

1672

1. EDUCATION, BOARD OF—AUTHORIZED BY SECTION 4834-10 G. C. TO RENT BUILDING FOR SCHOOL PURPOSES—BOARD MAY MAKE REASONABLE REPAIRS AND ALTERATIONS TO MAKE BUILDING USABLE FOR SCHOOL PURPOSES.
2. BOARDS NOT AUTHORIZED TO PAY COST OF ALTERATIONS AND REPAIRS IN BUILDING RENTED FOR SCHOOL PURPOSES FROM BUILDING FUND CREATED BY SECTION 5625-11 G. C.

SYLLABUS:

1. A Board of Education is authorized by Section 4834-10, General Code, to rent a building for school purposes, and such board may make reasonable repairs and alterations therein, required to make such building suitable for use for school purposes.

2. A Board of Education is not authorized to pay from its building fund created by it pursuant to Section 5625-11, General Code, the cost of alterations and repairs in a building rented by it for school purposes.

Columbus, Ohio, March 12, 1947

Hon. Carl Abaercheli, Prosecuting Attorney
Warren County, Lebanon, Ohio

Dear Sir:

I have before me your communication requesting my opinion, and reading as follows:

“I have been requested by the Board of Education of one of the local school districts in Warren County to obtain your opinion on the following questions upon the following statement of facts:

The particular district is a rural one which embraces an area of approximately 18 square miles, and with one exception a number of former school houses in the district have been closed and combined in one combination grade and high school building; and it is desired by the Board of Education, for purposes of efficiency and economy in opera-

tion, to close the one remaining one-room school house and bring its pupils to the central school.

This central school is now greatly overcrowded, and it is absolutely necessary in the opinion of the Board to obtain additional space. Because of the present high cost of building and the fact that they still have some outstanding bonds, it is not practical for the Board to consider a building program at this time, although preliminary plans have already been drawn up for a proposed addition for future expansion.

The only practical solution which the Board has been able to suggest for the present situation is to rent a two-story former library building which could probably be remodeled into four classrooms and which belongs to a private owner.

The owner of the former library building is willing to lease same to the Board of Education at an approximate rental of \$1,000.00 per year; however, in order to use the building for school purposes, it will be necessary to spend approximately between three to four thousand dollars to remodel the same, in order to comply with Public Building Order No. 4715 issued December 17th by the Department of Industrial Relations, Columbus, Ohio.

Said Public Building Order also sets forth that this order must be complied with before the proposed building can be used for temporary school purposes, and the conditional permission granted to use the structure is limited to a period not exceeding two years.

Based on the foregoing statement of facts, the Board's questions are as follows:

1. Is it legally possible for the Board of Education to spend the estimated sum for remodeling the library building for temporary school purposes, where the title to the building is vested in a private owner and where the school board is merely a lessee? Although I have checked the Ohio School Code in an attempt to find an answer to this question, particularly Sections 4834-10 and 4834-18, I am unable to satisfy myself as to the **correct answer to this question**, although the Board is granted the apparently broad power of: 'to rent *suitable school* rooms and provide the necessary apparatus and make all other necessary provisions for the schools under its control.'

2. In the event it is your opinion that the Board of Education may not undertake and pay for the proposed repairs and remodeling under the facts stated, and assuming the owner of the property is willing to undertake and pay for such repairs, remodeling and alterations, is it legally possible for the Board of Education not only to pay the reasonable rental value of the premises in their present condition, which they estimate at about \$1000 a year, but also to pay a sufficient increase in rental, spread over the two year use period as limited by the Department of Industrial Relations, to cover the actual cost of such remodeling, etc., the present estimated maximum of which would be, as stated above, at \$4000.00; that is, a total rental for the two years estimated at \$2000.00 for the ordinary rental value and \$4000.00 for the remodeling, or a total of \$6000.00, or an average of \$3000.00 for each year of the two year period; with the understanding with the owner or lessor that if the occupancy of the premises by the school board continued after the two years, that the rent would revert to the normal rental value.
3. In the event your answer to either of the foregoing questions is in the affirmative, would it be possible to pay for the proposed remodeling, either directly in the case of Question No. 1, or indirectly in the case of Question No. 2 from a sum of \$10,000.00 which said school board has in its building fund, which sum of \$10,000.00 was derived as follows:
 - (a) \$7500 from the sale of a former grade school building, which sum was placed by said Board of Education in its building fund, and
 - (b) \$2500.00 which was transferred from the Board's general fund to its building fund."

