

to be known as 'the memorial building maintenance fund' and shall be paid out on vouchers signed by two members of such board. The county commissioners, shall, upon request of the board, levy annually a tax sufficient to maintain such memorial building in a proper condition.

By the provisions of Section 3068, General Code, upon the completion, equipping and furnishing of the memorial building, the trustees shall transfer the same to the county, and the title of such site and building shall thereupon vest in the county. Authority is vested in the Court of Common Pleas to appoint a board of permanent trustees who shall have sole control, management and supervision of such memorial building and grounds. By the terms of Section 3068-1, supra, such board is authorized to receive donations and bequests to aid in the maintenance of such memorial building. There is no doubt in my mind that such donations and bequests actually belong to the county both in a proprietary and beneficial sense. The service which such board performs is performed for and on behalf of the county. I have no hesitancy in reaching the conclusion that such moneys as a board of permanent trustees of a memorial building receives, under the provisions of Section 3068-1, General Code, shall be deposited by it in the county treasury to the credit of "the memorial building maintenance fund."

Respectfully,
EDWARD C. TURNER,
Attorney General.

1819.

BOARD OF EDUCATION—NO AUTHORITY TO PAY MOVING EXPENSES OF SUPERINTENDENT—TRAVELING EXPENSES OF MEMBERS AND SUPERINTENDENT WHILE LOOKING FOR TEACHERS—PUBLICATION OF SCHOOL PAPER.

SYLLABUS:

1. *A board of education is unauthorized to pay the expenses of a person employed as superintendent of the schools in transporting his household goods from his former place of residence to the school district, except as the incurring of such expenses may be considered in fixing the salary of such employe.*
2. *A village board of education is unauthorized to pay the traveling expenses of one of its members or its superintendent or other employes while in search of teachers, except when, because of the lack of applicants, it becomes necessary to incur such expenses in order to employ teachers and maintain the schools.*
3. *A board of education has no authority to pay the expenses of an applicant for the position of teacher in the schools, to visit the board for an interview. Where, however, because of a lack of suitable applicants for teaching positions in the schools, it becomes necessary for a board of education to search for teachers in order to maintain the schools, the board may in its discretion send for a prospective teacher and pay his necessary expenses in coming for a personal interview with the members of the board or the superintendent, with a view to determining his qualifications and the terms under which he will accept the position if found to be satisfactory.*

4. *There is no authority for a board of education to pay for the publication of a school paper. Such paper may, however, be published as a part of the activities of a trade school maintained by a board of education.*

COLUMBUS, OHIO, March 7, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

“Question 1. May a board of education of a village school district pay the expenses of an applicant for the position of teacher in the schools to visit the board of education for an interview?

Question 2. May such village board pay a part or all of the expenses of a person employed as superintendent in transporting his household goods from his former place of residence to the village school district?

Question 3. May the board of education of such district pay the expenses of a member of the board or a superintendent or other employe of the board in visiting New York City and other points for the purpose of hiring teachers?

Question 4. We are enclosing herewith a sample of a publication called a ‘School Review.’ May such publication be paid for by the board of education out of the school funds?”

It may be stated as fundamental, that boards of education have only such powers as are granted to them by statute. In this respect, they are on a parity with other statutory boards such as county commissioners, of which it is said in a per curiam opinion concurred in by all the members of the Supreme Court, in the case of *State ex rel. Locher, Prosecuting Attorney, vs. Menning*, 95 O. S. 97-99, that:

“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.”

Unless there are express statutory provisions authorizing boards of education to expend money for the purposes stated in your inquiry, or unless the authority to expend money for these several purposes is implied as being necessary to carry out the express statutory powers of such boards, they do not have such power.

The purpose for which boards of education are created is to maintain the schools in their respective districts. For this purpose they are clothed with authority to provide school buildings and the necessary equipment and supplies for the proper maintenance of the schools and the accommodation of the pupils therein and to employ janitors, truant officers, superintendents of buildings and other necessary employes. Specific authority is given to employ teachers in rural and village districts by Section 7705, General Code, as follows:

“The board of education of each village, and rural school district shall employ the teachers of the public schools of the district, for a term not longer than three school years, to begin within four months of the date of appoint-

ment. The local board shall employ no teacher for any school unless such teacher is nominated therefor by the county or assistant county superintendent except by a majority vote of its full membership. In all high schools and consolidated schools one of the teachers shall be designated by the board as principal and shall be administrative head of such school."

