

**Note from the Attorney General's Office:**

1957 Op. Att'y Gen. No. 57-398 was overruled by 2004  
Op. Att'y Gen. No. 2004-012.

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BOARD OF EDUCATION—PURCHASE OF LAND FOR SCHOOL PURPOSES— §3313.37 RC—NO AUTHORITY TO MAKE INSTALLMENT PAYMENTS— §5705.41 (D) RC.

**SYLLABUS:**

A board of education may not lawfully purchase land and a building for necessary school purposes under Section 3313.37, Revised Code, under an agreement to pay for the property in installments over a period of years, even though the board has available, at the time of the execution of the agreement, funds in an amount sufficient to pay the entire purchase price, either on hand or in the process of collection, within the terms of Division (D) of Section 5705.41, Revised Code.

Columbus, Ohio, April 22, 1957

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“May a Board of Education lawfully purchase land and a building for necessary school purposes on an agreement to pay for the property in installments payable over a period of years, provided Title is conveyed to the Board at once, and provided

that the Board of Education has available at the time of the execution of the agreement funds in an amount sufficient to pay the entire purchase price called for by the agreement, either on hand or in process of collection?

“The further question should be resolved, and that is, may a Board of Education, if it is permitted to buy property on the installment plan, pay any interest to the seller of such property on the unpaid balance of the purchase price.”

There can be no doubt that, in Ohio, the only powers which are possessed by a board of education are those expressly conferred by statute. *Verberg v. Board of Education of the City School District of Cleveland*, 135 Ohio St., 246, *Schwing v. McClure, et al., Trustees*, 120 Ohio St., 335, *Perkins v. Bright*, 109 Ohio St., 14, *The State, ex rel. Clark, v. Cook*, 103 Ohio St., 465.

The first paragraph of the syllabus of the *Schwing* case, *supra*, is as follows:

“That boards of education are purely creatures of statute is an old and uniformly accepted doctrine \* \* \*.

“As an administrative board created by statute their powers are necessarily limited to such powers as are clearly and expressly granted by statute.”

An examination of the powers granted to a board of education to incur an indebtedness for the purchase of real estate reveals that any such power must be found in Article XII, Section 2, Ohio Constitution, or in Sections 133.04, 3313.37 or 5705.41, Revised Code.

Neither the constitutional provision above cited, nor Section 133.04, Revised Code, have any bearing on the present problem in view of the fact that there would be no necessity to levy any additional tax or issue any bonds to finance the contemplated purchase.

Section 3313.37, Revised Code, provides:

“The board of education of any school district, except a county school district, may build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.”

No specific method or procedure being set out in the above statute, the creation of any contractual relation for such authorized purchase must be done under the provisions of Section 5705.41, Revised Code, the applicable portions of which are as follows:

“No subdivision or taxing unit shall:

“(A) Make any appropriation of money except as provided in sections 5705.01 to 5705.47, inclusive, of the Revised Code; provided that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the same for the purpose for which such bonds were issued, but no expenditure shall be made from any bond fund until first authorized by the taxing authority;

“(B) Make any expenditures of money unless it has been appropriated as provided in such sections;

“(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn;

“(D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. \* \* \*”

This section seemingly would not specifically prohibit a board of education from entering into an agreement such as outlined in your letter, in view of the fact that the limitation contained in the statute merely makes it imperative that the board pay cash when purchasing property of any kind, or at least fix the time for payment when making a contract to purchase property or incur a financial obligation within a period not farther in the future than for which funds to meet the obligation of the contract might be collected or be in the process of collection.

However, although Section 5705.41, Revised Code, does not specifically prohibit the purchase of real estate by a board of education on an installment plan, there exists no clear and distinct authority to enter into such a transaction. Therefore, if no authority is expressly granted, it

becomes necessary to inquire whether it may be found by implication in Sections 3317.37 and 5705.41, Revised Code.

