

the county jail is necessary, they may provide such equipment and the duty to so provide rests primarily upon them. However, should there be a difference of opinion between the county commissioners and the court as to what is necessary, the latter would prevail. In the absence of intervention by the court, the decision of the commissioners as to the necessity of equipment for the county jail is final, provided they are acting within their statutory power.

Therefore, in specific answer to your question, it is my opinion that the county commissioners may furnish equipment to feed prisoners in the county jail when they deem it necessary and they shall furnish such equipment when required so to do by the Common Pleas Court.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4369.

SCHOOL—COUNTY BOARD OF EDUCATION REQUIRED TO PERFORM
DUTIES OF LOCAL BOARD OF EDUCATION WHEN.

SYLLABUS:

1. *Where a board of education in a school district under the jurisdiction of a county board of education fails for any reason, whether because of lack of funds or otherwise, to provide proper school privileges for the youth of school age within the district as provided by law, it is the duty of the county board of education of the county school district of which the said district is a part, upon being advised and satisfied thereof, to perform any and all such duties or acts in the same manner as the local board is authorized by law to perform them, as provided by Section 7610-1 of the General Code of Ohio.*

2. *Strictly speaking, the authority and powers of a county board of education which is performing the duties of a local board of education because of the local board's failure to do so by authority of Section 7610-1, General Code, do not cease long as the local board is derelict in its duty but of course where the derelict duty on the part of the local board is due only to a lack of funds, and funds thereafter become available it is the duty of the local board to take up the burden of maintaining the schools and the county board should insist on its doing so.*

COLUMBUS, OHIO, June 29, 1935.

HON. A. NEWTON BROWNING, *Prosecuting Attorney, Washington C. H., Ohio.*

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

“The Board of Education of Green Township Rural School District, shortly prior to January 7, 1934, requested the county board of education to take over the operation of the schools under Section 7610-1 of the General Code of Ohio, because of the fact that the funds of the local board were exhausted, and for that reason only. The board of education of said rural

school district has not failed to perform its duties in any respect except as above indicated. By action of said rural board, an election was held April 9, 1935, and a five mill levy was passed for the purpose of operation for the year 1935. I am advised by the county auditor that there would be funds sufficient to operate the schools in said rural school district, as least until the first of January, 1936.

I should like to have your opinion on the following:

1. Has a county board of education authority under Section 7610-1 to take over the operation of the schools under Section 7610-1 of the General Code of Ohio, when the breach of duty, if any, on the part of the local board consists only in the fact that it was unable to furnish or obtain funds with which to operate the schools in its charge?

2. If you decide that the county board of education does have the authority mentioned in question 1, when does such authority cease?"

Section 7610-1, General Code, reads in part as follows:

"If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, or to provide for the continuance of any school in the district for at least thirty-two weeks in the year, or to provide for each school an equitable share of school advantages as required by this title, * * the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. * *"

The statute speaks for itself. It makes no distinction between the failure of a board of education to provide proper school privileges according to law for one reason or another. If a local board fails to provide the proper school privileges for the reason that it has no funds with which to do so, the statute clearly imposes that duty on the county board of education.

In the case of *State ex rel. vs. Beamer*, 109 O. S., 133, page 139, Judge Allen said:

"Under Section 7610-1, the duty of the county board of education is measured by the duty of the board of education in the district. The county board is liable to provide 'sufficient school privileges' only if the district board is under a duty to render such service and has failed, and if the county board is satisfied of such failure."

The primary duty to provide proper school privileges in the several school districts rests upon the local boards of education of the districts. Section 7690, General Code, imposes on boards of education the duty to control and manage the schools under their respective jurisdictions. Section 7644, General Code, provides that each board of education shall establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the district and that elementary schools shall be maintained for not less than thirty-two weeks in each school year. Other statutes impose on local boards the duty to provide certain school privileges such as the maintenance of high schools, the furnishing of textbooks, the transportation of school children, etc. The members of a local board of education are subject to a penalty as provided by Section 7611, General Code, if the board of which they are

members should deliberately and without good reason fail in its duty. Said Section 7611, General Code, being a penal statute its provisions would no doubt be held not to be applicable where the board, because of lack of funds, finds it impossible to perform its full duty under the law.

Of course, if a local board of education is without funds to maintain the schools in its district and for that reason the county board maintains the schools under the authority granted it by Section 7610-1, General Code, and later the local board comes into funds with which it may maintain the schools, it is the duty of the local board to again take up the burden of maintaining the schools and it is the duty of the county board of education to turn over to the local board the task of maintaining the schools in the district.

Specifically answering your questions it is my opinion that:

1. Where a board of education in a school district under the jurisdiction of a county board of education fails for any reason, whether because of a lack of funds or otherwise, to provide proper school privileges for the youth of school age within the district, as provided by law, it is the duty of the county board of education of the county school district of which the said district is a part, upon being advised and satisfied thereof, to perform any and all such duties or acts in the same manner as the local board is authorized by law to perform them, as provided by Section 7610-1 of the General Code of Ohio.

2. Strictly speaking, the authority and powers of a county board of education which is performing the duties of a local board of education because of the local board's failure to do so by authority of Section 7610-1, General Code, do not cease so long as the local board is derelict in its duty but of course where the dereliction of duty on the part of the local board is due only to a lack of funds, and funds thereafter become available, it is the duty of the local board to take up the burden of maintaining the schools and the county board should insist on its doing so.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4370.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO,
\$15,000.00.

COLUMBUS, OHIO, June 29, 1935.

State Employes Retirement Board, Columbus, Ohio.

4371.

APPROVAL, BONDS OF CITY OF LIMA, ALLEN COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, June 29, 1935.

State Employes Retirement Board, Columbus, Ohio.