

specify, among other things, the number of years during which the increased levy shall be in effect. Before there is any authority for holding such election, a resolution at least substantially complying with the requirements of said House Bill 579 must be passed. The passage of a lawful resolution is a condition precedent to the holding of such an election. The resolution in question provided for the submission of a proposition to make a levy outside of the ten mill limitation for a period of three years, whereas under said house bill the question of making a levy for more than two years is unauthorized and the resolution in specifying the period for which such levy shall be made cannot specify a longer period than two years. I am of the view that this is not a mere irregularity but goes to the foundation of the election and that since there was no authority to submit such a question under said house bill and since under Section 5625-15, et seq., there is no authority for submitting this question at a primary election, said election was not legal.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5712.

BOARD OF EDUCATION—UNAUTHORIZED TO CONTRACT
WITH UNIVERSITY TO MAINTAIN IN DISTRICT
SCHOOLS DEPARTMENT OF SUCH UNIVERSITY.

SYLLABUS:

A district board of education is not authorized by Section 7650-1, General Code, or any other statute, to contract with a college or university located either within or without the district, to maintain within the district schools any department of the university.

COLUMBUS, OHIO, June 16, 1936.

HON. J. O. ENGLEMAN, *President, Kent State University, Kent, Ohio.*

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

“The Board of Trustees of Kent State University, at its regular meeting here April 10th, by formal resolution authorized me to request from you an opinion as to the legality of a proposal for a new working relationship between the University and the Kent City Public Schools.

The arrangement now in effect and one that has been in

effect since the establishment of this school, I think one which it now seems desirable to change, is this :

The university maintains on the campus a training school building accommodating children from kindergarten up to senior year in high school. Years ago, by mutual agreement between Kent City Schools and the Kent Normal School, now State University, the City School District was divided, and all the children in one portion of the district resulting from such division, were allocated to this institution. The teachers required for the Training School thus created, are employed, and their salaries in full, paid by the University.

Now the Board of Trustees of the University submits to you the following questions for an opinion :

(1) If the city school authorities agree, can the University Board permit the city schools to use the whole or a part of the Training School Building on the University campus, with the understanding that the city schools will maintain in said Training School building whatever departments the University may elect to surrender through such an arrangement?

(2) If the city schools can and do take over any part of the Training School on this campus, and pay the salaries of the teachers employed in such rooms or departments as the University may elect to surrender to the city schools, will the city schools be entitled to receive from state funds the same per pupil support in the case of the Kent city children in the Training School that they receive in the case of children in other buildings of the city schools?

(3) If it is permissible for a part or the whole of the Training School Building on the campus to be taken over by the city schools of Kent, would those city schools be able to collect from other school districts or from the State, tuition from such pupils as may be sent or elect to come from other districts to the Training School or to that part of it taken over by the Kent City Schools?

Your opinion will be of service in enabling the Board of Trustees to deal legally with the City School Board."

The powers and duties of the Board of Trustees of Kent State University are not set forth in detail in the statutes. It no doubt may safely be said that under the terms of Sections 7924-1 and 7924-2, General Code, which are the sections of law relating to the powers and duties of

the Trustees of Kent State University, those powers and duties are very broad, and although it is by no means clear just what is included in the proposed arrangement you speak of, especially what is meant by the expression "whatever departments the University may elect to surrender", it is probable that if the proposed arrangement, whatever it may be, should be determined by the Board of Trustees, in its discretion, to be in furtherance of the objects and purposes of a university of a class such as Kent State University, it would be held to be lawful. However, there remains the question of whether or not the Board of Education of Kent City School District may lawfully make such a contract. It is well settled that district boards of education, being creatures of statute, are limited in their powers by the statutes creating them. This principle has been stated and applied by the courts in hundreds of cases, and has been followed by this office in numerous opinions. It is stated by the Supreme Court, in the case of *State ex rel. Clarke v. Cook*, 103 O. S., 465, as follows:

"Boards of education and other similar governmental bodies are limited in the exercise of their powers to such as are clearly and distinctly granted."

Many similar expressions of the courts might be cited.

Primarily, the province of district boards of education is to establish and maintain public schools of various kinds for the education of the resident youth within their respective districts. However, others than resident youths may be admitted to the schools under some conditions and express statutory authority is granted to city boards of education by Section 7647, General Code, to establish and maintain normal schools within their districts. A normal school so established by authority of the above statute is held to be a part of the district's public school system. *Brown v. Board of Education of the City of Cleveland*, 6 N. P., 411. Express statutory authority is also extended to city boards of education to contract with colleges and universities and private schools for the obtaining in such school districts of instruction in special subjects beyond the scope of the public high school. Section 7650-1, General Code, reads as follows:

"The board or boards of education of any city school district or districts may enter into contract for a term not exceeding one year upon such terms and conditions as each board may deem expedient with each other, or with the trustees or other duly authorized officials of any college or university legally organized within the meaning of the provisions of G. C. Sec. 7650, for the purpose of obtaining in such school district instruction

in the special, technical, professional or other advanced studies which may be pursued in such college or university beyond the scope of the public high school. In like manner such board or boards of education may contract for a term not exceeding one year with each other or with a private corporation or association not for profit, maintaining and furnishing a museum of art, science or history, or providing musical instruction, for the purpose of obtaining in such school district such instruction or other educational services as can be rendered to the schools by such private corporation or association."

