92.

BOARD OF EDUCATION—EMPLOYMENT OF TEACHER JOINTLY WITH ANOTHER BOARD ILLEGAL—CONTRACTING FOR SUPERVISORS UNAUTHORIZED—WHO SHOULD PERFORM SUPERVISORY WORK.

SYLLABUS:

1. *Boards of education, in the employment of teachers to teach in the public schools, are not authorized to make such contracts of employment jointly with other boards of education. Such contracts should be made by each district separately, and independent of the action of other districts.*

2. *Boards of education in rural and village school districts are not authorized to employ persons to act as supervisors of teachers. The supervision of teachers and of class room work should be done, in village and rural school districts, by the county superintendent of schools or assistant county superintendents of schools, with the single exception of superintendents employed by authority of Section 4740, General Code, which superintendents are required to perform the duties prescribed by law for assistant county superintendents.*

COLUMBUS, OHIO, February 14, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your inquiry which reads as follows:

> "In Washington County the following arrangements were made for the teaching and supervising of the teaching of music:
>
> (1) A teacher was employed by each of several groups of districts to teach the music in those schools.
>
> (2) Another teacher was employed by all of the districts in these groups to supervise the teachers and the teaching of music in their districts, this latter teacher not necessarily to do any teaching. It also appears that this same teacher last named was at the same time employed as teacher of music by one other district outside of the groups mentioned.
>
> The question arises whether the employment of this person to supervise the teachers and teaching of music in these various districts, which themselves had part-time music teachers by this arrangement, was legal employment.
>
> You understand that this supervisor was not employed as an assistant county superintendent of schools, but her employment was undertaken, as explained above, by the various districts, comprising most of the county, which participated in the plan.
>
> Each of these districts undertook the payment of a part of her salary which was at the rate of $12.50 per month for each high school, and $1.00 per month for each elementary school room in each district."

It has been repeatedly held by the courts that boards of education and similar administrative boards and commissions, being creatures of statute, have only such powers as are expressly granted to them, together with such so-called implied powers as may be included within the express powers to carry them into effect, and to consummate the purpose for which they are granted. *State ex rel. Clark* vs. *Cook*, 103 O. S. 465; *State ex rel. Locher, Prosecuting Attorney,* vs. *Menning,* 95 O. S. 97.

In a general way the powers of boards of education extend to the maintenance of the schools of their respective districts. The exercise of this power is limited to the specific manner set forth in the statutes. Such boards have some discretion within

the authority granted to them by statute, but unless the power itself exists there is no opportunity for the exercise of discretion in the manner of accomplishing a desired result.

Boards of education are empowered to employ teachers, and in some instances, supervisors and superintendents, but at no place is there any authority for a local district board of education to act jointly with another board of education in the employment of teachers, supervisors, superintendents or any other employes except in the maintenance of joint high schools. It is stated in an opinion of my predecessor, Opinions of the Attorney General for 1927, at page 219, that:

> "Each school district is a separate taxing subdivision and entity by itself and in the expenditure of its funds boards of education are confined to expenditures for its own district independent of each and every other district unless by statute authority is given for joint action as in the case of the establishment of joint high schools."

It does not follow from the fact that public boards and officers may each be granted identical powers and be charged with the performance of like duties singly, that they may as a matter of law accomplish the desired ends by concerted or joint action. While in many independent instances such joint action might be conducive to convenience and more efficient public service and perhaps in some instances to economy and conservation of public funds, yet these considerations do not atone for the lack of statutory authority.

Moreover, this conclusion is strengthened by the fact that the Legislature has made specific provision for cases where it has determined joint ownership or operation of property by political subdivisions to be desirable; as, for instance, the authorization of joint ownership of a town hall by township trustees and a municipality located within the township by Section 3399, General Code, and the provisions of law authorizing the establishment and operation of joint high schools by boards of education. Section 7669, et seq.

It is a familiar principle of law that governmental agencies whose authority is entirely dependent upon statute, are limited in the exercise of that authority both as to manner and extent to the authority so granted. This was well stated by the Supreme Court in its application to municipal corporations before the so-called home rule amendments to the Constitution of Ohio were adopted, in the case of *Frisbee Company* vs. *City of East Cleveland,* 98 O. S. 266 in the following language:

> "It is well settled in this state that where the statute prescribes the mode by which the power conferred upon a municipal body shall be exercised, the mode specified is likewise the measure of the power granted."

It follows therefore that inasmuch as there is no authority for school districts to act jointly in the employment of teachers it cannot be done, and the contracts so made by the different groups of districts in Washington County, are void.

Boards of education in the employment of teachers, need not necessarily employ them for full time work. Part time teachers may be employed, and there can be no objection to several school districts in the same county school district or in separate county school districts each employing the same person for part time teaching. The districts may cooperate to the extent of arranging their schedules so that the same person may teach a part of the time in each district where he is employed for part time work, but the contracts with him should be made by each district separately and independent of the action of the other districts.

