

342.

DISAPPROVAL, LEASE TO FOX ISLAND, IN LOGAN COUNTY, OHIO, TO ORCHARD ISLANDS, INC.

COLUMBUS, OHIO, April 23, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease in triplicate executed by the State of Ohio, through you as Superintendent of Public Works, by which there is leased and demised to Orchard Islands, Inc., of Orchard Island, Inland Lake, Ohio, a certain state reservoir property in the north half of Section 36, Township 6, South, Range 8, East, Logan County, Ohio, commonly known as Fox Island.

An examination of the corporation files in the office of the Secretary of State discloses that on November 15, 1928, the Secretary of State, pursuant to the duty imposed upon him by the provisions of Section 5509, General Code, canceled the articles of incorporation of Orchard Islands, Inc., by reason of the failure of said corporation to file the reports and to pay the franchise taxes required by law. Under the decisions of the Supreme Court and of other courts in this state, it is, perhaps, not entirely clear how far the contractual rights of this corporation have been limited by reason of the cancellation of its articles by the Secretary of State. However this may be, I do not feel that I am warranted in approving a lease to a corporation which is in default for the payment of its franchise taxes, and against which corporation I may be required to institute quo warranto proceedings under Section 5513, General Code.

There are some provisions in this lease that I do not think are authorized by any of the statutory provisions relating to leases of this kind. However, I am basing my disapproval of this lease solely on the ground first above stated herein, that said corporation is in default with respect to its duties to the State of Ohio, and that in this situation, it has no right to apply for or receive a lease for State property.

I am accordingly herewith returning said lease and the duplicate and triplicate copies thereof, without my approval.

Respectfully,

GILBERT BETTMAN,
Attorney General.

343.

BOARD OF EDUCATION—NOT REQUIRED TO MAINTAIN HIGH SCHOOL BUT MUST PAY TUITION OF PUPILS WITHIN DISTRICT—MAY CONTRACT FOR SCHOOLING WITH OTHER BOARDS.

SYLLABUS:

1. *A board of education in a city, village, exempted village or rural school district is not required by law to maintain a high school within the district, but if no such high school is maintained, the tuition of pupils residing in the district who are eligible for admission to high school must be paid by the board of education of the school district.*

2. *A board of education of any school district not having a high school may enter*

into a contract with one or more boards of education maintaining such school for the schooling of part or all of its high school pupils.

COLUMBUS, OHIO, April 24, 1929.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

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

“Has a village board of education power to contract for the education of its own high school pupils, with another board of education either rural village or city, and thereby discontinue the operation and maintenance of its own high school?”

In this particular instance the village of Middlepoint, Ohio, has been operating a high school which now is in bad need of repair and new additions for more room. The board has voted a bond issue for the same, the latter of which has caused a sharp conflict of opinion among the villagers some of which claim that since there are school districts all about the village that have fine new buildings, that this village should discontinue its high school, send its high school pupils to one of those other districts by contract with it to pay their tuition, thereby avoiding an extra tax burden for remodeling.

The other side claim that to do that would cause their children to carry their meals and cause considerable inconvenience. That it would ruin the valuation of real estate in the village and destroy all civic pride and activity, and that to do so would be contrary to law.”

Sections 7734 and 7750, General Code, read as follows:

Sec. 7734. “The board of any district may contract with the board of another district for the admission of pupils into any school in such other district, on terms agreed upon by such boards. The expense so incurred shall be paid out of the school funds of the district sending such pupils.”

Sec. 7750. “A board of education not having a high school may enter into an agreement with one or more boards of education maintaining such school for the schooling of all its high school pupils. When such agreement is made the board making it shall be exempt from the payment of tuition at other high schools of pupils living within three miles of the school designated in the agreement, if the school or schools selected by the board are located in the same civil township, as that of the board making it, or some adjoining township. In case no such agreement is entered into, the school to be attended can be selected by the pupil holding a diploma, if due notice in writing is given to the clerk of the board of education of the name of the school to be attended and the date the attendance is to begin, such notice to be filed not less than five days previous to the beginning of attendance.”

Elementary school and high schools are defined in Sections 7648 and 7649, General Code.

By the terms of Section 7644, General Code, it is provided that each board of education must establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the district under its control.

Section 7663, General Code, provides as follows:

“A board of education may establish one or more high schools, whenever

it deems the establishment of such school or schools proper or necessary for the convenience or progress of the pupils attending them, or for the conduct and welfare of the educational interests of the district."

It will be observed that although each board of education is required by law to establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the school district, the provisions of the statute with reference to the establishment of high schools are not mandatory. It is provided, however, by Section 7664, General Code, that if a high school is established it shall not be discontinued under three years from the time of its establishment.

It is provided by Section 7747, General Code, that 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 a legal school residence.

From the foregoing, it would seem clear that the board of education of the village of Middlepoint, about which you inquire, has authority to discontinue the maintenance of a high school under its supervision, unless that high school has been established with the past three years, and to contract with another board of education either in a city district, exempted village district, village district or rural district for the schooling of its resident high school pupils.

The Attorney General in his official capacity is not of course concerned with the advisability of discontinuing the high school at Middlepoint, but there can be no question about the power of the Middlepoint Board of Education to do so, and if such action is taken it will not be contrary to law.

Respectfully,
GILBERT BETTMAN,
Attorney General.

344.

TAX AND TAXATION—PROCEEDS OF GENERAL TAX LEVIES PAID THROUGH ERROR TO WRONG POLITICAL SUBDIVISION—CAN BE RECOVERED.

SYLLABUS:

When the proceeds of general tax levies are collected and inadvertently paid to the wrong political subdivision, the political subdivision receiving such payments should, in accordance with the principles of equity and fair dealing, return the same to the political subdivision which should have received the payment in the first instance.

COLUMBUS, OHIO, April 24, 1929.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

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

"On May 25, 1921, a tract of land situated in the city of Ashtabula was detached from the municipality by an act of the city council and the Ashtabula township trustees. This property, prior to its detachment, was in the city school district, and no action was ever taken to transfer it into the Ashtabula township school district.