

to that effect was first enacted in 1892 (89 O. L., 233). That was before the day of centralization of schools and before any provision was made by law authorizing boards of education to transport pupils to school. In 1904, after the centralization of schools and transportation of pupils was authorized, the law referred to above was amended so as to provide that when pupils were transported to the school to which they were assigned, the provision with reference to their attending a nearer school if they lived more than one and one-half miles from the school to which they were assigned did not apply. Both these provisions were contained, at that time in Section 4022a, Revised Statutes.

When the statutes were codified in 1910 Section 4022a was codified as Sections 7735, 7736 and 7737 of the General Code. Sections 7735 and 7737, General Code, have not been changed since the codification of 1910.

The language of these two sections is unambiguous and so clear as to leave no room for interpretation or construction. It is clear that, even though a child may live more than one and one-half miles from the school to which it is assigned in the district where it lives, no authority exists for its attending any other school at the expense of the district of its residence, providing transportation is or will be furnished for it to the school to which it is assigned.

I am therefore of the opinion, in specific answer to your question that the Cromers Board of Education is not required to pay tuition for the child in question if it attends the Hopewell School, providing the Cromers Board will furnish transportation for the child if it attends the Cromers School.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4103.

BUILDING AND REPAIR FUND—LIBRARY BOARD—MAY NOT BE INVESTED IN INTEREST BEARING SECURITIES.

SYLLABUS:

No part of a building and repair fund provided for by section 7638, General Code, can be invested in interest bearing securities, but such fund must be placed in depositories as provided by section 7640-1, General Code.

COLUMBUS, OHIO, February 27, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of the following inquiry from you:

“You are respectfully requested to furnish this department your written opinion upon the following:

Under the provisions of Section 7638 of the General Code, a Library Board may set apart certain funds to the credit of a special Building and Repair Fund. *Question:*—May this fund be invested in interest bearing securities or is it required to remain in the depository established by the Library Board.”

The pertinent part of section 7638, General Code, reads as follows:

"In the event any balance to the credit of the library fund shall remain in the treasury at the close of any fiscal year, such surplus or any part thereof may be set aside by a two-thirds vote of the members of the board as a special building and repair fund. It may accept any gift devise or bequest for the benefit of such library. No member of the library board shall be interested, directly or indirectly, in any contract made by the board. It shall report annually in writing to the board of education."

The following statutes refer to library funds:
Section 7640, General Code.

"The proceeds of the tax levy for school district public library purposes shall be paid over by the county treasurer when collected by him as provided by law, to the treasurer of the board of library trustees, or other officer designated by such board to receive such funds, and shall constitute a fund to be known and designated as the library fund. Payments therefrom shall be made only upon the warrant of the library board of trustees, when signed by the president and secretary thereof and issued for lawful purposes."

Section 7640-1, General Code.

"That all funds belonging to boards of trustees of public libraries existing under sections 7635 to 7640 of the General Code, shall be deposited in the manner and with depositories selected by such boards of trustees in the manner prescribed by sections 7604 to 7609, inclusive, of the General Code, for the selection of depositories and the deposit of funds of boards of education, and security therefor shall be given to boards of trustees of such libraries in the manner and the amount provided by said sections 7604 to 7609, inclusive, of the General Code."

Neither these statutes nor sections 7604 to 7609, inclusive, authorize the investment of funds, but on the other hand, they specifically provide that the funds shall be deposited in the bank or banks which are chosen as depositories in accordance with the law.

It is well settled that public officials have only such powers as are expressly conferred by law and such implied powers as are necessary to carry out the express powers so conferred.

In the chapter relating to school funds section 7587-3, General Code, provides as follows:

"The replacement fund may be invested in the same manner as is provided by law for the investment of the sinking fund of any school district having a bonded indebtedness, and all interest received from such investments shall form a part of said fund, and may be invested in like manner."

There is nothing in the language of this statute which shows any indication

that the legislature intended that it should apply to the building and repair funds of school district libraries. In fact, the failure to include these funds in this section shows an intention to exclude them. The maxim *expressio unius est exclusio alterius* is clearly applicable.

In the Opinions of the Attorney General for 1930, Vol. II, page 999, sections 4296-1, et seq., providing for the investment of moneys in the treasury of a city, which are not required for immediate use, in obligations of the city, were construed. Although these sections are a part of chapter 5, title XII, division V, subdivision II, relating to both cities and villages, it was there said:

“There is nothing in the language of Sections 4296-1, et seq., to indicate that the Legislature contemplated that these sections should be applicable to other than cities. * * * I am, accordingly, of the view that these sections make no provision for the investment of moneys in a village treasury not required for immediate use, their application being solely to such moneys in the treasury of cities as defined in Section 3497, General Code.”

In Opinions of the Attorney General for 1925, page 596, prior to the passage of sections 4296-1, et seq., giving the cities the right to invest in their own obligations, it was held that an ordinance providing for the investment of the funds of a city in the obligations of such city was invalid although section 4240 provides that the council shall have the management and control of the finances and property of the corporation. After quoting sections 4294 and 4295, providing for the deposit of money in banks, the opinion says:

“The two sections quoted are the only ones relating to funds in the hands of the treasurer of a municipality, or his successor, under a charter government. This method of caring for the municipal fund would seem to be exclusive. * * * To permit a municipality to invest its general funds except as is specified by the statute, would impair the safety of such funds.”

I am of the opinion therefore that no part of the building and repair fund provided for by section 7638, General Code, can be invested in interest bearing securities, but that such fund must be placed in depositories as provided by section 7640-1, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4104.

MEMBER OF BOARD OF EDUCATION—MAY NOT PARTICIPATE IN HIS ELECTION AS CLERK OF SUCH BOARD AND IN FIXING SALARY FOR THAT POSITION—PROCEEDINGS VALID IF HIS VOTE UNNECESSARY TO GIVE HIM MAJORITY.

SYLLABUS:

1. *Where a member of a city, exempted village, village or rural board of education is elected clerk of such board by his own vote, which was necessary to give him a majority, there is no election.*
2. *Where a member of a board of education is elected clerk of the board by*