It cannot be presumed that the Legislature delegated in express language and in minute detail each and every act which it is necessary for a board of education to do in order to accomplish the ends for which it was created. The delegation of a power to accomplish a certain purpose necessarily carries with it the power to do all things necessary to consummate that purpose; in this respect, boards of education and similar boards and commissions have some discretion which the courts will respect.

The form of your question requires, for answer, the statement of a broad general principle, applicable to all situations. It is conceivable that a situation might arise where, in order to employ teachers it might become necessary to put forth an extraordinary effort in order to procure teachers at all. In former years, in some districts, boards of education have had no applications whatever for teaching positions, or an insufficient number of satisfactory applicants were had from which to employ an efficient teaching force, and perhaps this condition exists at the present time in some districts.

Teachers are an absolute necessity to the maintenance of proper schools, and if a situation exists in a district that makes it impossible to employ teachers by reason of a lack of applicants, the board of education is not for that reason relieved of its duty of maintaining the schools, but is required in my opinion to make every necessary effort to procure a teaching force and keep the schools open. Whether or not such a situation exists in a district is a question of fact to be determined from all the existing circumstances, and for that reason, it is much less difficult to determine the legality or illegality of particular acts of a public officer under a definite set of circumstances than to state a broad, general application of the rule.

In a former opinion of this department published in Opinions of the Attorney General for 1920 at page 706, in answer to an inquiry, similar to yours, as applied to city boards of education, it was held:

"When it is necessary to search for teachers to teach in the schools of the district, the superintendent of schools in a city school district may be paid expenses actually incurred. When the superintendent for any reason cannot so act, after the board by resolution has declared such necessity to exist and has so authorized a member to perform such duty any reasonable expense actually incurred by members of the board in search of teachers may be paid for it."

There was in force at that time, and is now, Section 7704, General Code, which reads as follows:

"On the third Monday of every January or on the Monday preceding the close of school each year, the clerk of the board of education of a city school district shall certify to the board of education of which he is clerk, the number of pupils enrolled in the public schools of that district, whereupon the board of such city school district may by resolution set aside from the contingent fund a sum not to exceed five cents for each child so enrolled, such sum of money to be known as the 'service fund' to be used only in paying the expenses of such members actually incurred in the performance of their duties or of their official representatives when sent out of the city school

district for the purpose of promoting the welfare of the schools under their charge; such payments to be made only on statement of the several members, or their official representatives furnished at the last meeting held in each month."

It is manifest that the Legislature in enacting Section 7704, General Code, recognized the right of the members of city boards of education to be reimbursed for actual and necessary expenses incurred in the performance of their duties and authorized such boards to establish a fund for that purpose and placed limitations on the amount to be placed in the fund, if established. The conclusions of the Attorney General in the 1920 opinion above referred to, are not made dependent on the existence of a "service fund," but rather on the necessities of each case as they might arise. As pointed out in the said opinion the terms of Section 7704, General Code, are directory as to the creation of the "service fund" but mandatory as to its use when once created, and it is therein stated:

"Your attention is called to the fact that the service fund above mentioned is obtained from the contingent fund of the board, limited in amount to a sum not in excess of five cents for each child enrolled in the schools, and created for the express purpose named in the statute. In the absence of a service fund, the expenses incurred, spoken of in your first and second questions, would be paid from the contingent fund."

In a later opinion, Opinions of the Attorney General for 1926, page 163, it is held:

"In view of the provisions of Section 7704, General Code, payment of claims for traveling expenses of members of a board of education, or their 'official representatives,' in a city school district where no 'service fund' has been established as required by said section, could not be justified and is illegal."

Be that as it may, these aforesaid opinions and Section 7704, General Code, have reference only to the activities of boards of education in city school districts. At the present time, there is no such fund known as a contingent fund of the board of education only as the same might be created as a part of the accounting system of the board.

The obligation of a village board of education to maintain the schools and employ teachers for that purpose is the same as that of a city board of education, and if to do so requires the members of the board or their legal representatives to incur expense, in traveling or otherwise, to fulfill these obligations they must do so. Whether they may lawfully be reimbursed therefor, or whether they have lawful claims for such reimbursement is another matter.

