

3056.

APPROVAL, BONDS OF VILLAGE OF MEDINA, MEDINA COUNTY,  
OHIO—\$10,512.00.

COLUMBUS, OHIO, March 17, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

3057.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS  
DUTY AS RESIDENT DISTRICT DEPUTY DIRECTOR—BERT  
BEUCLER.

COLUMBUS, OHIO, March 17, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of \$5,000.00 with surety as indicated, to cover the faithful performance of the duties of the official listed below:

Bert Beucler, Resident District Deputy Director, Fulton, Henry and Williams Counties, Union Indemnity Company.

Finding said bond to have been properly executed, I have accordingly approved the same as to form, and return it herewith.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3058.

PUBLIC HEALTH NURSE—MAY ONLY BE EMPLOYED BY BOARD OF  
CITY HEALTH DISTRICT—BOARD OF EDUCATION UNAUTHOR-  
IZED TO EXPEND FUNDS TO COMPENSATE SUCH NURSE.

SYLLABUS:

*Where a public health nurse is not employed in a city health district, the board of education of the city school district is not empowered to expend funds in any way for the compensation of a public health nurse within the district other than for the employment of nurses by said board of education, by authority of Section 7692, General Code.*

COLUMBUS, OHIO, March 18, 1931.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

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

“The board of education of the city of Fostoria, has requested that

I procure from you an opinion upon the question which may involve the construction of section 7693 of the Ohio General Code, or which may only involve the question of the authority of the board of education to transfer surplus funds.

The situation is this: The board of health of the city of Fostoria, prior to the present time, has employed a full-time city nurse, at a salary of \$1,800.00, \$900.00 of which was paid by the board of health and the other \$900.00 by the State of Ohio. The city council, this year, in preparing its budget, felt that because of lack of funds, it could not make an allowance to the board of health, of sufficient funds for the employment of this nurse, and therefore, cut out that item from the amount awarded to the board of health. The board of education feels that a city nurse is indispensable, and the board is willing to transfer the amount sufficient to pay the \$900.00 formerly paid by the board of health to the nurse, to the city council, with the understanding, of course, that this money is to be used by the board of health for the payment of the salary of the nurse.

The board of health and board of education are willing to co-operate to do this, providing of course, that the State is willing to continue paying the sum of \$900.00 as heretofore.

Under section 7693, of the Ohio General Code, the board of education may provide and pay compensation to the city health nurse, who is an employe of the board of health, in addition to the amount paid to her by the board of health, but in this instance, there is no amount payable by the board of health to which the board of education might add what it wished to pay, but the board of education is willing to transfer funds to the city council to pay for the nurse, and the board wants to know whether or not such a procedure is legal."

By force of sections 1261-30, 4408 and 4411, General Code, city health districts are empowered to employ such public health nurses for whole or part-time duty as may be necessary. When public health nurses are so employed, the Auditor of State is directed, upon the filing semi-annually of a certificate showing the appointment of public health nurses in a city health district and the salaries paid to said nurses during the preceding six months together with the endorsement thereon of the state commissioner of health that the local health authorities had complied with the provisions of law relating to public health, to "draw a voucher on the Treasurer of State to the order of the custodian of the funds of such health district, payable out of the general revenue fund, in an amount equal to one-half of the amount paid by the district board of health or health department to such \* \* \* public health nurse \* \* \* during such semi-annual period." Section 7693, General Code, reads as follows:

"The board of education of any school district, may provide and pay compensation to the employes of the board of health in addition to that provided by the city, township or other municipality."

Where a board of education appoints a school physician or school dentist by authority of section 7692, General Code, to make examinations and diagnoses and render medical and correctional treatment for school children, trained nurses may be employed to aid in such inspection in such ways as may be prescribed by the board.

A former Attorney General, in an opinion found in the reported Opinions of

the Attorney General for 1915, page 1918, said with reference to the employment of nurses by authority of section 7692, General Code:

"As I view it, the provisions of section 7692, General Code, as amended, contemplate the employment of a trained nurse only when such employment is necessary to enable the school physician appointed under authority of said section, to properly perform the duties required of him by the provisions of section 7692-1, General Code."

