

statute, it can only be properly concluded that a negative answer would be given your first question. * * *

Answer to your third question may be briefly made in the negative, since it is believed that section 3092 G. C. as amended in 109 O. L., p. 533, although slightly changed in other respects from the original section, still provides in chief for those cases arising wherein there is no children's home within the county, and consequently is not thought to be applicable to counties where such a home already exists."

It is also obvious from a reading of Section 3092, General Code, referred to supra that the children's bureau, which is a private agency, would be in the same category as private families in this connection. I am in accord with both the conclusion and reasoning of this opinion. Moreover, my examination of the General Code fails to disclose any statutory authority for the county commissioners to pay the board of children that have been adjudged by the Juvenile Court as county dependents to a children's bureau which is a private agency, where a county children's home is provided in the county. It is fundamental that county commissioners have only those powers which are fixed by statute or are necessarily implied from the language of the statutes. *State, ex rel., vs. Medical Board* 107 O. S. 20; *State, ex rel. Commissioners*, 8 N. P. (N. S.) 281; *Ireton vs. State, ex rel.* 12 O. C. C. (N. S.) 202; *Peter vs. Parkinson* 83 O. S. 36. Such rule is stated by Matthias, J. in the case of *Elder vs. Smith*, 103 O. S. 369, 370, in the following language:

"It has long been settled in this state that the board of county commissioners has such powers and jurisdiction and only such as are conferred by statute."

Consequently, in specific answer to your inquiry, it is my opinion that in a county in which there is a County Children's Home, the county commissioners have no authority to pay to the Children's Bureau, which is a private agency, the board of neglected and dependent children, who have been adjudged by the Juvenile Court as county dependents.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3701.

PUBLIC BUILDING—VOTE OF ELECTORS NECESSARY WHERE
TOWNSHIP AND VILLAGE LOCATED THEREIN UNITE TO
CONSTRUCT NEW BUILDING.

SYLLABUS:

A township and village located in such township cannot unite in the erection of a new public building without submitting the same to a vote of the electors of both subdivisions as required by Sections 3399, et seq., General Code, even though most of the material for said building is to be supplied from an old building which it is proposed to raze and which had been constructed jointly by such township and village.

COLUMBUS, OHIO, December 29, 1934.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“A situation has arisen in this county, the legal aspects of which we have been requested to submit to your office for opinion.

Some forty years ago the Village of Utica and Washington Township, in this county, jointly erected a building which was used as a township hall and city building. Through the passage of time, the building has so deteriorated that it is unsafe for use and has been vacant for more than a year. Plans have been drawn up and negotiations started to put the building in condition for use. The plan is to raze the building and, using the same material, with the addition of a small amount of new material, erect, upon the same foundation, a building to be used jointly by the village and the township. The estimated cost is \$6,000.00, \$2,000.00 of which will be furnished by the township and \$4,000.00 by the village. The township has sufficient money in the general fund to pay their portion and no additional tax levy is necessary. The major portion of the \$6,000.00 will be used in the purchase of cement, plaster and in repairing the present heating plant, which will require some new parts.

The question which has arisen is whether or not it is necessary to submit this proposition to the electors in accordance with Sections 3399, et seq., and if not, whether the trustees may proceed under Section 3260, 3295 or 3395.”

Sections 3260, 3295 and 3395, General Code, read as follows:

Section 3260. “The trustees shall fix the place of holding elections within their township, or of any election precinct thereof. For such purpose they may purchase or lease a house and suitable grounds, or by permanent lease or otherwise acquire a site, and erect thereon a house. If a majority of the electors of the township or a precinct thereof, voting at any general election, vote in favor thereof, the trustees may purchase a site and erect thereon a town hall for such township or precinct and levy a tax on the taxable property within such township or precinct to pay the cost thereof, which shall not exceed two thousand dollars. At least thirty days notice shall be given in at least five of the most public places in the township or precinct, that at such election a vote will be taken for or against a tax for such purchase.”

Section 3295. “The trustees of any township in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish and equip a township hall, a township park, bridges and viaducts over streets, streams, railroads or other places where an overhead roadway or footway is necessary, and sites for any of the same.”

Section 3395. “If in a township, it is desired to build, remove, improve or enlarge a town hall, at a greater cost than is otherwise

authorized by law, the trustees may submit the question to the electors of the township, and shall cause the clerk to give notice thereof and of the estimated cost, by written notices, posted in not less than three public places within the township, at least ten days before election."

