"Whether that position rises to the dignity of a public office is questionable and for the purposes of this opinion need not be decided. It at least is a public position or employment the occupant of which is appointed for a definite term, is required to give a bond as such occupant and is charged by law with the performance of distinct onerous duties for and on behalf of the public, to which there attaches definite remuneration, which the board is directed to fix by the terms of Section 4781, General Code. * *

It is a familiar principle of law that a person rightfully holding a public office is entitled to the compensation attached thereto. This right does not rest on contract. The compensation provided by law for the office is said to be an incident of the office, and the occupant of the office, so long as he rightfully holds the office is entitled to the compensation provided by law for the office regardless of whether or not he has any duties to perform as such officer. If a clerk of a board of education is to be regarded as a public officer he is clearly entitled to the salary attached to the office for the full term for which he is elected or appointed thereto, unless he is lawfully removed or the office is abolished.

If a clerk of a board of education is not a public officer his right to remuneration is based on contract, and until that contract is abrogated for some cause or other, and so long as he holds himself in readiness to perform the duties and obligations of the contract he is entitled to the remuneration provided by the terms of the contract even though the other contracting party may not require of him the service which he has contracted to perform or may not be in a position to, or be able to require the performance of those services. * *"

Whether or not a clerk of a board of education is a public officer is not material in the present situation. He may be appointed for a definite term, by authority of Section 4747, General Code, and in the present instance the clerk in question was so appointed. The mere fact that the appointing power may have gone out of existence can not have the effect of terminating the term for which the clerk was appointed, any more than an appointee of the governor, who might be appointed for a definite term, would have his term terminated by the resignation or death of the governor.

I am therefore of the opinion that the clerk in question, who was appointed for two years upon the organization of the board in January, 1934, is entitled to serve as such clerk until the organization of the next elective board in 1936.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3934.

BOARD OF EDUCATION—UNAUTHORIZED TO PAY TUITION FOR RESIDENT PUPILS FOR ATTENDANCE IN HIGH SCHOOL OUTSIDE DISTRICT WHEN.

SYLLABUS:

A board of education which has afforded high school privileges for its resident high school pupils for a period of three years, either within or without its district, is

without authority to pay tuition for such pupils for attendance in high school outside the district for more than one additional school year.

COLUMBUS, OHIO, February 11, 1935.

HON. NORTON C. ROSENTRETER, *Prosecuting Attorney, Port Clinton, Ohio.*

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

> "A school pupil whose parents are residents of Erie Township in Ottawa County, attended the Erie Township High School at LaCarne, Ohio, for one year.
>
> The Erie Township High School is now, and has for the past six years, been a high school of the second grade, offering three years of work. This pupil availed himself of but one year at the LaCarne High School, and not wishing to attend there any longer, enrolled at the Oak Harbor High School, which is a first grade high school, and there attended school for three consecutive years.
>
> The Erie Township Board of Education paid this pupil's tuition at Oak Harbor High School for the last of the said three years, this being the year 1931-1932, and also paid said pupil's transportation. However, the said pupil failed in his studies during the year 1931-1932 and did not graduate.
>
> In September, 1934, said pupil, as a senior, entered the Port Clinton High School, which is a first grade high school, and has attended for the past four months. He has now asked the Erie Township Board of Education to pay his tuition for the present school year at the Port Clinton High School.
>
> During all of this time the Erie Township High School has been open to this pupil.
>
> The question arises as to whether or not the Erie Township Board can now legally pay this pupil's tuition at the Port Clinton High School for the present year.
>
> Our attention has been called to Section 7748 of the General Code, which provides as follows:
>
> 'A board providing a second grade high school shall pay the tuition of graduates and all other children of like advancement residing in the district, at a first grade high school for one year. No board is required to pay the tuition of any pupil to a high school for more than four years.'
>
> It appears from the foregoing section that it is mandatory to provide a pupil who has graduated from a high school of second grade with at least one additional year of a high school education, and that at a first grade high school, and also that a board cannot be required to pay the tuition of a pupil for more than four school years.
>
> However, we should like to know whether this board, should it so desire, may legally pay the present year's tuition, notwithstanding the fact that it has already paid one year's tuition for him at the Oak Harbor High School."

Your inquiry involves the proper construction and application of Sections 7747 and 7748 of the General Code of Ohio the pertinent provisions of which sections read as follows:

> "Sec. 7747. The tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have

legal school residence, such tuition to be computed by the school month. * *"

"Sec. 7748. A board of education providing a third grade high school shall be required to pay the tuition of graduates from such school, and of other children who have completed successfully two years of work in a recognized high school, residing in the district at a first grade high school for two years, or at a second grade high school for one year and at a first grade high school for one additional year.

A board providing a second grade high school shall pay the tuition of graduates, and of other children of like advancement, residing in the district at a first grade high school for one year. No board of education is required to pay the tuition of any pupil to high school for more than four school years. * *"

It appears from your statement that the district of residence of the pupil in question maintained a second grade high school offering only three years of high school work. It therefore became the duty of the board of education of this district under the plain terms of the statute, to pay this pupil's tuition in a first grade high school for one year. This apparently was done, and it clearly follows that the board of education of the district of the pupil's residence cannot be compelled to pay tuition for this pupil in a high school for any further period, as the statute enjoins upon the board of education the duty of paying tuition under such circumstances for one year only.

The question presented, however, is whether or not this board of education may lawfully, if it sees fit, pay further high school tuition for this pupil.

We are led to inquire, therefore, as to the extent of the powers of a board of education in the administration of the affairs of its district and the expenditure of public funds belonging to the district.

