

is outstanding against such funds, they remain encumbered and available for the purpose of the contract or obligation, irrespective of the termination of the fiscal year. This is emphasized by the provisions of Section 5649-3h, General Code, then in effect, which was as follows:

"Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, or a transfer may be made from one appropriation item to another, provided that such amendment or supplement shall comply with all provisions of law governing the appropriating authority, including compliance with Section 5 of this act (G. C. 5649-3g), and provided further that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation for such purpose. Any appropriation shall cease to have force or effect after the termination of the fiscal year in which it was made; provided, however, that funds unexpended at the said termination of the said fiscal year and which had been appropriated during such year for the payment or performance of contractual obligations unliquidated and outstanding at such termination shall not be required to be re-appropriated, but such unexpended funds shall not be included by any budget-making body or board or any county budget commission in estimating the balance or balances available for the purposes of the next or any succeeding fiscal year."

Similar provision is now found in Section 5625-27 of the General Code, which need not be here quoted.

From the foregoing provisions, it is clear that, where a certificate has once been issued, the mere expiration of the fiscal year does not remove the encumbrance so as to make the funds so certified available for other purposes.

By way of specific answer to your inquiry, I am of the opinion that where proceedings have been instituted for the improvement of a county road, the cost of which is to be borne proportionately by the county, township and property owners, and pursuant to such proceedings the township clerk has certified that moneys are available for the purposes of the contract in connection with such improvement, such encumbrance continues against the funds in question until such time as the county commissioners take definite action by resolution abandoning the project.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2466.

BOARD OF EDUCATION—AUTHORITY TO EMPLOY PHYSICIANS AND NURSES—DISTRICT HEALTH COMMISSIONERS MAY BE EMPLOYED—COMPENSATION.

SYLLABUS:

1. *Under the provisions of Section 7692, General Code, a county board of education is not empowered to employ physicians and nurses for the purpose of making examinations and diagnosis of the school children and school employes within the county district.*

2. *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.*

3. *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.*

COLUMBUS, OHIO, August 20, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication requesting my opinion in answer to the following questions:

“Question No. 1. Under the provisions of Section 7692 of the General Code, may a county board of education employ a physician and nurse for the schools under its supervision?”

Question No. 2. May a person occupying the position of Health Commissioner be employed by the county board of education, or a local board of education, as school physician?

Question No. 3. May a county board, under the provisions of Section 7693, G. C., pay part of the compensation of a nurse employed by the board of health under the provisions of Section 1261-26?”

Sections 1261-26, 7610-1, 7692 and 7693 of the General Code, read in part as follows:

Sec. 1261-26. “In addition to the duties now required of boards of health, it shall be the duty of each district board of health to study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. The district board of health may also provide for the medical and dental supervision of school children, * * *”

Sec. 7610-1. “If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, * * * or to provide for each school an equitable share of school advantages as required by this title, * * * the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. * * *

All salaries and other moneys so paid by the county board of education, or by the probate court, or by the court of common pleas, shall be paid out of the county treasury from the general fund on vouchers signed by the president of the county board of education, or by the judge of the probate court, or by the judge of the court of common pleas, as the case may be, but they shall be a charge against the school district for which the money was paid. The amount so paid shall be retained by the county auditor from the proper funds due to such school district, at the time of making the semi-annual distribution of taxes.”

Sec. 7692. "Each and every board of education in this state may appoint at least one school physician; provided two or more school districts may unite and employ one such physician, whose duties shall be such as are prescribed in this act. * * *

Such boards may also employ trained nurses to aid in such inspection in such ways as may be prescribed by the board. Such board may delegate the duties and powers herein provided for to the board of health or officer performing the functions of a board of health within the school district if such board or officer is willing to assume the same. Boards of education shall co-operate with boards of health in the preventing of epidemics."

Sec. 7693. "The board of education of any school district, may provide and pay compensation to the employes of the board of health in addition to that provided by the city, township or other municipality."

School districts are classified by statute as city school districts, exempted village school districts, village school districts, rural school districts and county school districts (Section 4679, General Code). A county school district is defined by Section 4684, General Code, as consisting of a county, together with any territory attached thereto for school purposes, exclusive of any territory detached therefrom for school purposes, and exclusive of all city and exempted village school districts lying within the boundaries of the said territory.

For each county school district there is provided a board of education denominated a county board of education, the powers and duties of which are set out in Sections 4728, et seq., of the General Code. An examination of these statutes discloses that the powers of the county board consist, in the main, of exercising supervisory control over the territorial boundaries of rural and village districts within the county district, and the selection of a county superintendent of schools and assistant county superintendents, through whom the county board exercises general supervisory control over the academic functions of the district schools within the county district and the teaching force employed in such schools.

A county board of education does not conduct the district schools or any schools except as it may be said to conduct county normal schools, nor does it perform the details incident to the administrative and fiscal management of the district schools. For these purposes local boards of education are provided, which boards are empowered and directed to do all things deemed by the Legislature to be necessary for the proper conduct and management of the district schools. The only circumstances under which a county board of education is empowered to perform the duties specifically enjoined on a rural or village board of education is when such local board fails to perform its proper duty with reference to certain matters enumerated in Section 7610-1, supra. Under these circumstances it becomes the duty of the county board to perform any and all such duties or acts in the same manner as the local board is authorized to perform them.

By the terms of Section 7692, supra, "each and every board of education in this state" is empowered to employ one or more school physicians and trained nurses, either as and for its district alone, or jointly with other district boards of education, for the purpose of making examinations, diagnoses and inspections as provided in Section 7692-1, supra, to the end that the health of school pupils and the community in general may be safeguarded. The statute provides that, instead of employing physicians and nurses, the board may delegate the duties of inspections, examinations and diagnoses to the board of health or the officer performing the functions of the board of health within the school district, if such board or officer is willing to assume the same.

