

The above mentioned lease is executed under the authority of Section 471, General Code, as amended by the Conservation Act, passed by the 88th General Assembly.

Upon examination of the provisions of said lease, I find that the same is in conformity with the provisions of said section of the General Code, and with other statutory provisions relating to leases of this kind.

Said lease is accordingly hereby approved by me as to its legality and form, which approval is evidenced by my authorized signature on said lease and upon the duplicate and triplicate copies thereof.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2886.

SCHOOL PROPERTY—BOARD OF EDUCATION—POWER TO RENT OR LEASE NOT GIVEN BY STATUTE—KINDS OF PROPERTY BOARD MAY RENT TO TEMPORARY OCCUPANT.

*SYLLABUS:*

1. *In the absence of specific statutory authority therefor, boards of education do not possess the power to rent or lease school property held by them in their corporate capacity in trust for the use of the public schools.*

2. *When a board of education incidentally becomes possessed of buildings which are not needed for school purposes, and which can not immediately be advantageously disposed of, they may lawfully permit those buildings to be occupied for uses which are not strictly school purposes and may lawfully accept rental for such uses. Such occupancy, however, should be temporary, and until such time as the building may be sold in compliance with Section 4749, General Code.*

COLUMBUS, OHIO, January 30, 1931.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

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

“The Board of Education of one of the districts of this county desires to purchase land for the purpose of providing a playground adjacent to their school. Upon this property is a dwelling house and the board raises the question as to whether or not they could rent this property, to be used as a dwelling, to one of their teachers.”

It is well settled that boards of education being creatures of statute, have only such powers as are expressly granted to them by statute, together with such other powers as may be said to be implied as being necessary to carry out the express powers granted.

Boards of education are authorized by Section 4749, General Code, to sell property not needed for school purposes, but nowhere will there be found any authority to lease the same. A former Attorney General said with reference to this subject in

an opinion reported in the Annual Report of the Attorney General for 1913 at page 1508:

“Section 4749, General Code, which enumerates the power of the board of education with reference to acquiring, holding, possessing and disposing of real and personal property, does not include any provision for the leasing of such property by the board, and as the statutes nowhere prescribe the manner of executing such a lease, the board cannot be held to possess such power.”

It was also held by a former attorney general that real estate owned by a board of education could not be leased for oil or gas purposes in the absence of a specific statute authorizing the same. See Opinions of the Attorney General for 1918, Volume 2, page 1352.

In the case of *Weir v. Day*, 35 O. S., 143, which was an action in equity seeking to enjoin a board of education from attempting to lease a schoolhouse for a private or select school, the court held that while all public schoolhouses are vested in boards of education in trust for the use of the public for common schools, any appropriation of them to other uses is unauthorized and unlawful, and the injunction was granted.

In Opinion 2733, rendered under date of December 29, 1930, it was said:

“It seems to be the universal rule followed by the courts of Ohio and by this office, that school property can not be used by a board of education for other than strictly school and playground purposes, unless specific authority to the contrary is granted by statute and that a board of education has no authority to commercialize property held by it, even if it could be done advantageously from a business standpoint and without interfering with its primary purpose, by leasing the same and thereby collecting rental therefor.”

Inasmuch as there is no authority for a board of education to lease a building owned by it to one of its teachers or anyone else, which leasing necessarily involves the maintenance of the property in such condition as to be suitable for the purposes for which it might be leased, I am of the opinion that the board of education in question, does not possess the power to lease the dwelling house referred to in your inquiry, as a dwelling, to one of the teachers in the district.

I do not wish to be understood as saying that where a board of education acquires property for playground or other purposes and incidentally, by so doing, it comes into possession of buildings which are of no value to the board for purposes for which the property is acquired or for any other practical purpose and the building can not immediately be disposed of to advantage, it can not permit the building to be occupied temporarily for some purpose, not strictly a school purpose, and receive a fair rental for the use of said property. Under such circumstances the board would not in my opinion, be charged with an abuse of authority if it permitted a teacher or anyone else to occupy the premises temporarily, until such time as the building could be advantageously disposed of. The board can not, however, enter into a binding contract of lease for such premises and a permit to occupy the premises should extend only to a temporary occupancy. This, in my opinion, would be only the carrying into effect of the expressly granted power to hold and preserve the property of the district to the best interests of the people of the district.

In said opinion 2733, referred to above, it was said in the second branch of the syllabus:

"Except as the power may be implied, as being necessary to carry into effect some expressly granted power, a board of education is not authorized to rent or lease property held by it for the public school purposes of its district."

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2887.

RESEARCH BUREAU—COUNTY COMMISSIONERS—NO AUTHORITY TO CONTRACT FOR SURVEY OF COUNTY OFFICES LOOKING TO ESTABLISHMENT OF NEW SYSTEMS AND REPORTING LAYOUT.

SYLLABUS:

*County commissioners, under existing laws relating to county government, are not authorized to contract for the employment of a bureau of governmental research to make a survey and study of county offices and institutions, which survey consists of recommending new systems of accounting, advising as to a new system of budget procedure, reporting on personnel, office lay-out, contract procedure, budgeting, etc. Action of State Bureau of Inspection and Supervision of Public Offices upheld.*

COLUMBUS, OHIO, January 30, 1931.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Your predecessor recently submitted a request for an opinion, which request is as follows:

"The enclosed copy of Resolution and Agreement were transmitted to this office by the Board of County Commissioners with the request that we advise it as to its authority to expend county funds for the proposed survey.

We transmitted a copy of this Resolution to the Bureau of Inspection and Supervision of Public Offices for its advice in the matter and to date have received no reply. We anticipate that the Bureau has transmitted the same to your office for your opinion, and inasmuch as this is the last day of my term as Prosecuting Attorney and as the matter seems particularly within the province of the said State Bureau, I respectfully request that you advise this office of your opinion of the subject matter."

Since receipt of your predecessor's letter, we are advised that the Bureau of Inspection and Supervision of Public Offices has ruled (copy sent herewith) that "the county commissioners are without authority to make the contemplated contract." You have requested that I review this ruling. I concur therewith for the following reasons:

According to the resolution proposed to be passed by your board of county commissioners, the contract to be entered into with a bureau of governmental research is to provide that in consideration of the payment to such bureau of governmental research of not to exceed eight thousand dollars, this bureau will make a complete survey and study to include the following: