

Summarizing and answering your question specifically, I am of the opinion that the office of village marshal and the position of county dog warden are incompatible and may not be held by the same person.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2014.

APPROVAL, BONDS OF MORGAN COUNTY, OHIO, \$14,000.00.

COLUMBUS, OHIO, April 25, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

2015.

BOARD OF EDUCATION—AUTHORITY TO TRANSFER TERRITORY—  
CENTRALIZED SCHOOL DISTRICTS.

SYLLABUS:

1. *The mandatory provisions of Section 4696, General Code, have no application to centralized school districts.*
2. *The transfer of territory to a centralized school district does not effect a decentralization of the schools of the district to which the transfer is made.*
3. *The provisions of Section 4727, General Code, to the effect that centralization shall not be discontinued within three years, and thereafter, only by a vote of the people, does not prevent transfers of territory from such district, if a petition be filed therefor with the board of education of the county school district of which such centralized district is a part, signed by two-thirds of the qualified electors residing in the territory seeking to be transferred.*
4. *Under the provisions of Sections 4696, et seq., General Code, a board of education of a county school district is authorized to transfer territory from a centralized school district to another district, upon the petition of two-thirds of the qualified electors of the territory sought to be transferred, but it is not required to make such transfer, although the petition therefor be signed by seventy-five per cent. or more of such qualified electors.*
5. *When, in the creation of a new school district, under the provisions of Section 4736, General Code, the entire territory of a previously existing school district is incorporated in the newly created district, the board of education of the previously existing district so incorporated is thereby abolished, and a board of education for the newly created district should be appointed in the manner set forth in said Section 4736, General Code.*
6. *There is no authority for a board of education of a county school district to transfer school territory to a school district of another county school district.*

7. A petition requesting the county board of education to transfer territory of a school district of the county school district to a contiguous school district of another county school district is a nullity.

8. There is no authority for the filing of petitions for the transfer of school territory as authorized by Section 4692, General Code, except transfers from centralized districts. Transfers of territory between school districts of a county school district, except from centralized districts, may be made as seems in the judgment of the county board of education to be for the best interests of the schools, subject to the filing of remonstrances by the electors residing in the territory effected.

9. When transfers of school territory are made by authority of Section 4696, General Code, or upon the filing of petitions for transfers from centralized districts, the board must, if the transfer be made at all, transfer the exact territory described in the petition.

10. In transferring school territory by authority of either Section 4692 or 4696, General Code, county boards of education must deal with school districts separately. Petitions for the transfer of school territory lying in two or more school districts vest no jurisdiction in the board with which they are filed.

11. Only contiguous school territory may be transferred from one school district to another.

COLUMBUS, OHIO, April 25, 1928.

HON. EUGENE S. OWEN, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—This will acknowledge receipt from you of two communications under dates of the 11th and 12th instant, requesting my opinion in answer to several questions growing out of the filing of petitions with the County Board of Education of Delaware County for the transfer of school territory within the county school district, and the action of the County Board with reference thereto, and in the creation of new school districts within the county. The first of these communications is as follows:

"A. On January 28, 1928, a petition was filed with the County Board of Education of Delaware County asking that a part of Genoa township rural school district be transferred to Orange centralized school. Genoa township has one-room schools only. To have granted the petition asked for would have taken pupils living within two miles of the school house in the Galena village district and would have sent them to another school six miles distant. The county board acting under Section 4692 transferred a part of this territory to the Orange centralized school and part of this including some other territory adjacent to Galena to the Galena village district. The county board believed that Section 4696 making mandatory the transfer of territory upon petition of 75 per cent. of the electors refers to transfers of territory to another county, city or exempted village district and not to territory transferred from one district to another in the same county district. As more than 75 per cent. of the people residing in said territory signed the petition, the question at issue is, has the county board of education a right to change the boundary of the territory proposed to be transferred from that described in the petition?

B. On March 31, 1928, the Delaware County board of education by resolution created a new school district including the Galena village district and the northern part of the Genoa township district not centralized under Section 4736 G. C. On March 7, 1928, a petition was filed with the county board of education asking that a large portion of Genoa township including some territory embraced in the newly created Galena village consolidated district be transferred to the special district of the village of Westerville, Franklin County.' The questions at issue are, 1st, Is the county board of

education required to make this transfer providing 75 per cent. of the electors residing therein have signed the petition? Was the action of the county board of education in creating a new district out of Galena village and the northern part of Genoa township without submitting it to a vote of the people contrary to law?

