

2650.

BOARD OF EDUCATION—DUTY TO CONSTRUCT AND REPAIR
FENCES ENCLOSING SCHOOL LOTS—MAY NOT EXPEND SCHOOL
FUNDS FOR INSTALLATION OF LIGHTING SYSTEM IN TOWNSHIP HALL.

SYLLABUS:

1. *Under the provisions of Section 7620, General Code, it is the duty of a board of education to build and keep in good repair fences enclosing school lots.*
2. *It is not within the power of a board of education to pay from school funds, for a portion of the cost of installing a lighting system in a township hall.*

COLUMBUS, OHIO, May 11, 1934.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

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

“On behalf of the board of Education of the Orange Township Rural School District, I desire your opinion on the following propositions:

First: Said school board owns a tract of land consisting of approximately two acres upon which their buildings are erected and which is unfenced. The Party owning the land on the north side thereof, desires to use his land adjoining the school land for pasturage purposes and is insisting that the school board erect a partition fence so as to prevent his cattle from entering on the school grounds and from there on to the public highway.

The school board is not inclined to do this, but they desire your opinion as to whether or not they would be justified under the law in constructing or paying for the construction of one half of said partition fence, as provided in partition fence matters under Section 5908, G. C. In your opinion, would the board be justified in expending money out of school funds for the purpose of assisting to erect this fence? Further, neither the school grounds nor the adjoining pasture land are located within the boundaries of the municipality nor are they parts of an allotment outside of the municipality.

Second: Within the limits of the incorporated village of Leesville, there is and has been for many years a building, the title of which stands in the name of the trustees of Orange Township. Said building being commonly known as the ‘Township house’. For many years past, the board of education, the trustees of the township and the council of the village have used it as an office and meeting place for transaction of business coming before said boards. Heretofore, it has been lighted by kerosene lamps, but said boards desiring to keep up with the procession and use more modern means of lighting, now desire to have this building wired and lighted by electricity, so as to furnish better lighting facilities and be up to the modern pace of the times. The proposition for furnishing this lighting system is that the trustees of the township shall pay one third, the village one third, and the board of education one third of the actual costs thereof.

Question: Would said board of education be authorized under the statute, to enter into this contract and spend and pay for the one third of said lighting out of the school funds? I might say that the board of education and the town council have had free use of this building all these years, and paid no rent for the same."

With respect to your first question it may be noted that the matter is not controlled by Section 5908, General Code, which provides for the construction of partition fences. Provision is made for the fencing of school lots by Section 7620, General Code, which reads as follows:

"The board of education of a district may build, enlarge, repair and furnish the necessary school houses, 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 schoolrooms, 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 school houses, 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 subdistricts."

It will be noted from the terms of the above statute that school boards are charged with a duty to "build and keep in good repair fences enclosing such school houses". From this provision it would appear that a board of education is not only justified in expending money out of school funds for the purpose of enclosing a school lot with a proper fence, but that it is its duty so to do.

Your second question involves the application of the principle that boards of education being creatures of statute have such powers and such only as are expressly granted to them by statute, together with such incidental powers as are necessary to carry out the express powers so granted. This principle of law is of universal application, and has been applied by the courts in many cases, among which may be cited the cases of *State ex rel. Clark vs. Cook*, 103 O. S. 465 and *Schwing vs. McClure*, 120 O. S. 235.

I find no authority for a board of education to lease or rent property for the use of the board for holding meetings or for office purposes. Of course, a board of education is authorized and directed to hold meetings, and it is necessary that the board have some place to meet. It has been almost the universal practice for boards of education to utilize the school buildings for this purpose as most board of education meetings especially in rural and village districts, are held at times when the school buildings are not being used for school sessions. It is conceivable that in some districts, especially large city districts, it may be necessary to rent space for office purposes outside the school building and if such should be the case in the district to which you refer, it would be within the power of the board to rent a portion of the town hall.

There is no authority extended to a board of education to contribute to the expense of constructing or maintaining a township hall. Authority is extended to village authorities by Section 3399, General Code, to unite with the township trustees in the enlargement, improvement or erection of a public building for the joint use of the township and the village but no similar

authority is extended to a board of education, and in the absence of statutory authority similar to that extended to village authorities, it is my opinion that a board of education does not have this power. It seems clear that a board of education may not enter into a contract with the township trustees for the paying of the cost of installing a lighting system in a town hall. Under some circumstances, and where the situation warrants, a board of education might agree to pay rental for the use of a portion of the town hall for the purpose of holding its meetings and having its office. This would only be true in cases where it is not convenient and advisable to use one of the school buildings for that purpose.

I am therefore of the opinion, in specific answer to your questions:

1. Under the provisions of Section 7620, General Code, it is the duty of a board of education to build and keep in good repair fences enclosing school lots.

2. It is not within the power of a board of education to pay from school funds, for a portion of the cost of installing a lighting system in a township hall.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2651.

APPROVAL—FIVE BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES—PAUL H. ATZEL, INVESTIGATOR, DEPARTMENT OF HIGHWAYS—FRANK R. MCGILL, INVESTIGATOR, DEPARTMENT OF HIGHWAYS—WILLIAM M. DITLINGER, INVESTIGATOR, DEPARTMENT OF HIGHWAYS—KARL E. BUSHONG, INVESTIGATOR, DEPARTMENT OF HIGHWAYS—ALFRED F. TUCKER, INVESTIGATOR, DEPARTMENT OF HIGHWAYS.

COLUMBUS, OHIO, May 11, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted five bonds, each in the penal sum of \$2,000.00, with surety as indicated, to cover the faithful performance of the duties of the officials as hereinafter named:

Paul H. Atzel, Investigator, Department of Highways—New York Casualty Company.

Frank R. McGill, Investigator, Department of Highways—New York Casualty Company.

William M. Ditlinger, Investigator, Department of Highways—New York Casualty Company.

Karl E. Bushong, Investigator, Department of Highways—New York Casualty Company.

Alfred F. Tucker, Investigator, Department of Highways—New York Casualty Company.