The terms of the statute authorizing boards of education to employ physicians and nurses, as well as those authorizing the delegation of the duty of medical examination and inspection of school pupils and employes, are permissive. So also is the language of Section 1261-26, General Code, with respect to district boards of health providing for the medical and dental supervision of school children. However, the duty enjoined on district boards of health by the terms of Section 1261-26, *supra*, to study and record the prevalence of disease within the district and to provide for the prompt diagnosis and control of communicable diseases is mandatory, and the duty enjoined on boards of education to co-operate with boards of health to prevent epidemics is also mandatory. The language of Section 7692, *supra*, in this respect is as follows:

"Boards of education shall co-operate with boards of health in the preventing of epidemics."

It will be observed that the statute does not say control of epidemics, but the prevention of epidemics. Clearly, the prevention of epidemics requires some system of examination and inspection, and it follows, in my opinion, that a proper construction of Section 7692, *supra*, and related sections of the Code, requires boards of education to employ a physician or physicians, and in proper cases a nurse or nurses, providing the board of health or officer performing the duties of a board of health in the district is not willing to assume the burden of medical examination and diagnosis and the burden of inspection of school children and school employes, whether an epidemic is imminent or not.

It follows that if a rural or village board of education fails to do its duty in this respect, the county board of education is authorized by the terms of Section 7610-1, General Code, to employ a physician and to do all things with respect to the examination and inspection of the schools which the district board should have done. Under these circumstances, however, a physician and nurses so employed would be paid from the funds of the district for which they were employed, or their compensation paid from the general fund of the county, and charged against the local district.

Your inquiry, as I take it, is whether or not a county board of education may lawfully employ a physician and nurse for the schools of the entire county district, and pay them from the "county board of education fund."

The county board of education fund, by the terms of Section 4744-3, General Code, consists of an amount sufficient to pay such portion of the salaries of the county and assistant county superintendents of schools and such an amount as is necessary to conduct the county normal schools and such an amount for contingent expenses of the county board of education as may be certified by the county board to the county auditor. If a county board of education is authorized to employ physicians and nurses or to pay part of the compensation of employes of the board of health by authority of Section 7693, *supra*, such compensation must necessarily be included within the phrase "contingent expenses of the board." If the power exists to employ physicians and nurses or to pay part of the compensation of the employes of the board of health, the term "contingent expenses" is no doubt broad enough to include their compensation. Whether or not county boards of education possess this power must be determined from the intention of the Legislature as expressed in the several enactments creating county boards of education and those granting the power to employ physicians and nurses and to co-operate with boards of health in the examination, diagnosis and inspection of school children and employes and in the prevention of epidemics.

It will be observed that Section 7692, General Code, provides that "each and every board of education in this state may appoint at least one school physician

* * * such board may also employ trained nurses." Section 7693, General Code, provides that the "board of education of any school district may provide and pay compensation to the employes of a board of health in addition to that provided by the city, township or other municipality."

It must be conceded that so far as the intention of the Legislature at the time of the enactment of these statutes in the use of the terms "each and every board of education" and "any school district" is concerned, county boards of education and county school districts were not in contemplation, inasmuch as the statutes were enacted in their present form in 1913 (103 O. L. 897 and 898) and county boards of education and county school districts were not then in existence. County boards of education and county school districts were created in 1914 (104 O. L. 133 and 136). However, that fact is not conclusive, as the Legislature must be presumed to have known of the language contained in Sections 7692 and 7693, supra, at the time of the creation of county school districts, and did not at that time amend said sections. Therefore, in the creation of school districts of the same class as those included within the terms of Sections 7692 and 7693, supra, it must be presumed that the Legislature intended they should be included within the terms of those statutes.

As had been pointed out in the earlier part of this opinion, county school districts and county boards of education are not of the same class as local districts and boards. The functions of the two classes of districts are not similar. The Legislature having provided for medical examination and inspection of the schools, by granting to local boards the power to provide for such examination and inspection, the statutes should not in my opinion be construed so as to include county boards of education within the term "each and every board of education in this state," as the same is used in Section 7692, General Code, and county districts should not be included within the term "board of education of any school district" as the same is used in Section 7693, General Code.

By the terms of Section 1261-19, General Code, district boards of health are authorized to employ a health commissioner. Said section reads in part as follows:

"* * * The district board of health shall appoint a district health commissioner upon such terms, and for such period of time, not exceeding two years, as may be prescribed by the district board. Said appointee shall be a licensed physician and shall be secretary of the board and shall devote such time to the duties of his office as may be fixed by contract with the district board of health. * * * The district health commissioner shall be the executive officer of the district board of health and shall carry out all orders of the district board of health and of the state department of health. He shall be charged with the enforcement of all sanitary laws and regulations in the district, and shall have within the general health district all the powers now conferred by law upon health officers of municipalities. It shall be the duty of the district health commissioner to keep the public informed in regard to all matters affecting the health of the district."

It is apparent that the duties devolving on a district health commissioner do not in any wise conflict with the duties to be performed by a school physician in the examination, diagnosis and inspection of school children and school employes, and if the contract between the health commissioner and the district board of health is such as to give to the health commissioner sufficient time to perform the duties of school physician, it is my opinion that he may lawfully fill both positions.

I am, therefore, of the opinion in specific answer to your questions:

First, under the provisions of Section 7692, General Code, a county board of education is not empowered to employ physicians and nurses for the purpose of mak-

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?’”