It is a rule of universal application in this state that administrative boards created by statute, such as boards of education and the like, are limited in their powers to those expressly granted or made necessary to carry out expressly granted powers. *Peter* vs. *Parkinson,* 83 O. S. 36; *Schwing* vs. *McClure,* 120 O. S., 335. This rule is applied with strictness where the expenditure of public funds or the disposition of public property is concerned. In the case of *State* vs. *Pierce, Auditor,* 96 O. S., 44, the court went so far as to say:

"In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power."

It is also a familiar principle of law that where an express grant of power is given by statute to an administrative board to expend money for any purpose, the limit on the grant is in and of itself, a limit on the power of the board to expend money for the particular purpose. This principle is applied in the Pierce case, supra, where it is held:

"Where the statute places an express limitation upon the amount of money to be expended on any public work by any officer, or board, the constractual power of such officer, or board, is fixed by such statutory limit.

Where the statute delegates power to any administrative board, such as a board of county commissioners, to fix the limit of such public expenditure, and such board so fixes a limit in language free from doubt, there is no right

in any court to construe said language, and the power of such administrative board is thereby limited to the amount so fixed."

Applying this principle in the instant case, it appears that inasmuch as the statute directs that a board of education which maintains a second grade high school shall pay the tuition of its resident high school pupils in a high school of the first grade, for one year, the payment of such tuition is limited to one year, and the power to pay it for any further period of time does not exist.

Moreover, this conclusion is supported by the provision contained in Section 7748, General Code, that no board shall be held for the payment of high school tuition for a longer term than four school years. It is true that the statute does not contain an express limitation to the effect that no board which maintains a second grade high school shall pay the tuition of a resident high school pupil in a first grade high school for a longer period than one year but that intention may be gathered from a consideration of the fact that the statute expressly limits the payment of tuition to four years only, when consideration is given to the history of the statute and the manifest purpose of incorporating the four year provision in the statute.

The cardinal rule for construction of statutes is to determine the intention of the legislature in enacting them. That intention is to be determined primarily from the language used. However, the words of the statute are not the only source from which its meaning is to be gathered. It is one of the most familiar duties of a court in the construction of statutes, to consider their object, scope, end, and the evils that led to their adoption so that they may receive that interpretation that will give them due effect. *Van Matre* vs. *Buchanan, Wright,* page 233; *Hays* vs. *Lewis,* 28 O. S., 326; *Doll* vs. *State,* 45 O. S., 448; *Trustees* vs. *White,* 48 O. S., 577; *Cochrel* vs. *Robinson,* 113 O. S., 526. In the latter case it is held:

"In the construction of a statute the primary duty of the court is to give effect to the intention of the legislature enacting it. Such intention is to be sought in the language employed and the apparent purpose to be subserved and such a construction adopted which permits the statute and its various parts to be construed as a whole and give effect to the paramount object to be attained."

In the case of *Trustees* vs. *White,* supra, it is said:

"It is proper in giving construction to a statute to inquire into the cause and necessity of its enactment."

The provision of Section 7448, supra, to the effect:

"No board of education is required to pay the tuition of any pupil to high school for more than four school years."

has been a part of the statute for a number of years. It was first introduced into the statutes in former Section 4029-3, Revised Statutes, in 1902 (95 O. L., 72). At the same session of the Legislature during which the above provision was incorporated in Section 4029-3, Revised Statutes, Section 4007-4, Revised Statutes, was enacted classifying high schools. It was provided therein that a high school of the first grade shall be a school in which the courses covered shall cover a period of not less than four

years. (95 O. S., 116). The normal time required for the completion of a high school course in the public schools has at all times been four years, and the legislature in the enactment of this provision apparently meant to provide that all pupils should have the advantage of attending a high school for the full period of four years, at public expense, but no longer, so far as the payment of tuition in schools outside the district is concerned. This end is attained with respect to pupils who reside in a district which offers three years of high school work, by providing that the district of residence shall bear the burden of tuition charges for the pupil in another school of the first grade, for one year more. It seems apparent that it was the intent of the legislature in the enactment of these statutes, that when the district of residence of a pupil had afforded four years of high school advantages, either in schools maintained within the district or in other schools, it had performed its full duty with respect to the pupil, and that it was not the intention that the district of residence should bear any other expense in so far as the pupil's high school attendance in schools outside the district is concerned.

I am therefore of the opinion that the board of education of the Erie Township Rural School District cannot lawfully pay the tuition of the pupil in question, in the Port Clinton High School for the school year 1934-1935, or any part thereof.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3935.

HOUSING RELIEF—MAXIMUM AGGREGATE ALLOWANCE FOR APARTMENT HOUSE UNDER SUBSTITUTE S. B. NO. 53, FIRST SPECIAL SESSION, 90TH GENERAL ASSEMBLY.

SYLLABUS:

Where the annual taxes, exclusive of special assessments, levied upon an apartment house is $120.00, *the maximum, aggregate amount which may be allowed such apartment house, each month, for direct housing relief under Substitute Senate Bill No.* 53 *of the first special session of the* 90*th General Assembly, regardless of the number of suites occupied by indigent tenants, is* $10.00.

COLUMBUS, OHIO, February 11, 1935.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

> "The provisions of Amended Substitute Senate Bill No. 53 read in part as follows:
>
> '* * * The clerk may issue a voucher to the auditor of the county each month for the rent of any indigent person whom he finds is entitled to such relief, which amount so allowed each month shall be not less than $4.00 for a 2 room suite; $5.00 for a 3 room suite; $6.00 for a 4 room suite; $7.00 for a 5 room suite and $8.00 for a 6 or more room suite; but such voucher shall in no case exceed the sum of $10.00 per suite or single house, nor shall the total of such vouchers issued upon any one taxable property exceed in any one