I do not believe that the authority in question can be implied even though boards of education do have authority to purchase real estate under Section 3317.37, Revised Code, and they do have authority to enter into a contract of purchase so long as the provisions of Section 5705.41, Revised Code, are strictly complied with. In *State, ex rel. Clark, supra*, at page 467, Justice Wanamaker quotes from *State, ex rel. Locher, Prosecuting Attorney, v. Menning, 95 Ohio St., 97, at page 99*, as follows:

“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.*”

He then added the following paragraph:

“This doctrine as applied to boards of county commissioners in their financial transactions must in principle be equally obligatory upon boards of education in their financial transactions.”

The above principle was again set forth in the third paragraph of the syllabus of *State, ex rel. A. Bentley & Sons Co., v. Pierce, Auditor, 96 Ohio St., 44*:

“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.”  
(Emphasis added.)

An analogous situation was presented to this office by the prosecuting attorney of Holmes County in 1952. Opinion No. 1415, Opinions of the Attorney General for 1952, p. 342.

The question at that time was whether or not township trustees could purchase land and buildings and pay for the same over a period of four years under Section 3298-54, General Code, now Section 505.37, Revised Code, which provided, in part, as follows:

“*Township trustees* may establish all necessary regulations to guard against the occurrence of fires, protect the property and

lives of the citizens against damages and accidents and may, with the approval of the specifications by the county prosecuting attorney, *purchase or otherwise provide such fire apparatus, or mechanical resuscitators, or other equipment, appliances, materials, fire hydrants and such water supply for fire fighting purposes as may seem to the trustees to be advisable, in which event they shall provide for the care and maintenance thereof, and, for such purposes, may purchase, lease or construct and maintain necessary buildings;*

*“The board of trustees of any township or fire district, or districts created by them under the provisions of this act or the council or other legislative authority of any municipal corporation, may purchase the necessary fire fighting equipment for such township, fire district or districts or municipal corporation, and pay for the same over a period of four years. \* \* \*”*

(Emphasis added.)

It was the opinion of my predecessor that the authority to make a purchase over a four year period applied only to “fire fighting equipment,” and because the authority to purchase “necessary buildings,” and impliedly land, was set forth distinctly and separately from the words “other equipment” in the first paragraph, that the legislature intended to omit the buildings from the four year provision. In expressly mentioning “fire fighting equipment” in the four year provision the legislature impliedly intended to exclude “necessary buildings,” and did not intend for the term “equipment” to include land and buildings.

Attention is invited to Section 3327.08, Revised Code, which is the only place in the law of Ohio where a board of education is expressly granted the authority to enter into an installment purchase agreement. Said section is with reference to the purchase of school buses.

Following the rationale of Opinion No. 1415, Opinions of the Attorney General for 1952, p. 342, and the maxim that the legislature’s express mention of one thing implies the intentional exclusion of another, it can be concluded that the intent of the legislature as to boards of education was that they should have the authority to purchase school buses, and *only* school buses, on an installment plan.

Therefore, since there can be found no express authority in the law of Ohio for a board of education to purchase land and buildings on an installment plan, and none can be implied, it is my opinion that a board of education may not lawfully purchase land and a building for necessary

school purposes on an agreement to pay for the property in installments payable over a period of years, even though the board has available at the time of the execution of the agreements funds in an amount sufficient to pay the entire purchase price called for by the agreement, either on hand or in the process of collection.

This conclusion is in harmony with the second paragraph of the syllabus of Opinion No. 143, Opinions of the Attorney General for 1945, p. 110.

“2. No authority exists for a board of education to purchase property of any kind other than school buses and transportation equipment as provided by Section 4855-5, General Code, upon an agreement to pay for the same on the installment plan.”

However, I believe that the fact situation therein presented did not require an opinion broad enough to include the specific problem which you have propounded, and for that reason I have omitted any reference to said opinion until now.

The negative answer to your first question necessarily renders any opinion on the second question purely moot, therefore, I shall not enter into any discussion of it.

Respectfully,  
WILLIAM SAXBE  
Attorney General