

ing examinations and diagnosis of the school children and school employes within the county district.

Second, a person occupying the position of district health commissioner may lawfully be employed by a local board of education as school physician, providing his duties as health commissioner as fixed by his contract with the district board of health leave to him sufficient time to perform the duties of school physician. He could not lawfully be employed by a county board of education as school physician for the county district.

Third, a county board of education is not authorized to pay part of the compensation of a nurse employed by a board of health under the provisions of Section 1261-26, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2467.

OHIO PENITENTIARY—PURCHASE OF TRUCK FOR USE IN BUILDING
CELL BLOCK DISCUSSED—AUTHORITY OF DEPARTMENT OF WEL-
FARE.

SYLLABUS:

Where an appropriation is made to the Department of Public Welfare under the classification G-2, Buildings, for the construction of a new cell block at the Ohio Penitentiary, and permission is given by the Controlling Board to erect said cell block by force account, using prison labor, the Department of Public Welfare may purchase a motor truck for use in building such structure and the purchase price of the same may be charged to and paid out of such appropriation.

COLUMBUS, OHIO, August 21, 1928.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

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

“Will you please give us written opinion regarding the following described voucher: the Department of Public Welfare sends to this office Voucher No. 1188, payable to Mack International Truck Company in the sum of \$4246.00. This voucher is issued to pay for a truck to be used in the penitentiary in the construction of the new cell block, which is in course of construction now, same being remodeling of a building already on the ground.

This voucher is charged against G-2, Buildings. The argument in favor of the payment is that it will cost more to hire a trucking company to remove the debris from the prison grounds to the place of disposal than the cost of the truck would be to the penitentiary.

The question on which we ask opinion is: ‘Is this voucher a legal charge against G-2, Buildings, or, should it come from the maintenance fund of the prison?’”

In your communication you state that the voucher in question is charged against G-2, Buildings. I assume that the specific appropriation against which the charge is made is the following item found among the re-appropriations in House Bill No. 502 of the 87th General Assembly :

“Ohio Penitentiary—
G-2. Buildings—

Remodeling of chapel building and construction of cells therein ; construction of new auditorium building, containing office facilities ; and necessary improvements incidental thereto, (H. B. No. 168)-----\$250,000.00.”

In appropriation measures the Legislature follows the classifications and code symbols adopted by the Department of Finance as a guide for all state officers and departments in making departmental estimates, reports, purchase orders, requisitions, departmental records and vouchers. These classifications were adopted for the purpose of securing a uniform system of making estimates of amounts needed by the various officers and departments and to provide a uniform system of accounting, and are set out and defined in detail in Bulletin No. 7—Budget Classifications and Rules of Procedure, issued by the Department of Finance on June 1, 1922.

In making detailed appropriations for any office or department, the Legislature classifies the same in accordance with the classifications above referred to. Each detailed appropriation is preceded by an appropriate code symbol. The appropriation to which you refer, to-wit, G-2, Buildings, falls under the general classification or title “G. Additions and Betterments” and the following definition is taken from Bulletin No. 7 :

“G. Additions and Betterments—

This title means permanent investments which will increase the permanent assets of the state. Land and its improvements represent either the ownership in fee or the enjoyment under lease of real estate. A distinction of vital importance arises here, in that in the former case the valuable life of the expenditure is co-terminus with the life of the improvement, while in the latter it is limited to a term of years either more or less than life.

G-1. Purchase of Land—

All expenditures for the legal title to land and for leaseholds and interest in lands as purchase price.

G-2. Buildings—

Include under this head all new buildings, additions, and all contemplated remodeling of buildings which will leave them in better condition than before. Do not include repairs to keep plant up to normal condition. Ask for such improvements under F-1. Include necessary expenditures to restore to normal working efficiency any property purchased in a depreciated condition. Alteration to capital assets which result in an increase of capacity or a reduction of expense, or both.”

It will be noted that appropriations under the title, G. Additions and Betterments, include only permanent investments which will increase the permanent assets of the state. It will be observed that the sub-head, G-2. Buildings, includes any buildings, additions, contemplated remodeling of buildings which will leave them in better condition than before, but does not include repairs to keep the plant up to normal condition. Under ordinary circumstances, tools, materials or machinery which do not

become a part of such buildings, additions or contemplated remodelings should not, in my opinion, be paid for out of appropriations made under the G-2 classification.

However, upon investigation I am advised that upon application of the Department of Public Welfare the Controlling Board, in releasing the funds required to construct the cell block under consideration, granted authority to construct the same by force account, using prison labor. Authority for such action is found in Section 6 of House Bill No. 502 of the 87th General Assembly, which in so far as pertinent, provides:

"Whenever in the judgment of a department, board, commission or institution affected it seems desirable and in the interests of economy to construct or repair any building or make any other improvement herein provided by force account, plans, specifications, bill of material and estimate of cost shall first be presented to the Controlling Board and then filed with the Auditor of State; if the Controlling Board consents to such method and certifies such consent in writing to the Auditor of State and the Director of Finance in duplicate, Sections 2314 to 2330 inclusive, of the General Code shall be deemed not to apply to that part of such work to be done by force account. It shall be the duty of the Auditor of State or the Director of Finance to see that these provisions are complied with."

Under these circumstances, it would seem obvious that the Department of Public Welfare having authority to proceed with the work by force account has, as an incident to such authority, the right and power to purchase such tools and machinery as are necessary to carry the power granted into effect. It follows that if the Department of Public Welfare, in the exercise of a reasonable discretion, determines that a motor truck is necessary for use in the construction of the cell block and that it would be cheaper to purchase such truck than to hire the work done, such discretion will not be disturbed in the absence of a clear abuse thereof or fraud, and the purchase price of such motor truck may be charged to and paid out of the appropriation for the construction of the new cell block above referred to.

In view of the foregoing and answering your question specifically, it is my opinion that where an appropriation is made to the Department of Public Welfare under the classification G-2, Buildings, for the construction of a new cell block at the Ohio Penitentiary, and permission is given by the Controlling Board to erect said cell block by force account, using prison labor, the Department of Public Welfare may purchase a motor truck for use in building such structure and the purchase price of the same may be charged to and paid out of such appropriation.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2468.

HIGHWAY—EXTENSION OVER CROSSING AT GRADE—HOW RIGHT OF WAY IS ACQUIRED—ASSUMPTION OF COST.

SYLLABUS:

1. *Where a new highway is to be extended across the tracks of an existing railroad at grade, the municipality must obtain court authority therefor under Sections*