C. On April 7, 1928, a petition signed by 20 electors residing in the territory recently transferred to the Orange centralized school district and some territory included in the Genoa township school district adjacent thereto asking to be transferred to the Franklin county school district was presented to the Delaware county board of education. All of the residents of this territory are signers of the petition. Since this petition includes territory set over to the Orange centralized school as well as a part of the Genoa township rural school district, is it mandatory on the part of the Delaware county board of education to make the transfer?"

The second communication under date of April 12, 1928, is as follows:

"Westerville Village School District is in Franklin County, Ohio, and *not* an exempted village school district.

Orange Township School District is a centralized school district of Delaware County, Ohio.

Galena Village School District is a village school district of Delaware County, Ohio, but *not* an exempted village school district.

Genoa Township Rural School District is a school district of Delaware County, Ohio, not centralized.

Genoa Township of Delaware County, Ohio, is contiguous to Orange Township of said county; likewise to the territory of the Galena Village school District, and likewise contiguous to the territory of the Westerville Village School District.

A petition signed by more than 75 % of the electors of certain territory in said Genoa Township Rural School District, and said territory being contiguous to the said Orange Township Centralized School District, for the transfer of said territory to said Centralized school district, was filed with the County Board of Education of Delaware County, Ohio.

Question: Is it mandatory on the County Board of Education of Delaware County, Ohio, to make the transfer asked for?

A petition signed by more than 75% of the electors of certain territory in Genoa Township Rural School District, was filed with the County Board of Education of Delaware County, Ohio, asking for the transfer of the territory described therein, to the Westerville Village School District, and which territory is contiguous to said Westerville Village School District.

Question: Is it mandatory on the Board of Education of Delaware County, Ohio, to make the transfer of the territory described in the petition?

Question: In either case of the proposed transfer of territory can the County Board of Education of Delaware County, Ohio, change the lines of the territory as described in the petition, by transferring a part of the territory so asked to be transferred, or by adding other territory to that described in said petition?

Question: In the event that the County Board of Education should determine to transfer part of the territory of Genoa Township Rural School District to the Galena Village School District, would it be necessary to vacate the organization of the Galena Village School District, or to vacate said district entirely, and by annexing a certain portion of Genoa Township Rural School District to the former territory called the Galena Village School District, thus making or creating a new school district, necessitating the appointment of a new Board of Education for said school district thus created.

Question: Does the County Board of Education have the power and authority to vacate or abolish the Galena School District, form a new district as stated in the next preceding question, thus disorganizing the former board of education of the Galena Village School District, and make it necessary to appoint a new Board of Education for the newly created district?"

Transfers of school territory from one school district to another and the creation of new school districts are governed by Sections 4692, 4696, 4727 and 4736, General Code, which read in part as follows:

Section 4692. "The county board of education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred, and a notice of such proposed transfer has been posted in three conspicuous places in the district or districts proposed to be transferred, or printed in a paper of general circulation in said county, for ten days; nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred, shall within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer. \* \* \*"

Section 4696. "A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent. of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district. \* \* \*"

Section 4727. "When the schools of a rural school district have been centralized such centralization shall not be discontinued within three years, and then only by petition and election, as provided in Section 4726. If at such election more votes are cast against centralization than for it, the division into subdistricts as they existed prior to centralization shall thereby be re-established.

*Nothing in this or the foregoing sections, namely, Sections 4726 and 4726-1, shall prevent a county board of education upon the petition of two-thirds of the qualified electors of the territory petitioning for transfer, from transferring territory to or from a centralized school district, the same as to or from a district not centralized.*" (Italics the writer's.)

Section 4736. "The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall

make an equitable division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it. \* \* \*

It will be observed from the provisions of Section 4692, supra, that a county board of education is empowered to make transfers of territory between school districts of the county school district, that is, from one rural or non-exempted village school district to another rural or non-exempted village school district, in the same county school district, if in the opinion of the board such transfer is conducive to the best interests of the schools of the territory consolidated. The only limitations on this power are that, in making the transfer, the statute must be complied with as to the giving of notice and the filing of a map, and the further limitation that the transfer may be defeated by the filing of remonstrances as provided by the statute.

The statute itself vests authority in the county board of education to make transfers between such districts and it is not necessary that a petition be filed by interested electors before the board may act. In fact no provision is made for the filing of a petition in such cases, and if a petition be filed its only effect is the influence it may have on the action of the board. The board may act in accord with the petition or not. The electors in territory transferred by virtue of the authority granted in Section 4692, supra, who are dissatisfied with the action of the board in making such transfers, are limited to the filing of remonstrances in an effort to defeat the board's action.

On the other hand, however, the board has no jurisdiction, until a petition is filed, as provided by Section 4696, General Code, to transfer school territory to a city, exempted village, or county school district. When a petition is filed under Section 4696, General Code, signed by a majority of the electors, residing in a part or all of a school district of a county school district, asking that such district or part thereof be transferred to a contiguous city, exempted village, or county school district, the board has jurisdiction to make the transfer as requested if it sees fit to do so, but is not required to make the transfer unless the petition be signed by at least three-fourths of the electors residing in the district or part of the district seeking the transfer, in which case, if the petition be signed by seventy-five per cent or more of the electors residing in the territory seeking transfer it becomes the mandatory duty of the board to comply with the prayer of the petition. *State, ex rel. Brønner et al vs. County Board of Education of Franklin County et al.*, 97. O. S. 336.

When transfers are made under authority of Section 4696, General Code, the county board is bound to transfer the exact territory described in the petition, no more and no less; and the petitioners are limited in requesting a transfer to the inclusion in a single petition of a request for the transfer of territory lying within a single school district of the county school district, contiguous to the exempted village, city or county school district to which the transfer is sought.

The Court of Appeals in the case of *Woodrey vs. Board of Education*, 21 O. A. 471, had under consideration the right of a board of education to transfer parts of three school districts by one resolution and the filing of one map under authority of Section 4692, General Code. On page 474 of the opinion in the *Woodrey* case, the court said:

“Moreover, Section 4692 provides:

‘The county board of education may transfer a part or all of a school district of the county school district.’

The section does not say that the school board may transfer a part or all of the school district of two or more school districts. It says 'a part or all of a school district.' This language, if it means what it says, means that each school district must be dealt with separately."

Although the court in the Woodrey case was dealing with the provisions of Section 4692, General Code, it is my opinion that the same observations may be made with reference to the provisions of Section 4696, General Code, and I so held in Opinion No. 728 rendered under date of July 12, 1927, the first branch of the syllabus of which opinion reads as follows:

"The filing of a joint petition by electors of more than one or parts of more than one school district seeking the transfer of school territory, is not authorized by Section 4696, General Code, and the filing of such a petition vests no jurisdiction in the county board of education to act thereon."

An exception to the manner by which school territory may be transferred by authority of either Section 4692 or 4696, General Code, exists in cases of transfers from rural school districts in which the schools have been centralized, as provided by Section 4726, et seq., General Code.

These districts are commonly referred to as "centralized school districts" although the statute classifying school districts, viz., Section 4679, General Code, makes no reference to "centralized school districts" as a definite class. They are really rural districts in which action has been taken under authority of Sections 4726 et seq., General Code, looking to the centralization of their schools, and remain within the class defined by statute as rural school districts after centralization has been effected. The Supreme Court, in *Board of Education vs. Board of Education*, 104 O. S. 1; *State ex rel. vs. Board of Education*, 104 O. S. 75; *State ex rel. Darby vs. Hadaway et al.*, 113 O. S. 658, and in many other cases refers to these districts by the designation "centralized school districts."

Prior to the last amendment of Section 4727, General Code, the statute, as enacted in 1914 (104 v. 139) consisted of the part not underscored in the quotation of the statute, supra. In 1919, the statute was amended embodying therein that part underscored (108 v. Part 1, 235).

While the statute as enacted in 1914 was in effect, on February 19, 1918, the Supreme Court decided the cases of *State ex rel. Snapp vs. Goul et al.* and *State ex rel. Snapp vs. Stevens et al.*, 97 O.S. 259, in which it was held that in spite of the authority vested in county boards of education to transfer school territory by virtue of Section 4696, General Code, no transfer could be made of territory from a centralized school district under said section, because to do so would, in effect, be a decentralization of the schools in such district in a manner not authorized by Section 4727, General Code.

Manifestly the same reasoning would apply to transfers made under Section 4692, General Code. In the course of the opinion in the Goul and Stevens cases, supra, the Supreme Court said on page 261:

"The provisions of Section 4727, General Code, that 'When the schools of a rural school district have been centralized such centralization shall not be discontinued within three years, and then only by petition and election, as provided in Section 4726', constitute an exception to the provisions of Section 4696, General Code. Otherwise the county board of education would be required upon the petition of 75 per cent. of the electors of a specified portion of a rural school district to transfer such territory to another county, even though such transfer would effect a decentralization of the schools, which

is prohibited by the clear and express provisions of Section 4727, General Code.'

Since the amendment of 1919, the Supreme Court decided the case of *County Board of Education of Paulding County vs. Board of Education of Benton Township Rural School District*, 104 O. S., 1. The action was brought by the Board of Education of Benton Township Rural School District of Paulding County against the Board of Education of Paulding County School District, to enjoin the action of the latter board, in making a transfer of territory from the Benton Township Rural School District to the Payne Village School District, another school district of the Paulding County School District. It appears that the schools in Benton Township Rural School District had previously been centralized, and that there had been filed with the county board of education a petition signed by more than ninety per cent of the qualified electors residing in that part of Benton Township Rural School District, which it was sought to have transferred. The court held:

"The provisions of Section 4727, General Code, as amended April 16, 1919, authorizes a county board of education upon the petition of two-thirds of the qualified electors of territory included in the centralized school district, to transfer such territory to another district."

The court in its opinion, after referring to the amendment of Section 4727, General Code, made in 1919, said:

"\* \* \* That provision was enacted subsequent to the decision of the case of *State ex rel. Snapp vs. Goul et al.*, *Board of Education of Champaign County School District*, 97 Ohio St., 259, and apparently was enacted to confer upon the county board of education the very power and authority which this court found and declared it did not have under laws then in effect. The provisions of Section 4727, General Code, at that time, as held in the Goul case, negated the authority of the county board under the circumstances presented in that case to transfer territory from such district, and as the court there stated constituted an exception to the general powers then conferred by Section 4696, General Code."

In the case of *State ex rel. Darby vs. Hadaway, et al.*, 113 O. S. 658, the court had under consideration the mandatory provisions of Section 4696, General Code, in their applicability to transfers from centralized school districts, and held:

"1. The mandatory provisions of Section 4696, General Code, have no application to centralized school districts.

2. Under the provisions of Section 4696, General Code, and of Section 4727, General Code, as amended April 16, 1919 (108 O. L., pt. 1, 235), a board of education of a county school district is authorized to transfer territory from a centralized school district to another district upon the petition of two-thirds of the qualified electors of the territory sought to be transferred, but it is not required to make such transfer, though the petition therefor be signed by 75 per cent. of such qualified electors."

In the course of its opinion, the Court in referring to Section 4727, General Code, as amended in 1919, said:

"Previous to the amendment of Section 4727, General Code, April 16, 1919 (108 O. L., pt. 1, p. 235), county boards of education were not authorized,

much less required, to transfer territory from a centralized school district. *State ex rel. Snapp vs. Goul et al., Board of Education.*, 97 Ohio St., 259, 119 N. E., 824. It was there held that transfers of territory from centralized districts would effect a decentralization thereof, contrary to the provisions of Section 4727, General Code, and that, therefore, the provisions of Section 4727 must be construed as an exception to the provisions of Section 4696, General Code.

Thereafter, pursuant to a very apparent legislative policy, or at least a manifest tendency to vest in county boards of education greater powers and wider discretion, and particularly to confer upon them authority with reference to the transfer of territory from a centralized district, which this court had declared under existing statutes they did not possess, Section 4727, General Code, was so amended as to provide that: \* \* \*

It is to be observed that the terms of this statute, as amended above, are permissive only, and that whereas the board was theretofore precluded from transferring territory from such district that prohibition is now removed and the board may make such transfer provided two-thirds of the qualified electors of the territory petition therefor. No mandatory language is found in this amendment."

Some question has arisen as to whether or not transfers may be made to a centralized district in accordance with Section 4692, General Code, or whether in such cases the board is vested with jurisdiction to make such a transfer only when a petition signed by two-thirds or more of the qualified electors of the territory petition for the transfer. It will be observed that the statute provides:

"Nothing in this or the foregoing sections, namely 4726 and 4726-1, shall prevent a county board of education, upon the petition of two-thirds of the qualified electors of the territory petitioning for the transfer, from transferring territory to or from a centralized school district the same as to or from a district not centralized."

