

The first of these cases was against the County Auditor of Union County alleging that the Methodist Children's Home Association of Worthington, Ohio, had among its inmates, children of school age who before becoming inmates of the home, had a legal residence in Union County. One of these children attended school in the Worthington School District during the school years beginning September 1, 1917, and September 1, 1918, and four of these children attended the same school during the school year beginning September 1, 1919. It was claimed that Union County was responsible to the Worthington Board of Education for the tuition of these pupils and the suit was brought to require the said auditor to issue his warrant on the Treasurer of Union County for the amount of tuition due to Worthington School District. The suit was instituted in the Spring of 1922. No claim was made in the petition for any interest on the tuition charges which would have been due at the end of the school years beginning September 1, 1917, September 1, 1918, and September 1, 1919. The prayer of the petition in this case asked that a writ of mandamus be issued ordering the auditor to draw his warrant for the amount of said tuition and for other relief, and the costs of suit. No interest was asked for and none allowed.

The second suit referred to above was a similar action against the Auditor of Clermont County seeking to have the Auditor draw his warrant in favor of the Board of Education of the Worthington Village School District for tuition charges for certain children who were inmates of the Methodist Children's Home Association of Worthington, Ohio, formerly residents of Clermont County, and who had attended school in Worthington during the school years commencing September 1, 1921, 1922, 1923, 1924 and 1925. The suit was instituted in June, 1927, the prayer of the petition being the same as that in the former case. Here again no interest was asked for and none was allowed, although under the pleadings the court would have had jurisdiction to allow interest on the past due claims if it had seen fit to do so, and had determined that such interest was lawful.

In the absence of any controlling authority on the subject, and in view of the fact that administrative officers in Ohio have in the past almost universally not claimed or paid interest on claims for tuition due from one school district to another, you are advised that this practice should be continued, and your Bureau should act accordingly.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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3049.

VILLAGE COUNCIL—AUTHORIZED TO PURCHASE FIRE DEPARTMENT APPARATUS—LEASING AND RENTING APPARATUS LIMITED TO TEMPORARY USE.

**SYLLABUS:**

*A village council is without authority to rent or lease apparatus for its fire department for other than temporary use. The authority granted to village authorities to acquire implements and apparatus for the use of its fire department extends only to purchasing the same.*

COLUMBUS, OHIO, December 21, 1928.

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

GENTLEMEN:—I am in receipt of your request for my opinion, which reads as follows:

“May a village council legally enter into an agreement with a private corporation, without advertising for bids, for the rental of fire apparatus; said rental to be paid by the village at the rate of \$125.00 per month, the aggregate amount to be \$1,500.00 per year?”

Municipalities are authorized to maintain fire departments and purchase the necessary apparatus and equipment therefor, by Section 3617 of the General Code, which reads as follows:

“To organize and maintain police and fire departments, erect the necessary buildings and purchase and hold all implements and apparatus required therefor.”

As applying particularly to villages, Section 4391, General Code, is pertinent and reads as follows:

“The council may purchase for its own use or for the use of such companies, necessary fire engines, either steam or hand, hose carriages and all such other apparatus and instruments as is deemed necessary for the extinguishment of fires, and establish lines of fire alarm telegraph within the limits of the corporation.”

It is a familiar principle of law that the authority for the expenditure of public moneys must be strictly construed; and a power granted to a municipality or public officer is limited to the express terms of the grant and such power as may be said to be impliedly within such express terms as being necessary to consummate the purpose or purposes intended.

The purchase of fire apparatus implies, in my opinion, the acquiring of the ownership of such apparatus, and does not include the leasing or renting of it or merely acquiring the use of it. In no place in the statutes will be found any specific authority for village authorities to rent or lease fire apparatus, and I am of the opinion that the authority to purchase it does not include the power to lease or rent such apparatus.

In other statutes where power is given to acquire property for certain purposes, as for instance the authority granted to school boards to acquire school buildings, it is expressly provided that such buildings may be acquired by purchasing them or leasing them. If it had been the intention of the Legislature to permit village authorities to rent apparatus for the fire department it would have been a simple matter to grant the authority in express terms, whereas, the authority that is granted is limited to the power to purchase the apparatus.

