

Specifically answering your question, in the absence of any such rule to the contrary, a sheriff may lawfully purchase food already prepared for consumption from a restaurant or other person, subject, however, to such rules and regulations relating to the *purchasing* of food as may be prescribed by the county commissioners and to the limitations of Section 2850, General Code, that he shall be allowed only the actual cost of feeding such inmates but at a rate not to exceed seventy-five cents per day of three meals each.

Respectfully,
EDWARD C. TURNER,
Attorney General.

834.

APPROVAL, BONDS OF VILLAGE OF EMPIRE, JEFFERSON COUNTY—
\$4,082.25.

COLUMBUS, OHIO, August 5, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

835.

BOARDS OF EDUCATION—MAY CONTRACT FOR THE TRANSPORTATION OF PUPILS FOR AN ENTIRE SCHOOL YEAR OR FOR A TERM OF YEARS.

SYLLABUS:

Boards of education may in their discretion contract for the transportation of pupils for an entire school year or for a longer period if they deem it advisable, provided the general provisions of law with reference to the making of contracts by boards of education are complied with.

COLUMBUS, OHIO, August 6, 1927.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“We have an inquiry as to the length of time for which a board of education may contract with a bus owner or driver for the transportation of school children. On the one hand, the statutes seem to restrict a board of education from making any contract beyond the close of the fiscal year. On the other hand, such a thing as a contract on a unit basis is recognized which may be carried over to a subsequent budgetary period. On these latter terms it would seem that a board might contract with the bus owner or driver for a period of years.

Practically it seems important for a board of education to make such contract at least for an entire school year. Will you kindly advise us just what length of contract a board of education may legally make in such a case?"

By the terms of Section 7731, General Code, Boards of Education are required under certain circumstances to provide transportation for pupils attending public schools. Other statutes authorize the furnishing of transportation under certain circumstances if the board deems it advisable. There is no statutory limitation on how this transportation shall be provided other than the regulations set out in Sections 7731-1, 7731-2 and 7731-3, of the General Code, wherein requirements are made as to the designation of depots for gathering the children, the kind of vehicle to be provided, and the qualifications of the drivers of these vehicles.

Aside from these specific regulations, the statutes are silent as to the manner by which boards of education shall provide transportation for the pupils. The question of making contracts for such transportation and the terms thereof, or employing persons to effect the same is left entirely to the wisdom and judgment of the board.

The Supreme Court of Ohio has repeatedly said that in the absence of fraud or abuse of discretion, the courts can not control the discretionary powers vested in a board of education. *Bramon v. Board of Education*, 99 O. S. 369. *County Board of Education of Hancock County v. Boehm, et al.*, 102 O. S. 292. It can not be said as a matter of law that for a board of education to enter into a contract for the transportation of pupils for an entire school year or for a term of years, would be an abuse of discretion.

Section 5660, General Code, enacted as a part of the so-called Budget Law, which provides that no contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds shall be made or assumed by any authority, officer or employe of any county, political subdivision or taxing district unless the auditor or chief fiscal officer first certifies that the money required to meet such contract, agreement or other obligation or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose, and is in the treasury or in process of collection to the credit of the appropriate fund, free from any previous and then outstanding obligation or certification, expressly exempts certain contracts from its provisions.

Section 5660, General Code, supra, reads in part as follows:

" * * *

This section shall not apply to the investment of sinking funds by the trustees of such funds. In the case of contracts running beyond the termination of the fiscal year in which they are made for salaries of educational employes of boards of education, or for street lighting, collection or disposal of garbage or other current services for which contracts may lawfully be made extending beyond the end of the fiscal year in which made, or to the making of leases, the term of which runs beyond the termination of the fiscal year in which they are made, the certification of the auditor or chief fiscal officer as to money in the treasury or in process of collection, above required as a condition precedent to the making of such contract or lease throughout the fiscal year in which such contract or lease is in effect the auditor or fiscal officer shall make a certification for the amount required to meet the obligation of such contract or lease maturing in such year. In all such contracts or leases, the amount of the obligation remaining unfulfilled at the end of a fiscal year and which will become payable during the next fiscal year shall be included in the appropriations for such next year.

* * * "

This provision of law with reference to the certification of the auditor was amended by the 87th General Assembly in House Bill No. 80 and has been codified as Section 5625-33 of the General Code. This section reads 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 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. Each such contract made without such a certificate shall be void and no warrant shall be issued in payment of the amount due thereon. * * * "

It is apparent that unless there be some other limitation on the power of boards of education to contract for the transportation of pupils for a longer period than the remaining portion of the fiscal year in which the contract is made, such contracts may be made so far as the budget law is concerned.

An examination of several of the various statutes relating to the making of certain contracts to be performed in whole or in part in the fiscal years following the year in which the contract is made, such for instance as the section authorizing councils of municipal corporations to provide light, water and certain public necessities, (Section 3809, General Code), and the various sections authorizing boards of educations to employ superintendents and teachers, Sections 4739, 4744, 7702 and 7705, General Code, discloses that in each one of these cases the term for which the contract is made is limited. That is, Section 3809, supra, provides that the contracts therein provided for may be entered into "for a period not exceeding ten years," while in the other sections enumerated such language is used as "for a term of not to exceed three years" or "not longer than five school years," etc.

There is no express limitation as to time or the authority of boards of education to contract for the transportation of pupils. It is therefore my opinion that if other provisions of law governing the making of contracts by boards of education are complied with, such a board may lawfully contract for the transportation of pupils for an entire school year or for a longer period, if they think it advisable.

Respectfully,
EDWARD C. TURNER,
Attorney General.

836.

DISAPPROVAL, BONDS OF VILLAGE OF CRESTLINE, CRAWFORD,
COUNTY—\$9,000.00.

COLUMBUS, OHIO, August 6, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

In Re: Bonds of Village of Crestline, Crawford County—\$9,000.00.