

1161.

SCHOOL BUSES—TRANSPORTATION EQUIPMENT—BOARDS OF EDUCATION NOT EMPOWERED TO BORROW MONEY AND ISSUE NOTES TO OBTAIN FUNDS TO PURCHASE—SECTION 7732, G. C., H. B. 150, 93RD GENERAL ASSEMBLY—INSTALLMENT PLAN—PAYMENT—NOT LESS THAN ONE-FOURTH OF PURCHASE PRICE IN CASH—DEFERRED PAYMENTS—HOW EVIDENCED—SEE OPINION 1061, SEPTEMBER 9, 1939.

*SYLLABUS:*

1. *Boards of education are not empowered by Section 7732, General Code as enacted in House Bill No. 150 of the 93rd General Assembly, to borrow money and issue notes to enable them to obtain funds to purchase transportation equipment as provided by the statute.*

2. *Section 7732, General Code, as enacted in House Bill No. 150 of the 93rd General Assembly, extends to boards of education the power to purchase transportation equipment on the installment plan and to enter into contracts with dealers for the purchase of such equipment by the payment of not less than one-fourth of the purchase price in cash and the balance in payments as provided in the statute. Deferred payments to be evidenced by notes issued to the person or persons who sell the equipment.*

COLUMBUS, OHIO, September 9, 1939.

HON. HUBERT D. LAPPEN, *Prosecuting Attorney, Logan, Ohio.*

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

“The recent legislature enacted section 7732 of the General Code which became effective July 10, 1939, which in substance permits school boards to purchase school busses on the installment plan. Three boards of education in Hocking County desire to purchase school busses and borrow the money from a bank to pay for these. Will you, therefore, answer the following question:

May boards of education, under authority of section 7732, Ohio General Code, borrow money from private banks to purchase school busses or does the above quoted section merely give boards of education authority to enter into time contracts with automobile dealers?”

Section 7732, General Code, as enacted in House Bill No. 150 of the 93rd General Assembly, reads as follows:

“Boards of education, in the purchase of school busses and other equipment used in transporting children to and from school and to other functions as authorized by the boards of education shall be authorized to make such purchases on the following terms, to-wit: not less than one-fourth of the purchase price thereof shall be paid in cash; not less than an additional one-fourth of the purchase price thereof shall be paid within one year from the date of purchase; not less than an additional one-fourth of the purchase price thereof shall be paid within two years from the date of purchase; and the remaining balance if any of the purchase price thereof shall be paid within three years from the date of purchase. Such boards of education shall be authorized to issue the notes of the school districts signed by the president and clerk of the board of education, and specifying the terms of the purchase including deferred payments as provided above, which notes may bear interest at a rate not exceeding four per cent. per annum. In the legislation under which such notes are authorized, the board of education shall make provision for levying and collecting annually by taxation amounts sufficient to pay the interest and the specified portion of the principal; provided, however, that revenues, derived from local taxes or otherwise, for the purpose of providing transportation of children or for defraying the current operating expenses of such district, may be applied to the payment of such interest and the retirement of such notes.”

It is a familiar principle of law that a board of education created by statute has such powers and such only as are expressly conferred upon it by statute, together with such so-called implied powers as are necessary to perform and carry out the express powers granted. This principle has been consistently and universally and oftentimes drastically applied by the courts of Ohio.

State ex rel. Locher vs. Menning, 95 O. S., 97;

State ex rel. Bentley & Sons Company vs. Pierce, Auditor, 96 O. S., 44;

State ex rel. Clark vs. Cook, 103 O. S., 465;

Schwing vs. McClure, 120 O. S., 335.

It is equally well settled in all jurisdictions that where a statute prescribes the manner of exercise of the power therein conferred upon a public officer or statutory board, the manner specified is likewise the measure of the power granted and a contract made in disregard of the express requirements of such statute is not binding or obligatory upon the board

or officer or the political subdivision which the board or officer represents and for whom they or he purports to act.

State vs. Glidden, 31 O. S., 309;  
Tiffin vs. Schwan, 43 O. S., 178;  
Frisbie vs. City of E. Cleveland, 98 O. S., 266.

This principle of law is sometimes stated in the following manner:

“Enumeration of certain things in a statute implies exclusion of all other things.”

And again,

“Statutes limiting thing to be done in particular mode includes negative of any other mode.”

In the case of Train vs. Sisti, 262 N. Y. S., 167, the Court said:

“It is a maxim of the law, that if an affirmative statute which is the introduction of a new law, direct a thing to be done in a certain manner, that thing shall not be done in any other manner.”

See also

State vs. Harter, 43 O. App., 503;  
Martin vs. Commissioner of Internal Revenue, 61 Fed., 2d, 942;  
Anderson vs. Madsen Investment Company, 72 Fed., 2d, 768;  
Murray vs. Zook, 205 Ind., 669, 9 A. L. R., 321;  
City of Detroit vs. Redford Twp., 253 Mich., 217.

It will be noted, upon consideration of the terms of Section 7732, General Code, quoted above, that the statute does not extend authority to a board of education to borrow money and issue notes therefor so that it can with the proceeds of the loan pay cash for the transportation equipment which it proposes to purchase in pursuance of the authority conferred by the statute. On the other hand, it expressly provides that purchases may be made by the payment in cash of as little as one-fourth of the purchase price and the balance of the purchase price may be paid in yearly installments, which deferred payments shall be evidenced by notes. Obviously, these notes, if issued for a deferred installment of the purchase price should and can be issued to the person or persons only to whom the purchase price is to be paid, which is the vendor or seller of the article.

I am therefore of the opinion that, boards of education are not empowered by Section 7732, General Code, as enacted in House Bill No. 150, of the 93rd General Assembly, to borrow money and issue notes to enable them to obtain funds to purchase school busses and other transportation equipment as provided by statute. The statute merely extends to boards of education the power to purchase transportation equipment on the installment plan and to enter into contracts with dealers for the purchase of such equipment by the payment of not less than one-fourth of the purchase price in cash and the balance in payments as provided by statute. Deferred payments to be evidenced by notes issued to the person or persons who sell the equipment.

Respectfully,

THOMAS J. HERBERT,

*Attorney General.*

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1162.

TOWNSHIP ROADS—WORK-RELIEF EMPLOYEES' COMPENSATION FUND—PREMIUMS, HOW PAID—MEN EMPLOYED SOLELY IN CONSTRUCTION, MAINTENANCE, WIDENING OR RECONSTRUCTION—SECTIONS 3496-1 TO 3496-16, 5541-8, G. C.

**SYLLABUS:**

*Funds distributed to a township under the provisions of Section 5541-8, General Code, may be used to pay premiums to the Work-Relief Employees' Compensation Fund pursuant to Sections 3496-1 to 3496-16, inclusive, General Code, for the protection of men employed by the township SOLELY in connection with the construction, maintenance, widening or reconstruction of township roads.*

COLUMBUS, OHIO, September 9, 1939.

HON. T. B. WILLIAMS, *Prosecuting Attorney, New Lexington, Ohio.*

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

"I would like to have your opinion on the following statement of facts—

Monday Creek Township in this county has several men who are hired by the township to work on the township roads. In order to protect such employees the township must contribute to the State Insurance Fund under the Workmen's Compensation Law. The Industrial Commission has sent the township