3763.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE PURDY CONSTRUCTION COMPANY OF MANSFIELD, OHIO, FOR WORK IN THE OHIO CANAL IN AKRON, OHIO.

COLUMBUS, OHIO, January 7, 1935.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a contract between the state of Ohio, acting by and through you as Superintendent of Public Works and as Director of said Department, and the Purdy Construction Company of Mansfield, Ohio, as contractor, by which said contractor in and for the consideration therein provided for amounting to the sum of $15,556.20, contracts and agrees to furnish all necessary appliances, equipment, tools, machinery, material and transportation, and perform all labor necessary for the construction of concrete retaining walls in the Ohio Canal between Lots 9 and 12 in the city of Akron, Ohio, according to plans and specifications for said project, which plans and specifications are now on file in the office of the Auditor of State. The performance of this contract by the contractor above named is secured by a properly executed bond of the Aetna Casualty and Surety Company of Hartford, Connecticut, in the penal sum of $20,000.00.

As a part of the files relating to the execution of this contract, you have submitted to me contract encumbrance record No. 41 which contains the certificate of the Director of Finance showing that there is a sufficient unencumbered balance in the appropriation account to the credit of the Department of Public Works to pay the contract price for this improvement in the amount above stated. It also appears that the Controlling Board has approved the expenditure of the amount of money above indicated for this purpose, and has made and entered a release of this money from the appropriation account.

It further appears from proper certificates filed with you that the Aetna Casualty and Surety Company has complied in all respects with the laws of Ohio and is authorized to transact business in this State; and that said contractor as an employer has complied with the requirements of the Workmen's Compensation Law. Upon examination of said contract and bond, and of the other required files submitted, I find the same to be in legal form and said contract is herewith approved, as is evidenced by my approval endorsed on said contract, which, together with said bond and other files relating to the contract, are herewith enclosed.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3764.

BOARD OF EDUCATION—MAY PROCURE BURGLARY AND ROBBERY INSURANCE ON CAFETERIA FUNDS AND SCHOOL EQUIPMENT.

COLUMBUS, OHIO, January 8, 1935.

SYLLABUS:

1. *A board of education may lawfully pay from public funds under its control, for insurance against loss of furniture, fixtures and other equipment in its school buildings which may be occasioned by burglary or robbery.*

2. *A board of education may lawfully protect itself by effecting burglary or robbery insurance on funds in the hands of the director of a cafeteria which may have been established by such board.*

COLUMBUS, OHIO, January 8, 1935.

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:

> "QUESTION 1: May a board of education take out burglary insurance against loss of furniture, fixtures and other equipment in its school buildings, and pay for such insurance out of the public school funds?
>
> QUESTION 2: May a board of education take out burglary insurance on funds in the hands of the director of a cafeteria established by such school, and pay for such insurance out of the public school funds?"

Boards of education are purely the creatures or creations of statute. As such, they constitute agencies or instrumentalities by which the legislature administers the department of the civil administration of the state which relates to the public schools.

It is an old and accepted doctrine repeatedly stated by the courts, that as such administrative boards, boards of education have such powers only as are clearly and expressly granted by statute. *State ex rel. Clark* vs. *Cook,* 103 O. S., 465. Strictly speaking, boards of education have no implied or inherent powers, although some of the powers they possess are oftentimes referred to as such. They must necessarily have authority, call it by whatever name you will, to do the things which must necessarily be done in order to accomplish that which they are expressly authorized and directed to do. That is to say, each specific detail of the carrying out of an express purpose need not be expressly stated before the board may exercise its authority with respect to such detail, but an express authority to do an act carries with it the authority to do the necessary incidental acts in order to accomplish the purpose for which the express authority was given, as fully as though each such incidental detail were expressly authorized in separate and distinct terms. This is sometimes referred to as implied or inherent authority. In reality, it is that which is included in an express authority.

At no place will be found express statutory authority for a board of education to expend public funds for providing insurance against the perils of burglary or robbery either of furniture, fixtures or other equipment of school buildings, or of funds in the hands of the director of a school cafeteria. If a board of education possesses that power, it necessarily must be derived from the express power granted to acquire and hold such property and to maintain school cafeterias.

By force of Section 4749, General Code, a board of education is constituted a body politic and corporate and as such, is capable of contracting and being contracted with and of "acquiring, holding, possessing and disposing of real and personal property." With respect to the furnishings of school buildings and the providing of necessary apparatus for the schools, boards of education are given broad powers by the terms of Section 7620, General Code, where, with respect to the physical property necessary for the proper functioning of the schools, they

are expressly authorized to "make all provisions for the convenience and prosperity of the schools."

Section 4762-1, General Code, authorizes the board of education of any district to provide facilities in the schools under its control for the operation of school lunch rooms, and expressly provides that the accounts of earnings and expenses of such school lunch rooms shall be kept in a separate fund.

It has been held that this lunch room fund shall be considered as a part of the general school funds to be deposited in the usual school depositaries and paid out upon warrants properly signed by the president and clerk of the board of education, as provided by Section 4768, General Code. See Opinions of the Attorney General for 1926, page 49. There are, no doubt, times, however, when funds accruing from the operation of school lunch rooms are in the possession of the manager or director of the lunch room and there is no provision of law requiring such an employe to give a bond, so that if these funds should be lost by reason of a burglary or robbery or from any other cause without the fault of such director, the loss would fall on the school district.

