> Incidental or implied corporate powers do not belong to them, as is held with respect of the municipal corporation proper, constituted for the purposes of local government. Unless the statute confers the right to exercise any given power courts usually deny the power. One who deals with a school board must take notice of, and is bound by, the limitations on its powers. All powers must be exercised in substantial conformity with the statutes applicable."

Section 4756, supra, grants to boards of education the power to dispose of real estate held by them in their corporate capacity and expressly provides how such sales shall be made. Except as such power is reposed in a board of education by virtue of the said statute, a board of education possesses no power whatever to sell or dispose of the property held by it in its corporate capacity, and it clearly follows that a board of education in exercising this power, is limited by the terms of the statute. In the course of the court's opinion in the case of *Schwing* vs. *McClure, supra,* the court said with reference to the power of public officers to dispose of public property under their control:

> "Public officers intrusted with public funds or public property cannot give them away, nor can they pass title to public property except when acting within their strict powers. Property devoted to public use can only be disposed of by express authority, and a school corporation must pursue the statutory method of disposing of its property. *Caldwell* vs. *Bauer,* 179 Ind., 146, 99 N. E., 117."

Inasmuch as the board of education in question has not complied with the terms of Section 4756, General Code, with respect to a sale at public auction and publication or posting of notices thereof, it follows, in my opinion, that this board is without power to sell the property in question at private sale and convey title thereto. The fact that the Federal Government is involved in the matter makes no difference. The attempted sale in the manner stated is nothing more or less than a private sale, which the board of education is not empowered to make until after an attempt is made in compliance with the statute, to sell the property at public auction.

I am therefore of the opinion that the bid submitted by the Federal Government, for this property, cannot lawfully be accepted at this time, nor until after due advertisement and the receipt of bids as provided by the statute.

In my opinion, the terms of Section 4756, General Code, with respect to the manner of making sales of property by boards of education are mandatory. *Board of Education* vs. *Best,* 52 O. S. 138.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2475.

CONTRACT—IN ABSENCE OF CHARTER PROVISION ORDINANCE OF CITY COUNCIL AUTHORIZING CONTRACT FOR FIRE HYDRANT RENTAL WITH PRIVATE WATER COMPANY NEED NOT BE RATIFIED BY ELECTORS—LIABILITY OF CITY DISCUSSED.

SYLLABUS:

1. *Where the council of a city enacts an ordinance authorizing and directing*

the director of public service of said city to enter into a contract with a private water company for the furnishing of water and service to the city from and at various fire hydrants located on the mains of said company, for the use of the fire department of said city and for other public municipal purposes, it is not necessary to the validity of the contract entered into in pursuance of such ordinance, that the same be ratified by a vote of the electors of the city, unless such ratification is made necessary by reason of charter provisions.

2. *Where such an ordinance is enacted and a contract entered into in pursuance thereof, and water is furnished by the waterworks company to the said city, in accordance with the terms of the contract and said water is used and consumed by said city for fire department and other municipal purposes, the city is liable to the waterworks company at rates fixed in the ordinance, for water so furnished and delivered to the city.*

COLUMBUS, OHIO, April 9, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion concerning the liability of the City of Marion for so-called "fire hydrant rentals", as provided for by a certain contract entered into in 1926, between the City of Marion, a non-charter city, and the Marion Water Company, a private corporation.

While I do not have before me the text of the contract in question, I am advised that the contract was entered into in pursuance of, and by authority of a certain ordinance of the City of Marion duly passed by the council of the said city and approved by its mayor April 3, 1926. The said ordinance is entitled:

"ORDINANCE NO. 2628.

Directing the Director of Service of the City of Marion, Ohio, to enter into a contract with the Marion Water Company (an Ohio Corporation), for the furnishing of water and service from its fire hydrants in the City of Marion, Ohio. For fire protection and other purposes hereinafter specified."

Pertinent parts of this ordinance are as follows:

"BE IT ORDAINED by the Council of the City of Marion and State of Ohio:

Section 1. That the Director of Service of said City of Marion, Ohio, be and he hereby is authorized and empowered and directed to enter into a contract with The Marion Water Company, its successors and assigns for the furnishing of water and service from and at the various fire hydrants located on the mains of said Company in the streets, alleys, lanes and other public places in the City of Marion, Ohio, for the use of the Fire Department of the said City of Marion, Ohio, and its inhabitants, for the period of ten (10) years from May 1, 1926, to May 1, 1936, on the following terms and conditions, to-wit:

Section 2. Whenever the words "City" or "Grantor" are used in

this ordinance it is intended to mean and does refer to the City of Marion. Whenever the words, "The Marion Water Company", "Company" or "Grantor" are used, said words shall intend to mean The Marion Water Company (an Ohio Corporation, organized November 23, 1923), its successors and assigns, it being the purpose and object of the City Council of the City of Marion, Ohio, by this ordinance to invest in said The Marion Water Company (grantee), its successors and assigns for the purposes herein provided, all the powers which the City of Marion, Ohio, by its legally authorized City Council and officials can lawfully grant under the laws of the State of Ohio.