It is clear from the decisions of the Supreme Court above referred to, that a county board of education does not have, nor can it be vested with jurisdiction to transfer territory from a centralized district, unless such jurisdiction be conferred upon it by the filing of a petition signed by two-thirds of the electors residing in the territory seeking a transfer, as provided by Section 4727, General Code, although were it not for the exceptions with reference to centralized districts it would have jurisdiction conferred by Section 4692, General Code. The reason for this is that the making of such a transfer would amount to a decentralization of the centralized district contrary to the provisions of Section 4727, General Code, contained in the first two sentences thereof.

The same reasoning can not in my opinion be made to apply to transfers made to a centralized district. The adding of territory to a centralized district does not have the effect of decentralizing the district. Therefore, the necessity of vesting the county board of education with jurisdiction to transfer territory to a centralized district by the filing of a petition as provided by amended Section 4727, General Code, does not now exist and did not exist at the time the amendment was enacted for the reason that such jurisdiction is conferred on the board by Section 4692, General Code.

In an action in quo warranto, *State ex rel. Prosecuting Attorney vs. Hall, et al.*, 13 O. A. 350, instituted on relation of the Prosecuting Attorney of Clinton County against the members of the Board of Education of Jefferson Township Rural School District in Clinton County, the court held:



"The transfer of a village school district to a township centralized district, within three years after the centralization of the township district has no decentralizing effect on the schools and is not a violation of Section 4727, General Code, prohibiting centralization to be discontinued within three years."

It appeared that in June, 1915, the schools of Jefferson Township Rural School District had been centralized. Sometime in the latter part of 1916, the County Board of Education of Clinton County transferred the Midland Village School District in Clinton County to the Jefferson Township Centralized Rural School District. The transfer was accomplished before the amendment of Section 4727, General Code, was made in 1919. The suit being an original action in the Court of Appeals, was decided in December 1920. In the course of the opinion, the court said:

"It is further urged that the transfer works a discontinuance of the centralization of the Jefferson Township Rural School District within three years, thereby violating the provisions of Section 4727, General Code, The case of *State ex rel. Snapp vs. Goul et al.*, *Board of Education of Champaign County*, 97 Ohio St., 259, is cited in support of this proposition. We do not think that case in point. In that case there was a petition filed within three years to transfer territory from the centralized district, which in its effect would result in a discontinuance of the centralization. The centralization of the schools, and the changing of the boundary, which brings into the centralized district additional taxable property, could in no way have a decentralizing effect on the schools. It simply adds additional territory, which in the judgment of the county board of education is for the best interests of the schools. The transfer does no violence to Section 4727 of the Code."

Coming now to a consideration of your specific questions A, B, and C in the first communication, and 1, 2, 3, 4, and 5 in the second, and answering them in the order asked, I am of the opinion that:

A: Galena Village School District, a non-exempted village school district, Genoa Township Rural School District, and Orange Rural Centralized School District, each being a school district of the Delaware County School District, and the County Board of Education being vested by Section 4692, General Code, with power to make transfers as it sees fit, among these districts, except to make a transfer from a centralized district, regardless of petitions therefor, the transfers made as stated in your inquiry are legal. The petition filed served no purpose other than a declaration of the wishes of the persons signing the petition. Section 4696, General Code, has no application whatever to transfers of territory made from one school district of a county school district to another school district of the same county school district.

B-(1): If the petition of March 7, 1928, read as you state, that is, if it asked that territory be transferred to the "special district of the Village of Westerville," it did not vest any jurisdiction in the Delaware County Board of Education to act in the premises. Westerville District is not an exempted village school district. It is a school district of the Franklin County School District. County boards of education have no authority under the statutes by petition to transfer territory from a school district of one county school district to a school district of another county school district.

They have no jurisdiction to transfer a part or all of a county school district to an adjoining county school district, except where such jurisdiction may be conferred by the filing of a petition as provided by Section 4696, General Code. The filing of such a petition being a prerequisite of the vesting of jurisdiction in the county board of education to act, the statute should be strictly construed in that respect, and, un-

less the petition requests a transfer to another county school district, a city or an emptied village school district, the board has no authority to make the transfer and the petition is a nullity.

2. The board was fully authorized by Section 4736, General Code, to create a new school district from the Galena Village School District and a part of Genoa Township School District. It is not necessary that the question be submitted to a vote of the people. The only action that may be taken by the qualified electors of the territory affected to defeat the action of the board is by filing remonstrances as provided for by the statute.

