then to enter into a lease of said building.

At the outset of this opinion I must advise you that I can find no authority, statutory or otherwise, for the Board to enter into such a lease arrangement regarding a building on its own land. I recognize that school boards have the duty to provide transportation for certain students pursuant to Section 3327.01, et seq., Revised Code. In order to provide such transportation, school boards may purchase school buses in the manner prescribed in Section 3327.08, Revised Code. I acknowledge that the maintenance of these school buses is one of the factors in the transportation operating costs of the school districts. I am told that, with regard to the maintenance of the school buses, the school boards choose either a self-maintenance program or a contract-maintenance program with some outside garage, or a combination of these programs.

It may well be that in a given situation it would be more economical for a school board to use a self-maintenance program. It would be permissible for the school board to build its own bus-storage-and-maintenance building on its own land. This conclusion was reached in Opinion No. 5977, Opinions of the Attorney General for 1936, page 1263, the syllabus of which reads as follows:

"A board of education which owns vehicles used for the transportation of school children, may lawfully expend public funds for the purpose of erecting a garage for the housing of those vehicles."

In Opinion No. 5977, *supra*, it was found that it was permissible for the school board to build such a bus garage on its own land pursuant to the terms of Section 7620, General Code. The present version of Section 7620, General Code, is found in Section 3313.37, Revised Code, which states as pertinent:

"The board of education of any school district, except a county school 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.

"The boards of education may acquire land by gift or devise, by purchase, or by appropriation. Lands purchased may be purchased for cash, by installment payments, with or without a mortgage, by entering into lease-purchase agreements, or by lease with an option to purchase, provided that if the purchase price is to be paid over a period of time, such payments shall not extend for a period of more than five years, and a special tax levy shall be authorized by the voters of the school district in accordance with section 5705.21 of the Revised Code to provide a special fund to meet the future time payments.

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The cost of erecting a building is a capital outlay. It is obvious that the cost of erecting a building for a self-maintenance program is not one of the transportation operating costs of a school district intended to be covered by the operating funds provided to each school district under the School Foundation Program. The "foundation money" or operating money provided to each school district pursuant to Chapter 3317, Revised Code, is not intended to be used for the purpose of erecting permanent improvements on school lands. Permanent buildings, such as a school bus garage, are the type of improvement that the legislature intended to be purchased from a school board's building fund (and this would entail a special tax levy, competitive bidding, etc.).

I recognize that in your request for my opinion the school board is not proposing to use its operating money to erect the bus garage. However, assuming that the school board could find a private investor who would be willing to finance the construction of the bus garage on school lands and then lease it to the school board, I am sure that the private investor would want to recoup at least his investment. Given the statutory restrictions on the use of school lands for non-school purposes, this private investor would have no potential lessee other than the school board and would certainly insist on a long-term lease in order to cover his investment. Thus, indirectly, the school board would be paying for cost of erecting the building with operating money. It might be that, even if such a lease arrangement were permissible, it would be an abuse of discretion for the school board to lease such a building for an extended period of time if, by doing so, the board ended up paying more money as rent than it would have cost to erect the building with school funds. However, as I stated at the outset, I can find no authority for a school board to enter into such a lease arrangement regarding a building on its own land.

Therefore, it is my opinion and you are hereby advised that a school board may not allow a private investor to erect a building on the school's property and to lease this building to the school board.