* * * * *

Section 9. In consideration of the performance by The Marion Water Company, its successors and assigns, of the conditions hereinbefore specified and the furnishing of water service at the various hydrants now located (being five hundred fifty-six (556) hydrants at the present time), and to be located on its mains, the City of Marion agrees to pay therefor, the following amounts:

The sum of Thirty-eight ($38.00) Dollars per hydrant per year from and after the earliest period allowed by law, and the additional sum of Fifty ($.50) Cents per hydrant per year when twenty-five (25) hydrants shall have been changed from four (4) to six (6) inch; and the further additional sum of Fifty ($.50) Cents per hydrant per year when Twenty-five (25) more hydrants shall have been changed from Four (4) to six (6) inch, as provided in Section 8 of this ordinance; said sums to be due and payable April 1st, and October 1st, and to be payable on or before the 15th day of the said months, April and October.

Providing said hydrants have been removed and changed as aforesaid, beginning April 1, 1928, and continuing for the full period of eight (8) years, terminating on April 1, 1936, the City of Marion, Ohio, shall pay The Marion Water Company for said service the sum of Forty-one $41.00) Dollars per hydrant per year, payable in semi-annual installments, due April 1 and October 1, of each year, and payable on or before April 15th and October 15th for the service furnished during the six (6) months preceding April 1st and October 1st, respectively. The above shall include compensation for water used at City Fire Engine Houses, conditional that water shall not be wasted.

* * * * *"

It is apparent that the foregoing ordinance goes no further than to authorize a contract between the City of Marion and the Marion Water Company for the furnishing of water to the City of Marion for purely municipal purposes, to be delivered from "various fire hydrants located on the mains of said company in the streets, alleys, lanes and other public places in the City of Marion, Ohio, for the use of the fire department of the said City of Marion, Ohio, and its inhabitants."

I am informed that the contract in question provides only for the sale and delivery by the Marion Water Company of water to the City of Marion, to be delivered to it through its various fire hydrants, as described in the ordinance. The contract does not purport to be a contract or franchise for supplying the inhabitants of the City of Marion with water for domestic purposes.

The validity of this contract has been questioned for the reason that it

was not ratified by a vote of the electors of the City of Marion. Section 3981, General Code, provides as follows:

> "A municipal corporation may contract with any individual or individuals or an incorporated company for supplying water for fire purposes, or for cisterns, reservoirs, streets, squares and other public places within the corporate limits, or for the purpose of supplying the citizens of such municipal corporation with water for such time, and upon such terms as may be agreed upon. But such contract shall not be executed or binding upon the municipal corporation until it has been ratified by a vote of the electors thereof, at a special or general election, and the municipal corporation shall have the same power to protect such water supply and prevent the pollution thereof as though the water works were owned by such municipal corporation."

Without assuming to pass on questions that might arise under the above statute, with respect to the ratification by popular vote of contracts or franchises involving the supplying of water to the inhabitants of the municipality for domestic purposes, I am of the opinion that a contract entered into between a municipality and a private individual or a private water company for the supplying of water to the municipality for municipal purposes, is controlled by other and later legislation.

Said Section 3981, General Code, was enacted in its present form, in 1885 (82 O. L. 11), and was codified as Section 2434 of the Revised Statutes of Ohio. As so enacted, it applied to "any muncipal corporation except cities of the first grade." It was codified by the Codifying Commission of 1910, to read as it now does. By its present terms it applies to all municipal corporations.

In 1926, when the contract here under consideration was entered into, there was in force Section 3809, General Code. This section as it existed at that time, was enacted in 1912 (103 O. L. 526) and provided as follows:

> "The council of a city may authorize, and the council of a village may make, a contract with any person, firm or company for lighting the streets, alleys, lands, lanes, squares and public places in the municipal corporation, or for furnishing water to such corporation, or for the collection and disposal of garbage in such corporation, or for the leasing of the electric light plant and equipment, or the waterworks plant, or both, of any person, firm, company or municipality or for the purchase of electric current for furnishing light, heat or power to such municipality or the inhabitants thereof for a period not exceeding ten years, and the requirement of a certificate that the necessary money is in the treasury, shall not apply to such contract, and such requirement shall not apply to street improvement contracts extending for one year or more, nor to contracts made by the board of health, nor to contracts made by a village for the employment of legal counsel, nor to contracts by a municipality for the leasing or aquisition of the electric light plant and equipment, or the waterworks plant, or both, of any person, firm or corporation therein situated."

