

4539.

CHILDREN'S HOME—COUNTY COMMISSIONERS MAY  
ERECT AND MAINTAIN SEPARATE BUILDING FOR IN-  
MATES OF CHILDREN'S HOME—PREMISES MAY BE  
LEASED IN PART TO BOARD OF EDUCATION WHEN  
ERECTION OF SCHOOL BUILDING CONTEMPLATED.

*SYLLABUS:*

1. *A board of county commissioners may, if it sees fit to do so, erect and maintain a separate building for the purpose of providing suitable rooms for school purposes for the inmates of a county children's home.*

2. *A board of education in a district in which is maintained a county children's home, may lawfully erect, furnish and maintain a school building on the premises of the home or on premises adjacent to the home, for the purpose of maintaining therein a school for the education of the inmates of the home and other school children who lawfully may be assigned to such school.*

3. *A board of county commissioners may lawfully lease a portion of the premises owned and maintained by the county for a children's home, to the board of education of a school district in which the home is maintained for the purpose of erecting thereon the school building in which is to be maintained a school for the education of the inmates of the home and other children who lawfully may be assigned to such school, and the same may be done without competitive bidding and upon such terms as may be agreed upon between the board of county commissioners and the said board of education.*

COLUMBUS, OHIO, August 14, 1935.

HON. MARCUS MCCALLISTER, *Prosecuting Attorney, Xenia, Ohio.*

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

“We have in Green County a children's home, known as the Greene County Children's Home. The Trustees of the same have been appointed as provided by Section 3081 of the General Code. A school has been maintained at this institution for the education of the inmates, however, the number of inmates far exceeds the capacity of the school rooms. There are no other school buildings available within the school district wherein this Home is located. The school district having jurisdiction is known as the Xenia Township Rural School District. My questions are as follows:

1. Can the Board of Education erect upon the property adjacent to the County Home, belonging to the County, a suitable

school building to provide for the education of the inmates of such Home?

2. If your answer to my first question is in the negative, then can the County Commissioners erect such a school building?"

By the terms of Section 3088 General Code, it is provided that children of school age, who are inmates of a county, semi-public or district children's home, shall be given an elementary education after the manner prescribed in Section 7676, General Code. Said Section 7676, General Code, reads as follows:

"The inmates of a county, semi-public or district children's home shall have the advantage of the privileges of the public schools. So far as possible such children shall attend such school or schools in the district within which such home is located. Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the city, township, village or special board of education, having jurisdiction over the school district within which such home is located. Such board of education shall employ with the approval of the superintendent of the home necessary teachers, and provide books and educational equipment and supplies, and conduct such school in the same manner as a public school within the district. The trustees of the home shall furnish necessary furniture, fuel and light."

In an opinion of a former Attorney General, it was stated after noting the provisions of Section 7676, General Code:

"This section clearly provides that the inmates of a county children's home shall have the advantage of the privileges of the public schools and they are in that respect placed in the same position as other children. One of the privileges of the public schools that must be made available to every child is the privilege of a high school education. This proposition was fully established by our Supreme Court in the recent case of *State ex rel Masters vs. Beamer*, 109 O. S. 133." See *Opinions of the Attorney General for 1924*, page 509.

The responsibility for the education of the inmates of county children's homes is placed squarely upon the shoulders of the Board of Education of the school district in which the home is located. This responsibility may be met by maintaining a school at the home or by having the inmates attend schools which have been established in the district and the statute provides that this should be done "so far as possible."

The statute, Section 7676, *supra*, makes no distinction between elementary schools and high schools. There is no obligation, however, imposed by statute upon a board of education to maintain a high school in its district. The duty to provide high school privileges may be performed by providing for them in schools outside the district. It is contemplated, however, that elementary school advantages be afforded within the district. Section 7644, General Code, expressly provides that each board of education shall establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number thereof.

In many counties a school is maintained at the home for inmates of children's homes where it is not convenient for the children to attend other schools, and where there is suitable room for the maintenance of such a school. The county commissioners clearly have authority to provide the rooms and no doubt would be authorized to provide the facilities for a school in a separate building, if they should desire to do so.