Section 7705, General Code, provides as follows:

"The board of education of each village, and rural school district shall employ the teachers of the public schools of the district, for a term not longer than three school years, to begin within four months of the date of appointment. The local board shall employ no teacher for any school unless such teacher is nominated therefor by the county or assistant county superintendent except by a majority vote of its full membership. In all high schools and consolidated schools one of the teachers shall be designated by the board as principal and shall be the administrative head of such school."

At no place in the statutes is there authority for boards of education in village and rural school districts to employ supervisors of teaching, as such. The term "teacher" as used in Section 7705, supra, does not, in my opinion, include persons who do no teaching but who supervise or oversee the persons who do the actual teaching. A principal, of course, as administrative head of a school, does in a sense act as a supervisor. The work of supervising the teachers in village and rural districts is to be done by the county superintendent of schools and such assistant county superintendents as the county board of education may find it necessary to employ.

An examination of the statutes setting forth the duties of county superintendents of schools and assistant county superintendents of schools, discloses a clear legislative intent that class room supervision and the work to be performed by a supervisor of teachers, such as is spoken of in your inquiry, shall be done by the county superintendent of schools or by regularly employed assistant county superintendents. Sections 4739, 4744 and 7706, General Code. Section 7706, General Code, provides as follows:

"The county superintendent and each assistant county superintendent shall visit the schools in the county school district, direct and assist teachers in the performance of their duties, and classify and control the promotion of pupils. The county superintendent shall spend not less than one-half of his working time, and the assistant county superintendents shall spend such portion of their time as the county superintendent may designate in actual class room supervision. Such time as is not spent in actual supervision shall be used for organization and administrative purposes, and in the instruction of teachers. At the request of the county board of education the county superintendent and the assistant county superintendents shall teach in teachers' training courses which may be organized in the county school district."

Of course a superintendent in what is known as a 4740 district, by authority of Section 4740, General Code, performs the same duties as are prescribed by law for assistant county superintendents.

In view of the fact that the Legislature has provided for supervision of class room work and the supervision of teachers in village and rural school districts, by authorizing the appointment of assistant county superintendents of schools when necessary to assist the county superintendent of schools in such work, and has at no place granted authority to boards of education in rural and village school districts to employ supervisors of teachers either for general supervision or to supervise the teachers of special subjects, such as music, and the further fact that boards of education in the employment of teachers are not authorized to enter into such contracts of employment jointly with other boards of education, I am of the opinion in answer to your specific questions:

First, the employment of teachers jointly by the boards of education in the several groups of districts in Washington County as outlined in your inquiry is unauthorized, and void.

Second, the employment of a supervisor of teachers of music by joint action of the several school districts in the several groups of districts in Washington County, as stated in your inquiry, is unauthorized, and void.

Respectfully,
GILBERT BETTMAN,
Attorney General.

93.

DISAPPROVAL, BONDS OF STARK COUNTY, OHIO ROAD IMPROVEMENT—$45,000.00.

COLUMBUS, OHIO, February 14, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

Re: Bonds of Stark County, Ohio, Road Improvement, $45,000.00.

GENTLEMEN:—Transcripts of the proceedings of the Stark County Commissioners and other officers of Stark County, pertaining to four issues of road improvement bonds, aggregating $191,500.00, of which the Industrial Commission desires to purchase $45,000.00, have been submitted to this department for examination.

It appears in the transcript of the proceedings pertaining to the Canton-Bolivar, Section B, road improvement, amounting to $32,500.00, that the bond resolution was passed on July 18, 1928, authorizing $41,500.00 of bonds, which resolution provided that said bonds were to bear interest at the rate of 4½% per annum, payable semi-annually. Said resolution was amended on October 1, 1928, reducing the amount to $32,500.00, being the cost of the improvement, which amending resolution did not change the interest rate. The bonds of this issue were offered to the Stark County Sinking Fund Trustees, and rejected and then advertised for sale, in connection with the three other Stark County road improvement bonds already mentioned.. All four issues were advertised to bear interest at the rate of 4½% per annum, payable semi-annually, and the advertisement did not state that anyone desiring to do so may bid for such bonds based upon a different rate of interest, as permitted under Section 2293-28 of the General Code.

On October 24, 1928, bids were received on all four of said issues from seven bidders. Six of the bidders submitted bids on each issue at interest rate of 4½% as provided in the advertisement. The seventh bidder submitted a bid on three of the issues at an interest rate of 4½%, and in the case of the Canton-Bolivar issue, their bid was at an interest rate of 4%. An inspection of the tabulation of bids discloses the fact that this seventh bidder was not high on any of the three issues upon which an interest rate of 4½% was bid. The Board of Stark County Commissioners awarded the four issues of bonds in the aggregate to the seventh bidder on account of the fact that said bid of 4% on the Canton-Bolivar issue made said bid high, considering the four issues in the aggregate.

It has been repeatedly held by my predecessor that unless the advertisement states that bids may be presented based upon bonds bearing a different rate of interest (Section 2293-28 and Section 2293-29, General Code), the acceptance of a bid bearing a lower or different rate of interest is void; and unless the advertisement contains such a provision, there is no assurance that the bidder who based his bid upon the rate of interest in the advertisement, would not have submitted a bid based upon a