The express authority extended to boards of education to acquire, possess and hold property and to operate lunch rooms, clearly, in my opinion, includes the power to protect the property and the receipts of such lunch rooms, so as to secure the school district in case of loss. Inasmuch as the law makes no provision as to how this protection shall be afforded, it is a matter within the discretion of the board.

In previous opinions, and prior to the enactment of Section 2638-1, General Code, expressly authorizing such insurance, this office has taken the position that boards of county commissioners, the powers of which are limited by statute as are those of boards of education, could not legally provide for insurance against loss of funds and securities in the custody of a county treasurer or other county officer by reason of burglary or robbery. See Opinions of the Attorney General for 1927, pages 874, 916 and 2160. The conclusion of the Attorney General as set forth in these opinions was based on the fact that the legislature had provided for protecting the county against losses of that nature by requiring the county officers to give a bond which fully protected the county, and that inasmuch as the legislature had so provided, it was not within the powers of the commissioners to provide different or other protection. One court at least disagreed with the position taken by the Attorney General with reference to this matter. The Court of Appeals of Clark County, in the unreported case of *Funderburg et al.* vs. *Webb,* decided in 1924, held that the county commissioners might lawfully procure burglary insurance covering funds and securities in the county treasury, regardless of the fact that the county was fully protected by the bond of the treasurer against such possible contingencies. The Funderburg case is reviewed in the Opinions of the Attorney General for 1927, at page 2160.

It is said by the Supreme Court of Ohio in the case of *Crane Tp., ex rel. Stalter, Pros. Atty. et al.* vs. *Secoy et al.,* 103 O. S., 258, that:

> "It is pretty well settled under the American system of government that a public office is a public trust, and that public property and public money in the hands of or under the control of such officer or officers constitute a trust fund, for which the official as trustee should be held responsible to the same degree as the trustee of a private trust fund. Surely the public rights ought to be as jealously safeguarded as the rights of any individual made the beneficiary of a trust by the private party creating such trust."

While it can not be said that boards of education in their operation of school lunch rooms or in the management and control of school property, act in a proprietary capacity, it nevertheless is a fact that with reference to such matters a close analogy exists between transactions involving such property and the conduct of a private business man with reference to similar transactions. It is pertinent to inquire what the attitude of business men generally, is toward protecting themselves against possible losses occasioned by burglary or robbery by the carrying of insurance against such perils. It is a well known fact that such insurance is oftentimes procured by individuals and by private corporations and the making of contracts therefor is generally considered to be the act of a prudent business man. In fact, burglary insurance has come to be almost as common as fire insurance.

Reference is made to the so-called implied power of public officers to effect liability and fire insurance in cases where no express statutory authority exists therefor. In the case of *Travelers Insurance Co.* vs. *Village of Wadsworth,* 109 O. S., 440, it was held that municipal officers operating municipal waterworks or light and power plants might lawfully contract for an insurance policy of indemnity against liability which might accrue against a municipality from the operation of such properties although no express statutory authority existed for the procuring of such insurance. In the course of the opinion in this case reference is made to similar cases involving fire insurance. It is there said:

> "It has been expressly held that the power to maintain a public building includes the power to contract for fire insurance. *French* vs. *City of Millville,* 66 N. J. Law, 392, 49 Atl., 465, referred to in *French* vs. *City of Millville,* 67 N. J. Law, 349, 51 Atl. 1109. In this case a judgment was rendered against the city on notes given for fire insurance premiums. The court said:
>
> 'The city charter * * * empowers the city to erect and maintain a city hall, schoolhouses, and such other public buildings as may be necessary in the city. As incidental to the power thus granted, the city acquired the right to contract for indemnity against loss by the burning of such building.' "

In the opinion found in Opinions of the Attorney General for 1927, page 2160, referred to above, it is said with reference to the power of county commissioners:

> "Cognate sections of the General Code direct the county commissioners to furnish at the expense of the county, necessary books, stationery and similar supplies as may be needed for the county offices. This express authority to provide office equipment and supplies necessarily includes within it the authority to protect and preserve this physical property by insurance or otherwise, whether that insurance be against losses by fire, theft, robbery or burglary."

In the light of the above discussion, I am of the opinion in specific answer to your questions:

1. A board of education may lawfully pay from public funds under its control, for insurance against loss of furniture, fixtures and other equipment in its school buildings which may be occasioned by burglary or robbery.

2. A board of education may lawfully protect itself by effecting burglary or robbery insurance on funds in the hands of the director of a cafeteria which may have been established by such board.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3765.

APPROVAL, BONDS OF BEAVER RURAL SCHOOL DISTRICT, PIKE COUNTY, OHIO, $20,000.00.

COLUMBUS, OHIO, January 8, 1935.

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

3766.

APPROVAL, BONDS OF CITY OF CANTON, STARK COUNTY, OHIO, $15,000.00.

COLUMBUS, OHIO, January 8, 1935.

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

3767.

APPROVAL, BONDS OF JEFFERSON RURAL SCHOOL DISTRICT, ADAMS COUNTY, OHIO, $1,454.98.

COLUMBUS, OHIO, January 8, 1935.

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

3768.

APPROVAL, BONDS OF HAMBDEN RURAL SCHOOL DISTRICT, GEAUGA COUNTY, OHIO, $2,902.02.

COLUMBUS, OHIO, January 8, 1935.

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