The above statute clearly authorizes municipal corporations to contract for "furnishing water to such corporation" and contains no provision requir-

ing contracts of that nature to be ratified by a vote of the electors in the corporation.

In addition thereto, there was then in force, and still exists, Section 9324, General Code, which, in my opinion, is ample authority for a municipal corporation to enter into a contract such as the one here under consideration. This Section was enacted in 1906 (98 O. L. 150) many years after the enactment of Section 3981, supra. Said section 9324, General Code, reads as follows:

> "The municipal authority of any city or village or the trustees of any township in which a gas or water company is organized, may contract with such company for lighting or supplying with water the streets, lands, lanes, squares and public places in such city, village or township."

A former Attorney General had under consideration a somewhat similar question relating to a contract between a municipal corporation and a water company, whereby the water company sold and delivered to the village, water. The village was to own and operate a purification plant and distribution system for the distribution of the water to the inhabitants of the village. The Attorney General held:

> "A contract between a municipal corporation and a private corporation, whereby the latter is to furnish a supply of water to the former, which is to filter and distribute the same, is not governed by section 3981, G. C., and need not be submitted to a vote of the people.
>
> Such a contract, however, may not be made for a period exceeding ten years, that being the limitation of section 3809, G. C."

See Opinions of the Attorney General for 1915, page 987.

In 1913, the then Attorney General passed upon a very similar question and held:

> Where a village council passes an ordinance and enters into a contract with the water works company and the contract is accepted by the water works company, the ordinance is valid without submitting it to a vote of the electors of the village, and the village authorities are authorized to pay the water works company at rates fixed in the ordinance for water furnished by it to the village for fire protection and other municipal purposes."

See Annual Report of the Attorney General for 1913, page 1673.

The contract here under consideration, as I view it, is simply a contract whereby the Marion Water Company agree to furnish water to the City of Marion for purely public purposes. The rates fixed by the ordinance for the payment for water furnished to the city contemplate that water will be furnished through and by means of fire hydrants, and water used at city fire engine houses. The clear import of the ordinance and contract entered into in pursuance thereof is that water consumed for domestic purposes is

not included therein. The authority for entering into such a contract is clearly granted to the municipality by Section 3809, General Code, which was in force at the time the contract was entered into, as well as by Section 9324, General Code. Neither of these statutes require that such a contract be ratified by a vote of the electors of the corporation.

I am therefore of the opinion that the contract in question is valid, and that the city of Marion is liable to the Marion Water Company for water furnished to the city from water hydrants, at the rates fixed in said contract.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2476.

BOARD OF EDUCATION—MAY CONTRACT FOR TRANSPORTATION OF PUPILS FOR ENTIRE SCHOOL YEAR OR LONGER PERIOD WHEN—UNAUTHORIZED TO ENTER INTO CONTRACT WHICH DOES NOT GO INTO EFFECT UNTIL AFTER EXPIRATION OF TERM OF OFFICE TO MEMBERS OF BOARD.

SYLLABUS:

1. *Boards of education may, in their discretion, contract for the transportation of pupils for an entire school year or for a longer period if they deem it advisable, provided the general provisions of law with reference to the making of contracts by boards of education are complied with, and provided further, that such contracts are made in good faith, in the interests of the public, and for a time reasonable, under the circumstances.*

2. *A board of education is without power to enter into contracts for the transportation of pupils, which contracts do not go into full effect until after the expiration of the term of office of a portion of the members of the board.*

COLUMBUS, OHIO, April 9, 1934.

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

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

> "A board of education entered into contracts on August 1st, 1931, for the transportation of the children in the district, said contracts to run three years, to June 30, 1934.
>
> At the November election in 1933, new board members were elected to take their offices in January, 1934.
>
> The old board, on December 2, 1933, cancelled the original transportation contracts and made new contracts, extending to June 30, 1936.
>
> QUESTION: Were the contracts made on December 2, 1933, legal contracts?"

A former Attorney General, in an opinion which will be found in the published Opinions of the Attorney General for 1927 at page 1472, held: