

of the taxes or assessments and the penalties thereon by civil action in his name as county treasurer; and without regard to the amount of said taxes said treasurer is authorized to enforce said lien in the same way that mortgage liens are enforced. In such actions the county treasurer is represented by the prosecuting attorney.

The foregoing sections prescribe the procedure by which the county treasurer shall enforce the lien of taxes and assessments or either, or any penalties thereon, but if any such lands or town lots are not sold for want of bidders the same shall under the provisions of Section 5744, General Code, be forfeited to the state. This section reads as follows:

'Every tract of land and town lot offered for sale by the treasurer, as provided in the next preceding chapter, and not sold for want of bidders, shall be forfeited to the state. Thenceforth all the right, title, claim, and interest of the former owner or owners thereof, shall be considered as transferred to, and vested in, the state, to be disposed of as the general assembly may direct.'

Provisions for the sale of lands not sold for want of bidders and forfeited to the state are contained in Sections 5748 to 5773, General Code, to which your attention is directed. It is unnecessary to set forth all these sections herein, your attention being especially directed to Sections 5748, 5750 and 5755. \* \* \*"

I am enclosing a copy of Opinion No. 2100 above quoted from, as well as a copy of Opinion No. 1814, rendered under date of March 5, 1928, to the Honorable Oscar A. Hunsicker, Prosecuting Attorney of Akron, Ohio, which may be of interest in connection with your problem.

If the opinions enclosed do not answer the questions confronting you, upon the submission of a request to this department stating specifically the questions you desire to be answered, the same will receive prompt consideration.

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

2208.

BOARD OF EDUCATION—CANNOT SELL SCHOOL BUILDING UNTIL  
FOUR YEARS AFTER SUSPENSION—EXCEPTIONS.

**SYLLABUS:**

*A board of education has no authority to dispose of school buildings under its jurisdiction, by sale or otherwise, until four years after the suspension of the school which had been conducted therein, unless the said building has been condemned for school use by the Director of Industrial Relations of Ohio, or unless a new building has been erected, or is in process of erection, to house the children of the territory affected.*

COLUMBUS, OHIO, June 7, 1928.

HON. W. M. MCKENZIE, *Prosecuting Attorney, Chillicothe, Ohio.*

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

"In Ross County we have the following situation in the Village of Roxabel. There are two one room school buildings, one of which is a colored school and the other a white school. Some time ago the building inspector placed numerous orders for repairs on the colored school building. This order involved a rather large expenditure of money so the Board of Education transferred the white children to a school at Frankfort, Ohio, and transferred the colored children to the white school building. The Board of Education desires to know, if under these circumstances, the colored school building can be sold and the proceeds of the sale used to repair the white school building to which the colored children were transferred."

Sections 7684, 7730 and 7730-1, General Code, read as follows:

Section 7684. "Boards of education may make such an assignment of the youth of their respective districts to the schools established by them as in their opinion best will promote the interests of education in their districts."

Section 7730. "The board of education of any rural or village school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause, and teachers' contracts shall thereby be terminated after such suspension. Whenever the average daily attendance of any school in the school district for the preceding school year has been below ten the county board of education may, before the first day of August, direct the suspension and thereupon the board of education of the village or rural school district shall suspend such school. Whenever any school is suspended the board of education of the district shall at once provide for the assignment of the pupils residing within the territory of the suspended school to such other school or schools as may be named by the said board of education. Upon such suspension the board of education in authority over such village or rural school shall provide for the transportation of all pupils, so assigned, who reside in the territory of the suspended school and who live more than two miles by the nearest traveled highway from the school to which they have been assigned, to a public school in the rural or village district or to a public school in another district, except when in the judgment of such board of education confirmed by the judgment of the county board of education such transportation is unnecessary.

Ten day's notice of such suspension shall be posted in five conspicuous places within such village or rural school district by the board of education after the resolution providing for such suspension is adopted. Wherever such suspension is had on the direction of the county board of education then upon the direction of such county board, or upon the finding by the board of education ordering such suspension that such school ought to be re-established, such school shall be re-established.

Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year; provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension."

Section 7730-1. "In order to protect the rights of the petitioners mentioned in Section 7730, where a school has been suspended through either

or any of the proceedings mentioned in such section, the school building and real estate located in the territory of such suspended school and in which property the board of education has legal title, shall not be sold by the board of education of the district until after four years from such date of suspension of said school unless the said building has been condemned for school use by the director of industrial relations of Ohio; provided, however, that if a new building has been erected or is in process of erection to house the children of the territory affected, the building and grounds of such school so discontinued may be sold, and the money shall be used for the payment of the new building, for other permanent improvements or repairs, or be paid into the sinking fund, or if the material of the school house so discontinued is needed in the erection of a consolidated school or other school building, the school house so discontinued may be torn down, and the material used in the erection of the new school building, or sold and the money applied as herein provided.

In any case failure to use the school building for school purposes within the four years following the resolution for suspension of such school shall be considered a legal abandonment of such school and the school building and real estate in which the board of education has legal title may be disposed of by such board of education according to law."

Authority for the sale of a school building is contained in Section 7730-1, *supra*, which specifically provides that where no condition exists other than the suspension of the school, the building cannot be sold within four years after the date of such suspension and may be sold then only, if within the four year period the school has not been reopened upon petition of the parents or guardians of the children residing in the territory affected by such suspension, as provided in the last paragraph of Section 7730, *supra*, or otherwise.

In two other instances a school building may be sold, *viz.*, when it has been condemned for school use by the Director of Industrial Relations of Ohio, or when a new building has been erected, or is in process of erection, to house the children of the territory affected.

You state in your letter that "some time ago the building inspector placed numerous orders for repairs on the colored school building." I am not advised as to how far these orders of the building inspector went. If they amounted to a condemnation of the building for school purposes, the building may now be sold. The mere fact, however, that the state building inspector ordered that certain repairs be made, does not in and of itself amount to an order of condemnation. A building may be in need of repairs, and such repairs may be ordered by the state building inspector, yet the building may not be in such condition that it may not still be used. Failure to comply with an order to repair, might lead to a situation where an order condemning the building for school purposes would be made, but unless an order is made condemning the building for school purposes, the board of education has no authority to sell the building at this time.

It appears that the board of education of Roxabel Village School District assigned all the pupils who had been attending school conducted in the good school building to a school in another district, and had assigned the pupils who had been attending school in the building which needed repair to the good school building.

By authority of Section 7684, *supra*, a board of education may assign pupils to any school within its district as in its opinion best will promote the interests of education in the district, but it has no authority to assign pupils to a school outside the district unless the school which such pupils had been attending is suspended, as is provided in Section 7730, *supra*.

I cannot tell from your communication just what form the orders and proceedings of the school board have taken. If the order of the state inspector was merely an order to repair the building and not a condemnation of the building, and the board of education later passed a resolution of suspension of this school, the board may sell the building after four years, if in the meantime it has not been reopened on petition of the parents and guardians of the children residing in the territory affected by such suspension or otherwise.

The Supreme Court, in the case of *State vs. Board of Education*, 95 O. S., 367, held that the duty of a board of education to reestablish or reopen a suspended school upon petition as provided in Section 7730, General Code, is mandatory. The third branch of the syllabus of this case reads as follows:

"Under the proviso contained in Section 7730, General Code, as amended May 27, 1915 (106 O. L., 398), the board of education of any rural or village school district, which has theretofore suspended any or all schools in such village or school district, is required to reestablish such suspended school on a petition therefor, signed by a majority of the voters of the suspended district, at any time the school enrollment of the said suspended district shows twelve or more pupils of lawful school age."

At the time of the decision of the Supreme Court on the above case, the statute provided:

"that any suspended school as herein provided, *may* be reestablished by the suspending authority upon its own initiative, or upon a petition asking for reestablishment, signed by a majority of the voters of the suspended district, at any time the school enrollment of the said suspended district shows twelve or more pupils of lawful school age."

The Supreme Court held that the word "may" as used in the above statute meant "shall" so far as it applied to the reestablishment of a school upon petition of the voters of the suspended district. Since that time the statute has been amended and the language of the statute is now mandatory so far as it applies to the reopening of a suspended school upon petition of the school residents affected by such suspension.

In a former opinion of this department reported in the Opinions of the Attorney General for 1922, page 739, it was held:

"Where a school has been suspended under the provisions of Section 7730, General Code, the board of education cannot move a school house in which the suspended school was conducted until after a period of four years from the date of such suspension because of the rights of the petitioners, mentioned in Section 7730, General Code, the sole exception being where such building has been condemned for school use by proper state authorities."

In the light of the foregoing discussion, I am of the opinion that unless the state building inspector condemns the school building about which you inquire, the board of education has no authority to sell the building at this time.

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