It seems to me that this review of the legislative enactment of Section 6212-48 and other related sections, clearly establishes the fact that the use of the word "less" was an error or mistake, and that it was the intention of the legislature to use the word "more;" as can be easily ascertained from a reading of the context of previous enactments of this same section, as well as associated sections in the act. Accordingly, the word "more" will be deemed substituted or supplied in place of the word "less" so that the phrase will read, "more than 3.2 percentum but not *more* than 7 percentum of alcohol by weight", as contained in the first paragraph of Section 6212-48, General Code, as amended.

Therefore, in specific answer to your second question it is my opinion that, the Commission may continue to collect the tax upon the sale or distribution in Ohio, of beer, ale, porter, stout and other malt beverages containing more than 3.2 percentum but not more than 7 percentum of alcohol by weight, whether in barrels or other containers (except in sealed bottles or cans) at the rate of $2.50 per barrel of thirty-one gallons, as provided in Section 6212-48 of the General Code, as amended, and the word "more" will be deemed substituted or supplied for the word "less" as contained therein.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

778.

BOARD OF EDUCATION—EXCHANGE TEACHERS—BOARD HAS NO AUTHORITY.

SYLLABUS:

A board of education of a school district is without authority to assign a teacher to another school district inside or outside of the state, in exchange for the services of a teacher to be assigned and sent into said school district by the board of education from another school district and compensation to be paid by the board of education to the teacher with whom the contract for teaching exists.

COLUMBUS, OHIO, June 24, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.
GENTLEMEN:

This will acknowledge receipt of your recent communication which reads as follows:

"The Superintendent of the Akron City School District has requested an opinion from this department as to the authority to exchange teachers—that is, to assign one of the Akron teachers to another district inside or outside the State, the other district to assign a teacher to the City of Akron schools, the Akron teacher to draw her compensation from the Akron City School District, and no payment to be made to the teacher assigned to Akron in exchange.

We were informally advised by Mr. Ohl, former Assistant Attorney General, and so advised this Superintendent, that such exchange is illegal.

The Superintendent now requests that we procure your opinion in regard to the legality of the procedure, and we herewith submit the matter for your written opinion.

In this connection, we enclose a letter from Mr. R. H. Waterhouse, Superintendent of the Akron City School District."

The question of the legality of a board of education of "A" School District assigning one of its teachers to teach in "B" School District inside or outside of the State, and the Board of Education of "B" School District assigning one of its teachers to teach in "A" School District, is not new or novel. As stated in your letter, my predecessor in office rendered an informal opinion to you on this question. I also find in Opinions of the Attorney General for 1916, Vol. I, page 122, that this exact question was contained in the request, and although it was not discussed at any great length, the then Attorney General, on page 124, stated:

"While the board of education of a school district may contract with a teacher for services to be rendered in one of the schools of said district and, under the above provisions of Section 7690, G. C., may fix the salaries of such teachers, I find no authority in law warranting said board of education in sending said teachers into the school of another state or county in exchange for the services of teachers to be sent into said district from such other state or country, even though said foreign teachers might comply with the provisions of the statutes prescribing the qualifications of a teacher in an elementary school or in the several classes of high schools in this state."

I note that in the letter written by Professor Waterhouse to you,

he questions whether this "matter has received its due consideration"; that the opinion fails "to take into account that reciprocal services are involved" and the "opinion thus far seems to assume that a given board of education is paying for services rendered in another district without value received for such services." I agree with Professor Waterhouse that this question is deserving of being reviewed and reconsidered, at this time. A question that has been at issue for over twenty years cannot be waived aside by merely saying it "can't be done." There is no doubt that the proposition of "exchange-teaching" has its value, in that, a teacher who has been assigned to another school should be able to acquire some new ideas in practice that, if adopted, would tend to the benefit and betterment of the teacher's own school district.

The statutes are the sole source of authority for the employment of teachers in public schools. Contracts of employment between teachers and boards of education must be express and made in compliance with the provisions of the statutes. This principle was clearly stated in the case of *Board of Education of Benton Township* vs. *Parker, Etc.*, 1 Ohio Appellate, 114, wherein, at page 116, the court said:

> "* * it needs no citation of authorities in our own state at this time to support the proposition that not only are the powers of boards of this character strictly construed but that when their exercise are required to be performed in a certain manner that manner must be strictly followed."

The sections of the General Code pertinent to the employment of teachers in cities, provide as follows:

> "Sec. 7703. Upon his acceptance of the appointment, such superintendent, subject to the approval and confirmation of the board, may appoint all the teachers, and for cause suspend any person thus appointed until the board or a committee thereof considers such suspension, but no one shall be dismissed by the board except as provided in Section Seventy-seven Hundred and One. But any city or exempted village board of education, upon a three-fourths vote of its full membership, may re-employ any teacher whom the superintendent refuses to appoint. * *"
>
> "Sec. 7690. Each city, village or rural board of education shall have the management and control of all the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect,

to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries. * *"

"Sec. 7690-1. Each board of education shall fix the salaries of all teachers which may be increased but not diminshed during the term for which the appointment is made. Teachers must be paid for all time lost when the schools in which they are employed are closed owing to an epidemic or other public calamity."

"Sec. 7691. No person shall be appointed as a teacher for a term longer than four school years, nor for less than one year, except to fill an unexpired term, the term to begin within four months of the date of the appointment. In making appointments teachers in the actual employ of the board shall be considered before new teachers are chosen in their stead."

"Sec. 7699. Upon the appointment of any person to any position under the control of the board of education, the clerk promptly must notify such person verbally or in writing of his appointment, the conditions thereof, and request and secure from him within a reasonable time to be determined by the board, his acceptance or rejection of such appointment. An acceptance of it within the time thus determined shall constitute a contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause."

"Sec. 4752. A majority of the members of a board of education shall constitute a quorum for the transaction of business. Upon a motion to adopt a resolution * * to employ a superintendent or teacher * * the clerk of the board shall publicly call the roll of the members composing the board and enter on the records the names of those voting 'aye' and the names of those voting 'no'. * *"

It is to be observed that the resolution of the board of education authorizing the employment of a teacher, the fixing of the salary and term, and, the notification by the clerk of the appointment, and, acceptance of the appointment by the teacher, constitute a contract of employment binding both on part of the board of education and the teacher.

It is a well established principle of law that the rules of law relating to the performance and breach of contracts generally, apply to contracts between teachers and the school authorities. *John I. Ward* vs. *Board of Education of the City of Toledo,* 21 O.C.C., 699.

Both parties must perform such a contract according to its terms. The board must furnish a school building and equipment, and must make and keep it sufficiently comfortable and habitable that the teacher can discharge his or her duties. The teacher must teach or offer to teach according to the terms of the contract, and meet such other obligations as the contract imposes, and must obey the rules and orders of the school board. 56 Corpus Juris, page 396, Section 325. This principle was clearly enunciated in our own state, in *Board of Education of New Antioch Special School District* vs. *Eva Paul*, 7 O.N.P., 58, wherein the court said:

> "A person in accepting employment as a teacher in the public schools agrees to perform her labors and duties under the control and direction of the board of education and in conformity to such lawful rules and regulations as the board may adopt."

It is obvious that in a case, for example, where the teacher with whom the board of education of "A" School District has entered into a contract, has been assigned to teach in the School District of "B" and a teacher of the School District of "B" has been assigned by the Board of Education of "B" School District to teach in the School District of "A", that no privity of contract whatsoever, exists between the Board of Education of the School District of "A" and the assigned teacher from "B" School District or between the Board of Education of "B" School District and the assigned teacher from "A" School District. That, therefore, if such an "assigned" or "exchange" teacher is teaching in a school district other than the school district with whom the teacher had entered into a contract for teaching, there is no way in which the board of education of the district to which the teacher has been assigned can compel the "assigned" teacher to perform the contract according to its terms that the board had entered into with another teacher. The board of education cannot compel said "assigned" "teacher to perform her labors and duties under the control and direction of the board of education and in conformity to such law, rules and regulations as the board may adopt."