Statutory authority is extended to district boards of education, by Section 7620 and cognate sections of the General Code, to provide necessary buildings in which to conduct its schools, either by constructing and furnishing those buildings or renting them, and, without a doubt, a board of education may accept the use of any buildings tendered to it free of rental.

A school conducted by the Kent City Board of Education in the building owned by Kent University, should the University permit the board of education to use its building for that purpose, would be a public school in every sense of the word, and the board should conduct it as such. The board would be authorized to employ teachers for the school the same as any other school conducted by the board. The employment of teachers in city school districts is controlled by Sections 7691 and 7703, of the General Code of Ohio. In order that those teachers may be paid for their services, it is necessary that they be properly certificated according to law. Section 7805-9, General Code (116 O. L., 550).

In the event such a school is conducted in a building owned by the University, the district would, of course, be entitled to its proper share of the public school fund in accordance with Section 7395-1, General Code. No provision is made in this statute or anywhere else for the distribution to a school district of any portion of the public school fund or of any state funds for attendance of students in a normal school that may be established by a city board of education.

Liability exists for the payment to the Kent City School District of tuition for non-resident pupils that might attend a school conducted by the board in a building owned by the University the same as though they attended any other school conducted by the board. The law does not provide for the payment of tuition by one board of education to another for attendance of resident pupils of one district in the schools of the other if those students are more than twenty-one years of age, or if they had previously completed high school work. Such students may be admitted, however, and tuition charged for their attendance in accordance

with Section 7682, General Code. See also Sections 7622-4 and 7680, General Code.

While the Board of Education of the Kent City School District may accept from the University the use of the building in question, and maintain therein any class of schools it is authorized by law to maintain, a contract to maintain any particular class of school or to maintain a school in any particular manner or to employ any particular teachers or class of teachers would be beyond the power of the board to make. That is to say, such a contract would be a pure nullity and would not be enforceable. The only statutory authority for a district board of education to contract with a college or university with respect to instruction in the schools of the district is contained in Section 7650-1, *supra*, and obviously, this statute does not authorize a contract with a university or college to maintain in the public schools of the district "whatever departments the university may elect to surrender." The powers of a district board of education with respect to such a contract are limited by the terms of the statute.

In an opinion of this office, found in Opinions of the Attorney General for 1933, at page 1712, it is held:

"It is not within the powers of a city board of education, when leasing rooms for public school purposes, to agree as a condition of said lease, that certain teachers will be employed to teach the schools to be conducted in the said rooms nor that certain pupils will be assigned to the said schools."

Nor is it within the powers of a district board of education to maintain schools for the giving of instruction in studies beyond the scope of the high school except as contracts may be made therefor by authority of Section 7650-1, General Code, or in the maintenance of normal schools. In an opinion of a former Attorney General found in the reported Opinions of the Attorney General for 1928, at page 1013, it is held:

"With the exception of the authority vested in county and city boards of education to establish normal schools, and the authority vested in city boards of education, by virtue of Section 7650-1, General Code (112 v. 115), to contract with a college or university for the purpose of obtaining in the school district instruction in special, technical, professional or other advanced studies, boards of education are not authorized to establish schools of a higher grade than high schools, which require for the taking of the course of study therein more than thirteen school years, including one year of kindergarten work, regardless

of whether said proposed schools are to be maintained from public school funds or from tuition fees charged the attendants."

If a city board of education establishes and maintains a normal school by authority of Section 7647, General Code, it must do so independently of any other school district or any private or public educational institution. No authority exists for it to cooperate with any other agency, public or private, in the maintenance of such a school. In this connection, it is significant that there was introduced in the 88th General Assembly, in 1929, House Bill No. 165, the intent of which was to authorize the cooperation between a school district board of education and a college or university in the maintenance of normal schools. The bill failed of passage. The title of the proposed bill was as follows:

"A Bill to provide training school facilities in cooperation with colleges and universities approved as teacher training institutions."

No authority exists for a school board to take over and conduct as a part of its school system any department of a college or university. Section 7650-1, General Code, which is the only statute authorizing cooperation between colleges and universities and district boards of education clearly contemplates the making of a contract to obtain within the district instruction in special subjects beyond the scope of the high school which "may be pursued in such college or university." Students while receiving such instruction in pursuance of such a contract would in reality be students of the college or university as the studies under the terms of the statute are to be pursued in the college or university.

I am therefore of the opinion that the Board of Education of the Kent City School District is without authority to contract with Kent State University to maintain in the city schools any department of the University which the trustees of the University may elect to surrender to the city school district.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5713.

APPROVAL—BONDS OF PIKE COUNTY, OHIO, \$17,000.00.

COLUMBUS, OHIO, June 17, 1936.

Industrial Commission of Ohio, Columbus, Ohio.