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1. PERMANENT STREET IMPROVEMENTS UPON STREETS WHERE SCHOOL PROPERTY ABUTS—BOARD OF EDUCATION NOT EMPOWERED BY LAW TO CONTRACT WITH VILLAGE TO PAY PORTION OF COST OF SUCH IMPROVEMENT.
2. MUNICIPALITY MAY LEVY SPECIAL ASSESSMENTS, FOR CERTAIN STREET IMPROVEMENTS, UPON PUBLIC PROPERTY HELD BY BOARD OF EDUCATION, THE SAME AS AGAINST PROPERTY PRIVATELY OWNED—AUTHORITY SECTION 3812 G. C.

SYLLABUS:

1. *A board of education is not empowered by law to contract with the village in which school property under its jurisdiction is located, for the construction of permanent street improvements in or upon streets upon which*

*the school property abuts, whereby it agrees to pay a portion of the cost of the said improvement.*

2. *Special assessments assessed by a municipality for the making of certain street improvements by authority of Section 3812, General Code, may be levied upon public property held by a board of education the same as against property privately owned.*

Columbus, Ohio, May 10, 1940.

Hon. Wilmer D. Rekeweg, Prosecuting Attorney,  
Paulding, Ohio.

Dear Sir:

This is to acknowledge receipt of your request for my opinion, which reads as follows:

“Can a School Board enter into a contract with the village in which its school is located for the construction of a permanent street improvement in front of the school ground; and further, can a school board, if it has entered into such a contract, pay a portion of the cost thereof?”

The Council of the Village of Paulding is willing to make a permanent street improvement on the street adjacent to the Paulding school grounds if the School Board will pay a portion of the expense. Our School Board is willing to do that but, before entering into this contract, desire that I get your opinion as to whether or not such a contract would be legal.”

You do not state in your inquiry what class of street improvement is contemplated. Ordinarily, when street improvements are spoken of, and especially permanent street improvements, we think of grading or paving or the construction of sewers and similar improvements. Sometimes the oiling of streets has been regarded as a street improvement, at least for some purposes. In an opinion of a former Attorney General, published in the Opinions of the Attorney General for 1921, page 1180, it is held that the process of treatment with oil of municipal streets and public roads as authorized by Sections 3751, 3752, 3753 and 3754, General Code, is such a street or road improvement as to come within the meaning of the words “maintenance” and “repair,” as the terms are used in Section 6309-2, of the General Code, which section at that time directed that certain tax funds might lawfully be used for the maintenance and repair of streets. At any rate, the oiling of streets is not a permanent improvement. For the purposes of this opinion, I

will assume that the street improvement as mentioned by you, is one such as a municipality is authorized by Section 3812, of the General Code, to assess upon the abutting, adjacent and contiguous or other specially benefited lots or lands in the municipality.

This section reads as follows:

“Each municipal corporation shall have special power to levy and collect special assessments, to be exercised in the manner provided by law. The council of any municipal corporation may assess upon the abutting, adjacent and contiguous or other specially benefited lots or lands in the corporation, any part of the entire cost and expense connected with the improvement of any street, alley, dock, wharf, pier, public road, or place by grading, draining, curbing, paving, repaving, repairing, construction sidewalks, piers, wharves, docks, retaining walls, sewers, drains, watercourses, water mains or laying of water pipe and any part of the cost of lighting, sprinkling, sweeping, cleaning or planting shade trees thereupon, and any part of the cost and expense connected with or made for changing the channel of, or narrowing, widening, dredging, deepening or improving any stream or watercourse, and for constructing or improving any levee or levees, or boulevards thereon, or along or about the same, together with any retaining wall, or riprap protection, bulkhead, culverts, approaches, flood gates, or water ways or drains incidental thereto, or making any other improvement of any river front or lake front (whether such river front or lake front be privately or publicly owned), which the council may declare conducive to the public health, convenience or welfare, by any of the following methods:

First: By a percentage of the tax value of the property assessed.

Second: In proportion to the benefits which may result from the improvement, or

Third: By the foot front of the property bounding and abutting upon the improvement.”

It is a well settled principle of law that boards of education being creatures of statute and mere agencies of the State in carrying out the duty devolving upon the state by constitutional mandate to provide a system of common schools and to provide by law for the organization, administration and control of that system are limited in the exercise of their powers to the doing of such things only as are expressly or by necessary implication granted to them by the legislature. *State ex rel Clarke v. Cook*, 103 O. S., 465; *Schwing, v. McClure*, 120 O. S., 335.

The legislature has by Section 3761, General Code, expressly authorized boards of education to contract for the sprinkling of streets abutting on school property or the treatment of those streets with oil and other substances in the following language:

“any board of education is authorized to provide for sprinkling with water or treatment with any of the substances mentioned in section 3751, of the surface of any street abutting on school property by private contract, and to pay for the same as other contingent expenses.”

The treatment with substances mentioned in Section 3751, General Code, includes the treatment of streets with calcium chloride, road oil, light coal tar products, light asphalts or any other suitable light bituminous substances for the purpose of providing a temporary improvement in the laying of dust on and preserving the surface thereof.

No similar authority to that extended by Section 3761, General Code, is extended by statute to boards of education to provide by contract for paving or grading of streets abutting on its property or the construction of sewers therein, or doing any of the other things for which assessments are authorized by Section 3812, General Code.

The Supreme Court of Ohio, in the case of *Jackson, Treas., v. Board of Education of Cedarville Twp. Rural School District*, 115 O. S., 368, definitely held that assessments such as are authorized by Section 3812, General Code, may be assessed upon school property and that such assessments may be collected. The syllabus of this case is as follows:

“1. Section 3812, General Code, confers upon a municipality general authority to levy assessments for street improvements against property within such corporation belonging to a board of education and being used for school purposes, and no provision exists in the General Code of Ohio exempting such property from that general authority.

2. In the event of failure of such board of education to pay an assessment so levied, an action may be brought by the municipal corporation against such board of education to recover the amount of such assessment.”

Since the decision of the *Jackson* case, *supra*, the right of a municipality to assess school property for the making of such improvements as are mentioned in Section 3812, General Code, is unquestioned, and it is the only way provided by law by which a board of education may join in the making of such improvements.

I am therefore of the opinion, in specific answer to your question, that a board of education is not empowered by law to contract with the village in which school property under its jurisdiction is located for the construction of permanent street improvements in or upon streets upon which the school property abuts whereby it agrees to pay a portion of the cost of the said improvement.

Special assessments assessed by a municipality for the making of certain street improvements by authority of Section 3812, General Code, may be levied upon public property held by a board of education the same as against property privately owned.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.