

Specifically answering your inquiry, it is my opinion that by virtue of the authority contained in House Bill 94, the county treasurer may accept "liquidated claims" of a subdivision in payment of taxes assessed and being collected for the benefit of such subdivision to the extent of the taxes assessed for the benefit of such subdivision for whatsoever purpose and is not limited by such act to that amount of taxes assessed for the operating expenses of such subdivision.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1027.

BOARD OF EDUCATION—UNDER SECTION 4759, G. C. NOT AUTHORIZED TO SELL PROPERTY UPON TERMS OTHER THAN CASH UNLESS SALE MADE TO MUNICIPALITY OR BOARD OF TRUSTEES OF SCHOOL DISTRICT LIBRARY.

SYLLABUS:

A board of education in making sales of property by authority of Section 4759, General Code, is not authorized to sell such property upon terms other than for cash, unless the sale is made to a municipality or a board of trustees of a school district library.

COLUMBUS, OHIO, July 13, 1933.

HON. RAY B. WATERS, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—Over the signature of one of your assistants, my opinion has been requested, as follows:

"Would you kindly give us your opinion as to whether or not a board of education owning a parcel of land on which is located an old school building could sell the property for part cash and take back a first mortgage for the balance of the purchase price? The value of the property is over \$300.00?"

By force of Section 4749, General Code, boards of education of the several school districts in Ohio are vested with the power of acquiring, holding, possessing and disposing of real and personal property.

The manner of exercising that power when the property to be disposed of exceeds \$300.00 in value, or when it is determined to sell and convey the property to a municipality or a board of trustees of a school district library is provided for by Section 4756, General Code, which reads as follows:

"When a board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell such property at public auction after giving at least thirty days' notice thereof by publication in a newspaper of general circulation or by posting notices thereof in five of the most public places

in the district in which such property is situated. When the board has twice so offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at private sale, either as an entire tract or in parcels, as the board deems best. Provided, however, that in case the board of education decides to dispose of such real property, it may sell and convey the same to any municipality or board of trustees of the school district library in which such real estate is situated, upon such terms and conditions as may be agreed upon. The president and secretary of the board shall execute and deliver deeds necessary to complete the sale or transfer provided for by this section."

There is no specific statutory direction as to the manner in which sales of property of less value than \$300.00 must be made. In fact, there is no specific express statutory authority for making such sales. It has been held however, that the clothing of a board of education with corporate powers and the express extension to it of a general power of disposing of property as is done by the terms of Section 4749, General Code, amply authorizes the making of such sales, and in the absence of any limitation thereon, property of the value of \$300.00 or less may be sold by a board of education at private sale. (See Opinions of the Attorney General for 1915, page 877.)

It is a well settled principle of law that boards of education have limited powers only. Being creatures of statute, they possess such powers only as are expressly granted to them, together with such incidental powers as are necessary to the carrying out of the expressly granted powers. (*Schwing vs. McClure*, 120 O. S. 335.) It is equally well settled that when a power of sale is reposed by statute in a public officer or a public board, the precise manner provided by statute, if any, must be strictly followed in consummating the sale, and the power, in any event, is strictly limited to the power granted. Statutes granting such powers are strictly construed. *Abbott on Municipal Corporations*, Vol. 3, page 2194; *McQuillin on Municipal Corporations*, 2d Ed., Sections 1242 et seq.

It can not be said that the word "sell", as the term is generally understood, carries with it the idea that the sale must be for cash or that the payment of the purchase price in cash is necessary to effect a sale. The payment or agreement to pay the purchase price of property in money, is essential to a sale as distinguished from exchange or barter but it is a well known fact that sales in the ordinary course of business are often made on credit, wholly or partially, as well as for cash, and title is as effectually passed by a sale on credit as for cash if the intent to do so is present. However, where the legislature has extended authority to public officers or boards to sell property it has expressly provided in many instances that the sale may be upon terms or conditions as agreed upon, or otherwise. For instance, in the statute here under consideration, Section 4759, *supra*, authority is extended to boards of education to sell property of a greater value than \$300.00 at public auction after due advertising. No mention is made of the right to sell upon terms or conditions. If the sale is to be made to a municipal corporation or a board of school district library trustees, however, the sale may be "upon such terms and conditions as may be agreed upon." The fact that the legislature authorized a sale in the one instance, upon terms and conditions, excludes the idea, in my opinion, that the sale in the other instance may be upon terms or conditions, or otherwise than for cash.

Another instance where the legislature authorized a sale upon terms or conditions, was in an act authorizing certain cities which owned a line or lines of

railway to sell the same in the manner provided for in the act "at a price and upon terms of payment satisfactory to said trustees of the sinking fund." (84 O. L. 82).

In pursuance of this act, the City of Cincinnati sold the Cincinnati Southern Railway. Suit was brought to enjoin the sale, it being contended among other things, that the attempted sale was invalid because it was not made for cash. The case was carried to the Supreme Court, where it was held (*City of Cincinnati vs. Dexter*, 55 O. S. 93):

"Payment of the purchase price in cash is not essential to a valid sale under the statute; the sale is authorized to be made upon terms of payment satisfactory to the designated municipal board."

I am therefore of the opinion that in the absence of a statutory provision authorizing and directing a board of education to effectuate sales of property of the value of more than \$300.00 upon terms and conditions, such sales may not be made otherwise than for cash.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1028.

HOSPITAL SERVICES—TOWNSHIP TRUSTEES MAY CONTRACT THEREFOR WITH PRIVATE HOSPITAL TO BE FURNISHED TO INDIGENT RESIDENTS HAVING LEGAL SETTLEMENT WITHIN TOWNSHIP—NOT PROHIBITED BY CONSTITUTIONAL PROVISIONS.

SYLLABUS:

Township trustees are authorized to contract with a private hospital to furnish hospital services to the indigent residents having a legal settlement within the township, provided the contract price for the furnishing of such services is commensurate with the services rendered.

COLUMBUS, OHIO, July 13, 1933.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

"I have been asked by the Ashtabula General Hospital Trustees whether or not it would be legal for the various townships to enter into contracts with the Hospital for a year's time for the care of their indigent sick, at a certain flat rate which would be less than the regular rate charged by the Hospital.

I find no authority for doing this, but I was requested to get your opinion on it, and would appreciate this at your convenience."

Township trustees have those powers and duties which are defined by statute or naturally or necessarily implied from the language of the statute.