"A teacher's contract is, as a general rule, for his personal services." 56 Corpus Juris, page 418, Section 369. The teacher's right extends only to the particular position to which appointment is made, and limited by circumstances that under the contract he or she must render a personal service. That a teacher's contract is one for the rendition of that teacher's own personal services is glaringly evident from the execution of the contract. It is common knowledge: that, each teacher is

employed on his or her own qualifications; that because of this, no definite or established salary schedule for teachers exists in Ohio, but each and every board of education fixes the salary of each teacher employed; and that, at the time of employing the teacher and fixing his or her salary, the board of education takes into consideration that particular teacher's "preparation, experience, teaching success, and pupil-teacher ratio" of the class to which that particular teacher is to be assigned in the board of education's own particular school district. Therefore, a board of education having contracted for the individual personal services of a certain teacher, has no authority to accept in lieu thereof, the personal services of another teacher who is under no legal contractual obligation to serve the board. At this point, we are confronted with the contention that the board of education in accepting the personal services of a teacher other than the one it employed, is "receiving reciprocal services" and "value received." This contention fails to take into consideration the fact that the board of education has contracted for certain personal services of a certain teacher and will expend public funds for that particular service only because it is duly authorized by statute to enter into such a contract and make such an expenditure. The board of education cannot accept for that expenditure of money any other services than the services authorized by statute, regardless of the fact that the board may receive "personal services" of an "assigned" teacher whose "preparation and teaching success" are superior to the teacher with whom the board entered into a contract.

It is a well known rule of law that an administrative board may not expend money except as provided by statute. This principle of law has been clearly enunciated by the Supreme Court of Ohio. In the case of *State, ex rel. Locher, Pros. Atty.*, vs. *Menning, et al.*, 95 O.S., 97, at page 99, the Court said:

> "The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

See also *State ex rel. A. Bentley & Sons Co.* vs. *Pierce, Aud.*, 96 O.S., 44.

It is an old and uniformly accepted doctrine that public officers,

such as members of the board of education, have no powers except such as are expressly conferred by the statute or necessarily implied from the power so conferred. In 1894, the Supreme Court in the case of *Board of Education* vs. *Best,* 52 O. S., 138, clearly stated this doctrine at page 152, as follows:

> "The authority of boards of education, like that of municipal councils, is strictly limited. They both have only such power as is expressly granted or clearly implied, and doubtful claims as to the mode of exercising the powers vested in them are resolved against them."

See also, *The State, ex rel. Clarke* vs. *Cook, Aud.,* 103 O.S., 465; Opinions of the Attorney General for 1916, Volume I, page 122; Opinions of the Attorney General for 1926, Volume I, page 386.

After an examination of the statutes pertaining to the employment of teachers, I am compelled to conclude that there is no power expressly conferred by the statutes or that can be implied from the powers expressly conferred, that authorizes a board of education to enter into a contract with, and pay a teacher for certain personal services and not receive the express personal services contracted for.

It therefore is my opinion: that a board of education of a school district is without authority to assign a teacher to another school district, inside or outside of the state, in exchange for the services of a teacher to be assigned and sent into said school district by the board of education from another school district and compensation to be paid by the board of education to the teacher with whom the contract for teaching exists.

Specifically answering your question it is my opinion: that the Board of Education of Akron City School District is without authority to assign one of the Akron teachers to another district, inside or outside the State, the other district to assign a teacher to the City of Akron Schools, the Akron teacher to draw her compensation from the Akron City School District, and no payment to be made to the teacher assigned to Akron in exchange.

Respectfully,
HERBERT S. DUFFY,
Attorney General.