The duties of a district health board, as set out in section 1261-26, General Code, include the studying and recording of the prevalence of disease within the district and of providing for the prompt diagnosis and control of communicable diseases. The duties of a board of health in a city school district necessarily reach into the schools and into the homes of the children attending schools, and public health nurses employed by a city health district perform duties somewhat different from those performed by nurses employed by a board of education. For that reason, the Legislature felt justified in authorizing boards of education to contribute from school funds moneys to assist the health district in the employment of public health nurses. The moneys so contributed however, are no part of the salary of the nurse paid by the city and there is no authority for the State to match the funds contributed by a board of education toward the compensation of a public health nurse employed by a board of health of a city health district, and if the city health district does not employ a public health nurse there is no authority for the board of education to make any contribution to the city health district for that purpose.

A board of education, like other administrative boards, is vested only with limited powers, and it represents its district only in such transactions as are expressly authorized by statute. Any implied power that may exist in a board of education is limited to such as may be reasonably necessary to make its express powers effective. In short, any so-called implied power in a board of education is only incidental or ancillary to an express power and if there is no express grant, it follows as a matter of course, that there can be no implied grant. *State ex rel. Clark v. Cook*, 103 O. S., 465.

The authority for boards of education as well as other similar administrative boards, to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the school district. *State ex rel. Menning*, 95 O. S., 97.

The power extended to a board of education by section 7693, General Code, is such only as to permit the board to contribute toward the compensation of a public health nurse employed by a health district but does not extend to the actual employment of such a nurse for a public health district. The employment must be by the public health district and the salary paid to the nurse which is to be matched by an equal amount paid from the state treasury must be paid from funds belonging to the health district. When this is done, the board of education may add to it such an amount as is deemed proper or in other words, contribute something so as to give the nurse additional compensation to that paid by the health district and the State.

There is no authority anywhere authorizing a board of education to transfer funds in its custody which are to be used for educational purposes within the district, to another political subdivision for any purpose. It is held in *Board of Education v. Board of Education*, 19 App. 18:

"The expenditure of public funds by a public board can only be made

when the provisions of the General Code applicable thereto are complied with."

I am therefore of the opinion, in specific answer to your question, that where a public health nurse is not employed in a city health district, the board of education of the city school district is not empowered to expend funds in any way for the compensation of a public health nurse within the district other than for the employment of nurses by said board of education, by authority of Section 7692, General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

3059.

PARTITION FENCE—CONSTRUCTION ORDERED BY TOWNSHIP TRUSTEES—MUST BE GOOD AND SUBSTANTIAL—CAPABLE OF TURNING LIVE STOCK.

SYLLABUS:

1. Under Section 5910, General Code, the township trustees shall assign the portion of a partition fence which the owners are to build, and the owners may build any kind of fence they choose, so long as it is a good and substantial fence. Undoubtedly, such a fence should be capable of turning live stock ordinarily kept by farmers, including sheep.

2. If a land owner fails to build a good and substantial fence, the other party may apply to the township trustees, under Section 5913, supra, whereupon the trustees shall sell the contract for the construction of such fence to the lowest responsible bidder. Under such procedure, the trustees specify the kind of fence that is to be constructed.

3. When the trustees assign the portion of the fence each owner is required to build, under Section 5910, General Code, they may suggest to the owners the kind of fence they regard as good and substantial, but such suggestion can have no binding force except in so far as it bears upon their action when application is made to them under Section 5913, General Code.

COLUMBUS, OHIO. March 18, 1931.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Your recent communication reads:

"Section 5910 and kindred sections of the General Code of Ohio, provide for the settling of line or partition fence disputes by application to the Board of Trustees of the Township in which the fences in question lie for an apportionment of the building of the parts of said fence between the respective landowners by the said Board of Trustees. Various provisions are made for the working out of this apportionment in the building of said partition fences between the respective landowners. However, the one question that is in dispute in a particular case before a particular Board of Township Trustees of Monroe County, Ohio, does not seem to