C: Inasmuch as the petition of April 7, 1928, included territory lying in more than one school district, even though signed by all the electors residing in the territory seeking a transfer, it does not empower the board to act thereon. Apparently, the portion of Orange Rural School District included in the petition is not contiguous to the Franklin County District, but is contiguous to the portion of Genoa Township District included in the petition, and that portion of Genoa District is contiguous to Franklin County School District. In that case, the portion of Orange School District could not be transferred to Franklin County District until after the portion of Genoa District had been transferred and thus made contiguous to Franklin County District. It could then be transferred only after a petition had been filed with the Delaware County Board of Education, signed by two-thirds of the electors residing in the territory seeking to be transferred, whereupon the board might make the transfer if in its judgment it would be for the best interests of the schools. This is true because Orange Township District is a centralized district, and under no circumstances is it mandatory for a board of education to transfer territory from a centralized district, even though a petition is filed therefor, signed by all the electors in the territory seeking to be transferred.

1. It is not mandatory for the County Board of Education of Delaware County to make the transfer under the circumstances set out in your inquiry.

2. It is not mandatory for the County Board of Education of Delaware County to transfer territory to Westerville Village School District as requested by the petition which you describe, nor is it permitted to make such transfer, as county boards of education under no circumstances can make transfers of territory between school districts of separate county school districts. If the petition in this case had requested a transfer to the contiguous Franklin County School District and had been signed by at least seventy-five per cent. of the electors residing in the territory seeking to be transferred, it would be the mandatory duty of the Delaware County Board of Education to make the transfer as requested.

3. When transfers are made under Section 4696, General Code, or from centralized districts, the transfer of the exact territory described in the petition must be made. No attention need be paid to petitions where transfers are made under section 4692, General Code.

4. The Delaware County Board of Education may transfer a part of Genoa Township District to Galena Village District by authority of Section 4392, General Code. In that case, the Galena Village District is not abolished, but continues as before, and its Board of Education continues to function as and for, the enlarged district. If a new district is created from all of Galena District, and a part of Genoa District, under and by authority of Section 4736, General Code, the Galena Village District as it had before existed, is abolished, and its board of education ceases to function. In such case a board of education for the new district should be appointed as provided by said Section 4736, General Code. It depends on the means taken by the county board to accomplish the result desired. In either case, the action of the county board is of

course subject to the right of the elector: affected to file remonstrances. *Cline vs. Martin*, 94 O. S. 420; *Board of Education of Hancock County vs. Boehm et al.*, 102 O. S. 292; *Board of Education of Putnam County vs. Board of Education*, 112 O. S. 108.

5. The answer to your fourth question makes it unnecessary to answer your fifth.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2016.

COUNTY COMMISSIONERS—NO AUTHORITY TO EXPEND FROM CURRENT YEAR'S APPROPRIATIONS FOR CLAIMS ARISING FROM PURCHASE OF SUPPLIES IN PREVIOUS FISCAL YEAR—LIABLE IN DAMAGE.

SYLLABUS:

1. *No expenditures can be made from a county treasury until money has been appropriated therefor in accordance with law, including Sections 5625-29 to 5625-33, General Code.*

2. *County commissioners have no authority to pay from the current year's appropriation claims arising by reason of the procuring of supplies or material during the previous fiscal year.*

3. *When public authorities expend or authorize the expenditure of public moneys in pursuance of any contract, agreement, obligation or order, without first having obtained the certificate of the chief fiscal officer of the taxing subdivision for which they are acting, that the money required to meet such contract, agreement, obligation or order has been appropriated or authorized or directed for such purpose and is in the treasury to the credit of the appropriate fund, free from any previous and outstanding obligation or certification, as provided by Section 5625-33, General Code, and such contract, agreement, obligation or order has been executed by the delivery to the taxing subdivision of the subject of the contract, agreement, obligation or order, and the contract price fully paid, the taxing subdivision cannot recover from the contractor or obligor the amount paid on such void and illegal contract without first putting or showing readiness to put the contractor or obligor in status quo ante.*

4. *Public officers who expend or authorize the expenditure of public funds on void contracts, agreements, obligations or orders contrary to the provisions of Section 5625-33, General Code, are liable to the taxing district whose funds have been so expended for all damages or loss sustained by such taxing subdivision in an amount equal to the full amount of such funds paid on or on account of any such void contract, agreement, obligation or order.*

COLUMBUS, OHIO, April 25, 1928.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

“During the year 1927 an employee in charge of an institution maintained by the county, purchased certain material and supplies, which were used at the institution. The persons from whom the purchases were made charged same to the county. No certificate for the expenditure was made as provided by Section 5660 of the General Code. There were not sufficient funds