It has been held in former opinions of this office that under sections 3295 and 3260, General Code, township trustees are authorized to expend from the general fund for the purpose of constructing a township hall, a sum not exceeding two thousand dollars without a vote of the electors, but if the cost exceeds two thousand dollars, then sections 3295, et seq., apply and it is necessary to submit the question to a vote of the electors, even if it is not necessary to levy a tax to pay the cost thereof. Annual Report of the Attorney General for 1911-1912, page 276; Opinions of the Attorney General for 1929, Volume I, page 517; Opinion No. 2404, dated March 24, 1934. These statutes, however, refer to township halls constructed, enlarged or improved by township trustees and do not apply to or authorize the construction, enlargement or improvement of a public building jointly by a township and a village. This authority and the manner of its exercise is provided for only by sections 3399, 3400, 3401 and 3402, General Code, which read as follows:

Section 3399. "The electors of a township in which a village is situated, and the electors of such village may if both so determine, as hereinafter provided, unite in the enlargement, improvement or erection of a public building."

Section 3400. "For such purpose an application shall be made to and filed with the trustees of the township, signed by not less than twenty-five resident free-holders of such township, who are not residents of the village, and application shall also be made to and filed with the mayor of the village, signed by not less than twenty-five resident freeholders of the village."

Section 3401. "At the next general township and municipal election after such applications have been so filed, the question as to whether or not a tax shall be levied upon all the property subject to taxation in such township and village for the enlargement, improvement or erection of a public building, shall be submitted to the electors of such township and of such village. Ten days' notice that the question will be submitted to the electors, shall be given by the trustees of the township and the mayor of the village, in a newspaper of general circulation in such township and village, which notice shall state the maximum amount of money proposed to be used for such purpose, and the rate of tax proposed to be levied."

Section 3402. "Two-thirds vote necessary. If at such election two-thirds of the electors of the township and of the village voting, vote in favor of such improvement, the trustees of such township and the council of the village shall jointly take such action as is necessary to carry out such improvement."

There is no provision in these statutes requiring the submission to the electors of the village or township of the question of paying for the maintenance or repair of such a building, and the authority of the township and

village to join in its maintenance or repair would be necessarily implied from their power to construct it. However, what is proposed to be done in the case you present is more than a repair, even though it is expected to supply from the old building most of the material for the new building. This would certainly constitute either an improvement or an erection of a building. In my Opinion No. 2404, above referred to, I held that the installation of a new heating plant was an improvement rather than a repair of a township hall. I am of the view, therefore, that my opinion found in Opinions of the Attorney General for 1933, Volume III, page 1707, is dispositive of your question. The syllabus of this opinion reads as follows:

"1. A township and village located in such township cannot unite in the erection of a public building without submitting the same to a vote of the electors of both subdivisions.

2. The only method by which the approval of such electors to such an improvement can be obtained, is by submitting to them the question as to whether or not a tax shall be levied on all the property subject to taxation in such township and village for such improvement.

3. Upon the approval of the electors by the vote required by section 3402 of the General Code, the cost of said improvement may, if it is not necessary to levy an additional tax therefor, be paid out of the general funds of said subdivisions."

I am therefore of the opinion that a township and village located in such township cannot unite in the erection of a new public building without submitting the same to a vote of the electors of both subdivisions as required by sections 3399, et seq., General Code, even though most of the material for said buildings is to be supplied from an old building which it is proposed to raze and which had been constructed jointly by such township and village.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3702.

APPROVAL, COPY OF WARRANTY DEED EXECUTED BY G. C. GRESS AND FLORENCE GRESS AND ENCUMBRANCE RECORD RELATING TO THE PROPOSED PURCHASE OF LAND IN COSHOCTON COUNTY BY THE MUSKINGUM WATERSHED CONSERVANCY DISTRICT.

COLUMBUS, OHIO, December 29, 1934.

The Board of Directors of the Muskingum Watershed Conservancy District, New Philadelphia, Ohio.

GENTLEMEN:—You have submitted for my examination and approval a certificate of title, a copy of a warranty deed executed by one G. C. Gress and by Florence Gress, his wife, and contract encumbrance record No. 38, relating to the proposed purchase by the Muskingum Watershed Conservancy District of a tract