Public officials in performing the duties of their offices are bound to do each and every necessary act which the law imposes on them as such officers. Compensation therefor is regulated by statute and when, as in the case of members of village boards of education, no compensation is provided by statute, the members of such boards must perform their duties without pay. So far as compensation to the members of such boards for their own time is concerned, no claim exists, but this rule does not apply to expenses actually incurred by the officers in the discharge of their duties. It is stated in 23 American and English Encyclopedia of Law, 2nd Edition, Vol. 23, page 389:

"Where the law required an officer to do what necessitates an expendi-

ture of money for which no provision is made, he may pay therefor and have the amount allowed him."

Throop on Public Offices, Section 493, states:

"A public officer is entitled to receive from the public authority which he represents, reimbursement for extraordinary expenses, necessarily incurred by him, in the course of, or in consequence of, the discharge of his official duties, and not intended to be covered by the compensation allowed to him, the rule in this respect being the same as in cases of private agency."

When a real, as distinguished from a fancied necessity arises, a village board of education may incur expenses in employing teachers for the schools and have the same allowed from public funds, but the necessity therefor should be real and not for the mere purpose of covering junketings of the board or its representatives. Each case must necessarily be judged in the light of the special circumstances. As a general rule, however, the discretion of the board will not be interfered with in the absence of clear abuse or for fraud.

There is a marked distinction, however, between a board of education searching for persons to accept positions as teachers, when necessary, and the persons themselves making applications for such positions. Clearly, there is no authority vested in a board of education to pay the expenses of a person to enable him to apply for a position or to have an interview with the board with a view to filing an application for a position.

However, where a situation such as I have stated exists in a school district, that is, where an insufficient number of suitable applications are made from which to select an efficient teaching force and it therefore becomes necessary for the board to make some additional effort to secure teachers, other than mere consideration of the applications on file, the board may in its discretion send for persons it may desire to employ for the purpose of determining, through a personal interview, their qualifications and the terms under which they will accept a position, and may lawfully pay their necessary expenses in presenting themselves for that purpose. Here, again, in determining whether or not the board has abused its discretion, consideration must be given to the necessities of the situation and each case judged by the particular circumstances. It would be impossible to lay down any hard and fast rule that would be applicable in all situations. As a rule, however, the discretion of the board should be respected in the absence of facts indicating collusion, fraud or other abuse of discretion.

There is no authority for boards of education to pay moving expenses or household expenses or any expenses for persons employed as superintendent, or in any other capacity. There is, however, express authority to fix the salaries of such employes. Section 7690, General Code, reads in part, as follows:

"Each city, village or rural board of education shall have the management and control of all of 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 employees, including, if deemed best, a superintendent of buildings, and may fix their salaries. * * *"

In fixing these salaries, consideration may be given to necessary expenses that may be incurred by a person whom the board desires to employ as superintendent, and the salary so fixed that the superintendent will be justified in incurring necessary

expenses in order to accept the position, but whatever is paid him must be paid as salary, and not as moving expenses.

Neither is there any authority for boards of education to publish or pay for the publication of a school paper such as the "School Review" which you enclose. There are circumstances, however, where a publication of this kind might be justified as being incidental to courses of study in the school. Where a school maintains a printing department as a part of its trade school activities, there could be no objection to the activities of these departments taking the form of publishing a school paper. Where the editing and printing are both done as a part of the school work and in furtherance of the prescribed courses of study in the school it clearly would be lawful to print and publish such a paper.

Answering your questions specifically, it is my opinion :

First, a board of education has no authority to pay the expenses of an applicant for the position of teacher in the schools, to visit the board for an interview. Where, however, because of a lack of suitable applicants for teaching positions in the schools, it becomes necessary for a board of education to search for teachers in order to maintain the schools the board may in its discretion send for a prospective teacher and pay his necessary expenses in coming for a personal interview with the members of the board or the superintendent, with a view to determining his qualifications and the terms under which he will accept the position if found to be satisfactory.

Second, a board of education is unauthorized to pay the expenses of a person employed as superintendent of the schools in transporting his household goods from his former place of residence to the school district, except as the incurring of such expenses may be considered in fixing the salary of such employe.

Third, a village board of education is unauthorized to pay the traveling expenses of one of its members or its superintendent or other employe while in search of teachers, except when because of a lack of applicants, it becomes necessary to incur such expenses in order to employ teachers and maintain the schools.

Fourth, there is no authority for a board of education to pay for the publication of a school paper. Such paper may, however, be published as a part of the activities of a trade school maintained by a board of education.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1820.

APPROVAL, BONDS OF SENECA TOWNSHIP, MONROE COUNTY—
\$2,000.00.

COLUMBUS, OHIO, March 7, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.