Your question, however, is whether the board of education may construct a school building on county property which is a part of the property maintained for children's home purposes. Section 7620, General Code authorizes boards of education to build and furnish necessary schoolhouses and to purchase or lease necessary sites therefor. By force of this section the board of education of the Xenia township rural school district in Greene county, clearly possesses authority to construct, furnish and maintain a school building for the accommodation of the inmates of the Greene County Children's Home at any place within the district that the board sees fit to locate the building, and may purchase or lease a site therefor from whomever it wishes. The question of whether or not the County Commissioners may sell or lease a portion of the lands upon which the children's home is located, to the Board of Education for that purpose, without competitive bidding, is no longer an open one, in view of the provisions of Section 2447 and 2447-1, General Code, as amended in 1931. These sections read as follows:

Sec. 2447. "If, in their opinion, the interests of the county so require, the commissioners may sell any real estate belonging to the county, and not needed for public use; and, in any event, they may grant leases, rights and easements to municipalities or other governmental subdivisions for public purposes, including among other such purposes memorial structures and underground structures, on or in lands owned by the county where such lease, right or easement shall not be deemed by the commissioners to be inconsistent with the need of such land for public use by the county; such lease, right or easement may be for such length of time and upon such terms and for such purposes and may provide for such renewals thereof as said

commissioners may deem to be for the best interests of the public;  
\* \*”

Sec. 2447-1. “\* \* Said commissioners, by resolution adopted by a majority thereof, are empowered to grant leases, rights and easements to municipalities and other governmental subdivisions in accordance with the terms of section 2447 without advertising for bids. When such grant of lease, right or easement is so authorized, a deed or other proper instrument therefor shall be executed by said board of county commissioners.”

It would seem to be beyond question that a Board of Education in a district in which is located a county children's home, may lawfully erect, furnish and maintain a school building on the property which is a part of the site of a county children's home or on property belonging to the county adjacent to such site, and that the county commissioners of a county may lease such property to the board of education for said purpose if the commissioners deem such lease to be not inconsistent with the need of such lands for public use by the county. In my Opinion No. 4198, rendered under date of April 30, 1935, and addressed to the Prosecuting Attorney of Licking County, it was held as stated in the third branch of the syllabus of that opinion:

“A board of county commissioners may by resolution adopted by a majority thereof, grant leases, rights and easements in real estate belonging to the county to municipalities and other political subdivisions without advertising for bids.”

If such a school is so established by a board of education on lands belonging to a county, it will be a public school in every sense of the word and its use will not be limited entirely to the education of the inmates of the county children's home. Any pupils in the district may be assigned in accordance with law, to attend such school the same as any other school in the district.

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

1. A Board of County Commissioners may, if it sees fit to do so, erect and maintain a separate building for the purpose of providing suitable rooms for school purposes for the inmates of the county children's home.

2. A board of education in a district in which is maintained a county children's home may lawfully erect, furnish and maintain a school building on the premises of the home for the purpose of maintaining therein a school for the education of the inmates of the home.

3. A board of county commissioners may lawfully lease a portion of the premises owned and maintained by the county for a children's home, to the board of education of a school district in which the home is maintained

for the purpose of erecting thereon the school building in which is to be maintained a school for the education of the inmates of the home, and the same may be done without competitive bidding and upon such terms as may be agreed upon between the board of county commissioners and the said board of education.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4540.

BOARD OF EDUCATION—"OPERATING EXPENSES" AS USED  
IN SEC. 7595-1 (i) DEFINED—BUDGET FOR SCHOOL DISTRICT  
DISCUSSED.

*SYLLABUS:*

1. *The words "operating expenses" as used in Section 7595-1 (i), General Code, are not synonymous with the phrase "contingent expenses" as used in Section 4744-2, General Code.*

2. *"Operating expenses" as used in Section 7595-1 (i) include expenses incident to salaries as well as those which had formerly been called contingent expenses.*

3. *It is not necessary under the present law that boards of education within a county school district include anything in their budget to be certified to the county auditor for operating expenses of the county board of education of the county school district in which the local district is located.*

COLUMBUS, OHIO, August 14, 1935.

HON. NELSON CAMPBELL, *Prosecuting Attorney, Mount Gilead, Ohio.*

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

"Section 4744-2, of the General Code, reads as follows:

*'On or before the first day of August of each year the county board of education shall certify to the county auditor the number of teachers to be employed for the ensuing year in the various rural and village school districts within the county school district, and also the number of assistant county superintendents employed and their compensation and the compensation of the county superintendent for the time appointed; and such board of education shall also*