

2191.

SCHOOLS—WHEN BOARD OF EDUCATION OF RURAL SCHOOL DISTRICT MAY CONTRACT FOR CURRENT FOR LIGHT, PAYING A CONNECTION FEE FOR LINE FURNISHING SUCH CURRENT.

The lighting of a school building is a part of its necessary furnishing or equipment, and the board of education of a rural school district may contract for current for light, paying a connection fee for the line furnishing such current, if in the judgment of the board of education such method is most advantageous for its schools.

COLUMBUS, OHIO, June 25, 1921.

HON. H. A. BURGESS, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter which reads:

“The board of education of a rural school district desires to install electric lights in the school building. It will be necessary to build a line a distance of about five miles for such purpose, and the school board desires to co-operate with other residents of that district in paying the expense of such construction.

The lighting company has drafted an agreement, and considers the payment which is to be made by the school board and other persons interested as a ‘connection fee.’ The school board and property owners would pay only the actual cost of the construction of the line referred to. There is no intention to form a mutual association of any kind, but in fact it is more of a contribution to be made to the lighting company to pay for the construction of the line. After the installation of the same, consumers will then be charged the regular rate for electricity used. A line will be constructed along the public highway as far as is necessary. The school board desires to pay a sum not to exceed five hundred dollars. Individual contributors will, in no instance, pay an equal amount.

It does not seem that there is any fixed price which any person or corporation must pay, but the amount to be paid is left to the individual.

Will you kindly advise me if in your opinion the school board can enter into such an agreement under section 7620 G. C. or any other section which might be applicable?”

Sections 7620 and 7622-3 G. C. read:

“Sec. 7620. 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 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. 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.”

"Sec. 7622-3. The board of education of any school district shall, upon request and the payment of the proper janitor fees, subject to such regulation as may be adopted by such board, permit the use of any school house and rooms therein and the grounds and other property under its control, when not in actual use for school purposes, for any of the following purposes:

1. For giving instructions in any branch of education, learning or the arts.

2. For holding educational, civic, social or recreational meetings and entertainments, and for such other purposes as may make for the welfare of the community. Such meetings and entertainments shall be non-exclusive and open to the general public.

3. For public library purposes, as a station for a public library, or as reading rooms.

4. For polling places, for holding elections and for the registration of voters, for holding grange or similar meetings."

The board of education is authorized to "make all other necessary provisions for the schools under its control" and to "make all other provisions necessary for the convenience and prosperity of the schools within the sub-districts." When section 7620 G. C. was amended (108 O. L. 187) the word "subdistricts" was retained, and the phrase "either within or without the district" was added after "or rent suitable school rooms." The general powers and duties of boards of education thus remain as they have been for many years—enlarged rather than curtailed. The word "subdistricts" is retained in this section as amended, perhaps, for the purpose of referring to the separate school houses of a rural school district not centralized, since the old-time sub-district organization had been abolished under the code of 1914. There is now no such thing as a subdistrict, except in city districts of between fifty thousand and one hundred fifty thousand population.

Your question concerns the lighting of the school building. You state the district is a rural one, but you do not say that it is a centralized school building or a high school building, though this can make little, if any, difference in the instant matter.

Proper lighting of school rooms is a necessary provision for schools, expressly so in these days of changing social conditions and increasing school problems, when there has come into the law provisions for such broad and divers activities as those provided for in section 7622-3 G. C., supra, and others not here quoted. All these are gathered to the school houses for the board of education to foster, house, and otherwise care for. The physical well being of the pupils, the entertainment and encouragement of community affairs, part time schools, etc., all demand that proper light shall be had. Electricity is, perhaps, the best medium used among modern lighting devices. Lighting is a part of the equipment or furnishing of a school building, and there can be no doubt that the board of education is by law afforded authority to light its buildings properly, either in first construction or in repair.

In the present matter the board of education has probably discussed various means of lighting and has reached the conclusion that the way you outline is best, most convenient and economical for it to use. With its discretion in all lawful matters not arbitrary, and free from capriciousness, fraud or collusion, courts have consistently refused to interfere. See *Brannon vs. Board of Education*, 99 O. S. 369.