The word “purchase” is defined by Black in his Law Dictionary thus:

“The word ‘purchase’ is used in law in contradistinction to ‘descent’ and means any other mode of acquiring real property than by the common course of inheritance, but it is also much used in its more restricted vernacular sense (that of buying for a sum of money) especially in modern law literature; and that is universally its application to the case of chattels.”

A similar definition is given by Bouvier. Webster defines the word "purchase" in its application to law, as follows:

"Technically to acquire real estate by any other means than by descent or distribution."

Another definition is given thus:

"Acquisition of title to or property in anything for a price, buying for money or its equivalent, to obtain, to get, to acquire. Synonymous with buy."

In *March vs. Lott*, 97 Pac. 163, it is stated:

"The term 'purchase' implies acquisition."

I have found no authority which would justify the conclusion that the word "purchase" ever includes the words "lease" or "rent". From a study of the definitions given for the word "purchase" by lexicographers and by courts, no other conclusion is possible than that, where authority is given to purchase, it implies the acquisition of the property in, or title to, the thing purchased. This obviously is not done when it is leased or rented, and I am therefore of the opinion that Section 4391, General Code, does not authorize the council of a village to rent or lease fire apparatus, nor is there any authority to be found anywhere in the statutes giving to villages this right.

I do not wish to be understood as saying that in certain emergencies where fire apparatus is furnished by a neighboring municipality for the extinguishment of fires and protection of property in a village, the village could not lawfully pay for the use of the same, but this right would not extend to the renting of apparatus by the month or year.

I am therefore of the opinion that a village council may not lawfully enter into an agreement for the rental of fire apparatus at the rate of \$125.00 per month, the aggregate amount to be \$1,500.00 per year.

No consideration has been given in this opinion to the so-called home rule power of municipalities arising out of the adoption of Article XVIII of the Constitution of Ohio.

By force of Section 6, Article XIII of the Constitution of Ohio, the General Assembly is directed to provide for the organization of cities and incorporated villages by general laws, and to restrict their power of taxation, assessment, borrowing money and loaning their credit so as to prevent the abuse of such power.

Section 4391, General Code, and those other sections of the Code setting forth the manner by which purchases of property may be made, such for instance as Section 4328, General Code, providing for competitive bidding when purchases are made by a municipality, involving the expenditure of more than \$500.00, are laws restricting the power of contracting debts and were no doubt enacted for the purpose of preventing the abuse of such power.

In the case of *Berry et al. vs. City of Columbus*, 104 O. S. 607, cited with approval and followed by the Supreme Court in *State ex rel. vs. Williams*, 111 O. S. 400, it is said that Section 6 of Article XIII of the Constitution was not repealed by the adoption of Section 13, Article XVIII, or of any other home rule provision in said article.

In no case has the Supreme Court gone so far as to say that the home rule powers given to municipalities by Article XVIII of the Constitution of Ohio empower such municipalities as have not adopted a charter by authority of Section 7 of the said Article XVIII to exercise any of their municipal powers in any other manner than that provided by general laws, except the power to regulate traffic on their streets, which by force of the case of *Perrysburg vs. Ridgeway*, 108 O. S. 245, is said to be one of the powers of local self-government that may be exercised, irrespective of general laws, by a municipality, whether such municipality has or has not adopted a charter.

Until such time as the courts extend to non-charter municipalities home rule powers in other respects than in the regulation of traffic on their streets, administrative officers should look to the general laws for municipal power and its manner of being exercised.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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3050.

APPROVAL, NOTES OF MANTUA VILLAGE SCHOOL DISTRICT, PORT-  
AGE COUNTY, OHIO—\$90,000.00.

COLUMBUS, OHIO, December 21, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3051.

APPROVAL, BONDS OF THE CITY OF HAMILTON, BUTLER COUNTY—  
\$18,000.00 (SPECIAL ASSESSMENT)

COLUMBUS, OHIO, December 21, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*