

of the lands or parts thereof upon which such liens were in effect, and to this end the court may segregate the proceeds of the sale of such property with respect to the several tracts thereof upon which the respective liens operated, so as to preserve the equities of each and all of said liens.

I assume that your question has reference to the sale of delinquent lands for the payment of taxes and assessments, together with penalties and interest thereon included in the certificate upon which the action in foreclosure is predicated, as provided for in Section 5718 of the General Code, above quoted. However, I apprehend that the rule just stated would likewise apply with respect to taxes and assessments accruing subsequently to the delivery of the delinquent tax and assessment certificate upon which the foreclosure action is filed, which subsequent taxes and assessments should likewise be satisfied as far as possible out of the proceeds of the sale of the property involved in such action.

In the consideration of the question here presented, it is noted that Section 11588, General Code, provides as follows:

“When a mortgage is foreclosed, or a specific lien is enforced, a sale of the property shall be ordered; and when the real property to be sold is in one or more tracts, the court may order the officer who makes the sale to subdivide, appraise, and sell them in parcels, or sell any one of the tracts as a whole.”

Under the provisions of this section of the General Code, the court in a case such as that stated in your communication could order the separate sale of the tract of land covered by the lien of the assessments and the interest thereon, and of the remainder of the lands covered only by the lien of the delinquent taxes and the interest and penalty thereon. In such case the court would apply the proceeds of the sales of said several tracts of land to the liens upon said respective tracts, marshaling said liens so as to preserve the equities of each in the funds applicable to their payment.

However, as above noted, I do not deem it necessary for the court, in a case such as that stated in your communication, to divide the lands described in the certificate into two tracts and to order the sale of such tracts separately. The court has ample power to segregate the proceeds of the sale of the tract of land described in the certificate as a whole so as to accomplish the same result that could be accomplished by division and sale of such lands in the manner provided by Section 11588 of the General Code. In any event, I am clearly of the opinion, by way of specific answer to your question, that it is only necessary to file one action to foreclose the liens of such taxes and assessments, together with interest and penalties thereon.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2733.

SCHOOL PROPERTY—BOARD OF EDUCATION HOLDS TITLE IN TRUST FOR USE OF PUBLIC SCHOOLS OF DISTRICT—WHEN BOARD MAY RENT OR LEASE—CONTRACT FOR OTHER USES DISCUSSED.

SYLLABUS:

1. *Boards of education are invested with the title to the property of their respective districts in trust for the use of the public schools of the district, and the appropriations of such property to any other use is unauthorized, except as definite and specific statutory authority exists therefor.*

2. *Except as the power may be implied, as being necessary to carry into effect some expressly granted power, a board of education is not authorized to rent or lease property held by it for the public school purposes of its district.*

3. *A board of education may lawfully permit the use of school property under its control, for playground and athletic purposes, by the pupils of another school district, under proper rules and regulations, so long as such use does not in any way interfere with the use of the property for the school purposes of its own district and the board of education of the district whose pupils are allowed the use of said property may lawfully pay for the said privilege from the public funds of their district.*

COLUMBUS, OHIO, December 29, 1930.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

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

“The Board of Education of Geneva Township owns certain land which the Board of Education of Geneva Village desires to lease for the purposes of an athletic field.

There seems to be no question but what the Board of Education of Geneva Village has the authority to lease land and equipment for use as an athletic field, but I have been unable to find any authority whereby the Township Board could lease said property.

I would appreciate very much your opinion as to whether or not this could be done.”

Boards of education in Ohio are creatures of statute and their powers are limited to those granted by statute. The members of such boards are public officers whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no powers except such as are expressly granted or such as are necessarily implied from the powers that are expressly granted. *State ex rel Clark vs. Cook, Auditor*, 103 O. S., 465; *Schwing vs. McClure*, 120 O. S., 235.

By authority of Section 7620, General Code, boards of education are clearly authorized to acquire property for schoolhouses or for playground purposes either by purchase or lease. There is no express authority, however, for boards of education to lease or rent property for any purpose after having once acquired the same.

In *Weir vs. Day et al.*, 35 O. S., 143, it was held as disclosed by the first branch of the syllabus, as follows:

“Under the act of May 1, 1873, entitled ‘an act for the reorganization and maintenance of common schools’ (70 Ohio L. 195), boards of education are invested with the title to the property of their respective districts in trust for the use of public schools, and the appropriation of such property to any other use is unauthorized.”

The doctrine of the above case is as true today as it was when it was decided, and it may as truly be said under the law as it exists today as under the act of 1873 that boards of education hold the property of their school districts as trustee for the citizens of the district as purely for school purposes. In later years it is probably true that the scope of school purposes has come to be somewhat broadened. More stress is being laid on recreation activities than formerly and the use of property, the title to which is vested in a board of education, for playground and recreational pur-

poses is commonly understood to be a legitimate and proper school purpose, as much so as classroom work conducted in a school building.

Boards of education are authorized by Section 4749, General Code, to sell property not needed for school purposes but nowhere will there be found any proper authority to lease the same. A former Attorney General said with reference to this subject, in an opinion reported in the Annual Report of the Attorney General for 1913 at page 1508:

"Section 4749, General Code, which enumerates the power of the board of education with reference to acquiring, holding, possessing and disposing of real and personal property, does not include any provision for the leasing of such property by the board, and as the statutes nowhere prescribe the manner of executing such a lease, the board cannot be held to possess such power."

It was also held by a former Attorney General that real estate owned by a board of education could not be leased for oil or gas purposes in the absence of a specific statute authorizing the same. See Opinions of the Attorney General, 1918, Volume 2, page 1352.

Provision is made for the leasing of school and ministerial lands, that is, state school and ministerial lands, but that authority does not cover the property^o which is held by local boards of education for school and playground purposes.

It seems to be the universal rule followed by the courts of Ohio and by this office, that school property can not be used by a board of education for other than strictly school and playground purposes, unless specific authority to the contrary is granted by statute and that a board of education has no authority to commercialize property held by it, even if it could be done advantageously from a business standpoint and without interfering with its primary purpose, by leasing the same and thereby collecting rental therefor.

It is provided by Sections 7622 to 7622-5, General Code, that a board of education may permit the use of school property for certain educational and recreational purposes subject to certain regulations prescribed by the statutes in question and under proper rules and regulations made by the board.

Section 7622-6, General Code, provides as follows:

"Boards of education may co-operate with commissioners, boards or other public officials having the custody and management of public parks, libraries, museums and public buildings and grounds of whatever kind in providing for education, social, civic and recreational activities, in buildings and upon grounds in the custody and under the management of such commissioners, boards or other public officials."

Sections 4065-1 to 4065-7, General Code, provide for the cooperation of cities, villages, counties and school districts in the maintenance and operation of recreation centers and playground activities. The title of the act wherein these sections were enacted (109 O. L., 609) is as follows:

"AN ACT Authorizing cities, villages or counties, to acquire, maintain and operate playgrounds, playfields, gymnasiums, public baths, swimming pools, and indoor recreation centers, and authorizing school districts to join in the maintenance and operation of such activities, and authorizing the issue of bonds and the levy of taxes for such purposes."

An examination of this act discloses that while a school district is authorized

to cooperate with a city, village or county in the establishment or maintenance of playgrounds, playfields, gymnasiums, etc., it does not contain any express authority for a school district to cooperate with another school district in establishing and maintaining such recreational activities.

Upon consideration of all the legislation on this subject, one is forced to conclude that a school district, through its board of education, is not authorized to lease a portion of its premises to another school district for any purpose whatever nor is it authorized to cooperate with another school district in the establishment and maintenance of playgrounds or recreation centers.

I am of the opinion, however, that the provisions of Section 7622, et seq., authorizing a board of education to permit the use of school property under its jurisdiction, for educational and recreational purposes, are sufficiently broad to authorize a board of education to permit the use of those premises by the school children of an adjoining school district for athletic purposes providing such a use will at no time interfere with the use of the premises by the district to which they belong for the necessary purposes of that district. Strictly speaking, this would not be a lease of the premises from one board of education to another, but simply the granting of a permit or license, authorizing the other board to use the premises. This permit or license would be revocable at any time by the board of education authorizing the same and should be revoked if at any time the board needed the premises for the school or playground purposes of its own district.

If such an arrangement were made there could be no objection to the one board paying to the other the reasonable value of the privilege extended to it. In the strict sense of the word this would not be paying rental as for a lease but merely paying for the privilege of using the premises.

I am therefore of the opinion, in specific answer to your question, that the Board of Education of Geneva Township School District is without authority to lease the lands owned by it, to the Board of Education of the Geneva Village School District for an athletic field, but that, by authority of Section 7622, et seq., of the General Code, the Geneva Township Board of Education may permit the use of a portion of the premises owned and held by it by the Board of Education of the Geneva Village School District for athletic purposes, so long as that use does not in any respect interfere with the use of those premises by the Geneva Township District for school and playground purposes.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2734.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE W. M. WELCH MANUFACTURING COMPANY OF CHICAGO, ILLINOIS, FOR EQUIPMENT FOR BOTANY AND ZOOLOGY BUILDING AT OHIO STATE UNIVERSITY AT AN EXPENDITURE OF \$10,455.00—SURETY BOND EXECUTED BY THE AMERICAN SURETY COMPANY.

COLUMBUS, OHIO, December 30, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works for the Board of Trustees of the