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EDUCATION—PURCHASE OF LAND FOR SCHOOL PURPOSES ON INSTALLMENT PAYMENT BASIS, UNAUTHORIZED—CONTRACT WITH UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, UNAUTHORIZED.

SYLLABUS:

1. A board of education is without authority under the statutes to purchase land for school purposes on an installment basis.

2. A board of education is without authority to enter into a contract with the United States Department of Health, Education and Welfare whereby said Department would convey land to the board of education to be paid for in installments over a period of years, with an agreement that in the event the board should not have constructed school buildings on said property within a period of five years, or in case of default on the part of such board in making the stipulated payments, the property should be conveyed to the United States, with the forfeiture at the option of said Department, of all payments theretofore made.

Columbus, Ohio, March 24, 1958

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

I have before me your communication in which you request my opinion as to the authority of a board of education to enter into an agreement, a copy of which you submitted, with the United States Department of Health, Education and Welfare, such agreement being known as "the deferred use plan". In brief, the plan contemplates the conveyance of land by the above named federal agency to a board of education, to be paid for by the board of education in installments running over a series of years. The general idea of the plan is suggested by the following quotation from paragraph 2 of the agreement:

"2. The deferred use plan provides for payment of 1/20th of the fair value of the property annually, together with interest for a maximum of 5 years. Thus, if the fair value of a school site and a water facility property were each \$10,000, both transferees would pay annual installments of \$500, together with the prevailing interest. The public benefit allowance will be applied against the unpaid balances of fair value remaining at the begin-

ning of utilization and the transferee will pay to the Department at this time the total cash amount of the unpaid balance of fair value which is not covered by public benefit allowance."

Section 4 of the proposed agreement reads as follows:

"4. Transfer will be made by quitclaim deed. In order that there may be no complications in title revestment where there is forfeiture, the transferee will be required to deposit in escrow simultaneously with its acceptance of the deed from the Government, a return deed to the property to the United States to be released by the escrow agent in accordance with the escrow terms which will cover performance of the terms and conditions in the deed."

The agreement further provides that if within the period of five years the school district shall have improved the property by beginning the construction of a school building, then the remainder of the agreed purchase price shall be reduced by forty per-cent. This reduction is described as a "public benefit allowance". The agreement further provides that:

"Upon failure to commence utilization within the required period, or upon default in payment of an installment or interest due, the property together with all payments of principal and interest already made will at the option of the Department be forfeited and title will revert to the United States."

I do not consider it necessary to go into further analysis of the agreement. It seems very clear that it would amount to an installment purchase by the board of education, of property intended for use for school purposes, and the only question presented appears to be whether or not a board of education is authorized to purchase real estate for school purposes on an installment basis. An examination of the statutes specifying the powers of boards of education fails to reveal any authority whatever for purchase of property on installments, except that provision of Section 3327.08, Revised Code, which authorizes such board to purchase school buses on deferred payments running over three years.

We recognize the well established rule that boards of education, being creatures of the statutes, have only such powers as the statute has seen fit to confer. *Verberg v. Board of Education*, 135 Ohio St., 246; *Schwing v. McClure, et al., Trustees*, 120 Ohio St., 335; *Perkins v. Bright*, 109 Ohio St., 14; *The State, ex rel. Clark v. Cook*, 103 Ohio St., 465.

The first paragraph of the syllabus of the *Schwing* case, *supra*, is as follows:

“That boards of education are purely creatures of statute is an old and uniformly accepted doctrine * * *.

“As an administrative board created by statute their powers are necessarily limited to such powers as are clearly and expressly granted by statute.”

I call attention further to Section 5705.41, Revised Code, which provides in part as follows:

“No subdivision or taxing unit shall:

(D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, *or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year*, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. * * *” (Emphasis added)

In Opinion No. 1604, Opinions of the Attorney General for 1958, p. 22, I pointed out that while a lease for a reasonable term, calling for an annual rental, is a continuing contract within the provisions of Section 5705.41, *supra*; yet, as stated in the third paragraph of the syllabus of that opinion it was held:

“3. Since a lease agreement coupled with a firm contract to purchase is not a ‘continuing contract’ under Section 5705.41, Revised Code, the funds necessary to cover that portion of the contract representing the purchase price of the property must be appropriated and certified by the fiscal officer as being in the treasury or in the process of collection.”

In Opinion No. 398, Opinions of the Attorney General for 1957, p. 118, the question presented was whether a board of education could lawfully purchase land and a building for necessary school purposes, on an agreement to pay for the property in installments over a period of years, and it was held:

“A board of education may not lawfully purchase land and a building for necessary school purposes under Section 3313.37, Revised Code, under an agreement to pay for the property in installments over a period of years, even though the board has available, at the time of the execution of the agreement, funds in an amount sufficient to pay the entire purchase price, either on

hand or in the process of collection, within the terms of Division (D) of Section 5705.41, Revised Code.”

That statement, as will be noted, goes a little further than is necessary, so far as our present question is concerned, in so far as it suggests that there is a lack of such power, even though the board has available at the time of the execution of the agreement sufficient funds to pay the entire purchase price. In the case which you present I do not understand that the board of education would have in the treasury or in the process of collection the full amount of the installment contract in question. The opinion, however, to which I have last referred, is a specific declaration that a board of education cannot purchase property on an installment contract, and that also was the effect of the syllabus which I have already quoted from Opinion No. 1604, *supra*.

In addition to the lack of authority to purchase on installments, it is my opinion that a board of education would be without authority to agree to the conditions of said proposed agreement as to reconveyance and forfeiture of payments made.

In specific answer to your question it is my opinion :

1. A board of education is without authority under the statutes to purchase land for school purposes on an installment basis.

2. A board of education is without authority to enter into a contract with the United States Department of Health, Education and Welfare whereby said Department would convey land to the board of education to be paid for in installments over a period of years, with an agreement that in the event the board should not have constructed school buildings on said property within a period of five years, or in case of default on the part of such board in making the stipulated payments, the property should be reconveyed to the United States, with the forfeiture at the option of said Department, of all payments theretofore made.

Respectfully,
WILLIAM SAXBE
Attorney General