Section 4749 G. C. provides that boards of education may contract and be contracted with. This contract is intended to be one for furnishing current

for lighting a building, to which a line must be constructed. A connection fee is charged for such construction. This line, being about five miles in length, affords opportunity for the lighting company to sell the current to other users. If along the line other connections may be made and these users express a willingness to contract to pay a proportional part of the whole cost to secure light, thereby reducing the amount of the connection fee the board would be required to pay, if connection were made for it alone, such circumstances operate to minimize the required initial expense and are commendable. Each user, of course, contracts separately with the lighting company as does the board of education.

Buying light is very much like buying fuel. Both are necessary for the conduct of the schools, their convenience and prosperity. The board here is contracting for a supply of current to produce the light it needs. The light line is the vehicle of supply, as is the coal wagon that brings the coal or the automobile that carries the pupils to the school building. In thus contracting the board is the best judge of the way to get the light it needs.

Attention is directed to section 7623 G. C., which provides that contracts *to furnish or to make any improvement or repair provided for in this chapter that exceed five hundred dollars* shall be let by publication and bid.

From a recent opinion of this department—Opinions of the Attorney General, 1920, Vol. II, page 1237—discussing section 7620 G. C., the following is quoted:

“Here the law, doubtless, permits and empowers the board of education to make a temporary tap of the water main where it now is in the streets near the new site, if it can secure the right to do so, and to lay a private line over the property of others at a reasonable expense, thus carrying the water where it may be used, subject of course to the city's consent; or it may drive a well on its own property and construct a water system for use in its new building if no sanitary or other regulation forbids or may forbid should the water supply become bad or unfit for use.”

It is conceivable that a transaction of this character may be entered into otherwise than in good faith. It is important that the amount paid by the board of education shall be such a sum as to commend itself as reasonable and just and proportionate to that paid by others who use the light line. Contracts with a public utility are well hedged about by law. In a short time service may be stopped or refused as unprofitable or for other reasons, and the board of education would thus be without the service it desires and needs. An attempt to avoid or to prevent such contingency should not be lost sight of. A better way, in a case like this, would be that the board of education own the line connecting its buildings with the light company's lines. This might exceed five hundred dollars in cost and require that bids be taken for the construction of the line, but the property would then belong to the board. In the event of failure of current supplied from one source, connection could then be made with some other or the line could be disposed of otherwise by the board.

Attention is called to the fact that the contract, which the statement says has been prepared by the lighting company, is not herein passed upon or discussed, no copy of the same having been submitted.

It is therefore the opinion of this department that the board of education of a rural school district may contract with a lighting company for cur-

rent to light its school rooms, paying a connection fee in order to receive such current where such fee is required by the lighting company as a condition precedent to the furnishing of current for light.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2192.

STATE BOARD OF ACCOUNTANCY—SECTION 1375 G. C. CONSTRUED—
 APPLICANT ENTITLED TO ONE ADDITIONAL EXAMINATION
 WITHOUT ADDITIONAL FEE.

Under the provisions of section 1375 G. C. the examination fee of \$25 charged by the state board of accountancy entitles the applicant to one additional examination within eighteen months without the payment of an additional fee.

COLUMBUS, OHIO, June 25, 1921.

State Board of Accountancy, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date received in which you request the opinion of this department, as follows:

“Section 1375 G. C., reads as follows:

“At the time of filing the application for such examination and certificate, each applicant shall pay to the treasurer of the state board of accountancy a fee of twenty-five dollars. Such examination fee shall not be refunded, but an applicant may be re-examined without the payment of an additional fee within eighteen months from the date of his application. (99 v. 332, Sec. 4.)

The question has arisen as to whether, in case more than two examinations are conducted within any eighteen months period, applicants may sit in each of the examinations held within said period or whether the statute contemplates that only one re-examination be granted without the payment of an additional fee.

There has arisen a difference of opinion among the members of the board as to the interpretation of this section and as to whether an applicant may sit in more than two examinations within such eighteen months period without the payment of an additional fee. It is the opinion of part of the board that the law contemplates that applicants shall be permitted only one additional examination without the payment of an additional fee provided that the re-examination is taken within eighteen months subsequent to the first examination.

Your advice as to the duty of the board in this particular is respectfully requested.”

General Code, Section 1374, provides as follows:

“Each year, the state board of accountancy shall hold an examination for such certificate. Each applicant shall be examined in theory of accounts, practical accounting, auditing and commercial law as affecting accountancy. If three or more persons apply for certifi-