1. I think we may start with the proposition that it is the duty of every Board of Education to provide sufficient school buildings and other facilities to afford the opportunity for school attendance to all the children of its district. Section 4836-1, General Code, provides:

"The Board of Education of each city, exempted village and local school district *shall provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number thereof.* Every day school so provided shall continue not less than thirty-two weeks in each school year."

(Emphasis added.)

For the purpose of carrying out this duty the General Assembly has provided in Section 4834-10 of the General Code as follows:

“The Board of Education of any school district, except a county school district, *may build, enlarge, repair and furnish the necessary school houses, 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.” (Emphasis added.)

Here it will be noted that the Board is given specific authority to “*build, enlarge, repair and furnish the necessary school houses*”. It is also given express authority either to purchase or lease sites for such school houses. This provision it appears to me can have no other construction than that the board may if it sees fit, build a school house on leased ground. We are not concerned with that proposition in the question before us, but it does illustrate the broad discretion which the General Assembly has seen fit to confer upon a Board of Education. Doubtless, if it should attempt to build an expensive building on ground on which it holds only a short lease, it would be open to the charge of abuse of its discretion. Proceeding with an examination of this section we note that the board is authorized to rent suitable schoolrooms either within or without the district and finally, in very broad language the board is authorized to “make all other necessary provisions for the school under its control.”

The authority given by this section to repair a school building which the board has acquired either by erection, purchase or lease, seems to me to be quite clear. In my opinion such changes or alterations in a school building as are necessary to make it safe for school occupancy or to comply with the orders of the Department of Industrial Relations would be clearly comprehended within the powers conferred by this section. If a lease which a Board of Education may acquire is of sufficient duration to justify reasonably the alterations and repairs contemplated, I am of the opinion that the Board of Education would have full authority to enter into the lease and to make the necessary changes.

The serious question raised by the facts which you present is whether or not the amount required to make the alterations stipulated by the

Department of Industrial Relations would be so disproportionate to the use which the board could get out of the building in the short space of two years as to make its action a manifest abuse of discretion.

While Boards of Education are held to a strict adherence to the powers that are granted to them by the General Assembly yet it seems to be well settled that where the power exists a Board of Education has wide discretion in exercising it. In the case of *Brannon v. Board of Education*, 99 O. S., 369, it was held:

"1. Section 7625, General Code, vests in a Board of Education authority to determine the needs of the school district for the proper accommodation of its schools. * * *

3. A court will not restrain a Board of Education from carrying into effect its determination of any question within its discretion, except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority."

To the same effect see *State, ex rel. v. Board of Education*, 11 Oh. App., 146; *Pugh Printing Co. v. Yeatman*, 22 O. C. C., 584; *Commissioners v. Pargillis*, 10 O. C. C., 376.

In an opinion of a former Attorney General, found in 1919 Opinions of the Attorney General, p. 871, it was held:

"Where the chief deputy inspector of workshops and factories issues an order against a public school building, that it is inadequate or unsafe for an overflow of pupils, and such excess number of pupils is thereby without proper school facilities, the Board of Education must provide suitable space, and an emergency is created."

It was further held that the Board can meet such emergency by renting or leasing rooms for school purposes under Section 7620, General Code, then in force, the provisions of which were quite similar to those of Section 4834-10 supra. In the course of the opinion it was said:

"It will be noted from the above section that the powers of the Board of Education are rather sweeping on the question of providing school facilities, the fundamental idea being that the schools must be kept going, for after enumerating various powers in detail, the section says in two places that 'the board * * * shall make all *other necessary* provisions' for the convenience and prosperity of the schools."

It appears to me that where the rental value of a building is \$1,000 per annum and the proposed lease is only for a period of two years, an expenditure of \$4,000 in alterations would be out of proportion to the value of its use and might well be regarded as an abuse of discretion. If the term is extended for a reasonable period, I would see no objection to the expenditure of the contemplated sum.

2. The second proposition which you have presented seeks to arrive at the same result through a different course of procedure, namely, that the work of remodeling shall be done by the owner, and that the rental be increased so as to cover the cost. This course, it appears to me, would be subject to the same objection as above noted as to your first proposition, if the use of the building by the board is to be limited to a two year term. It would be difficult to justify the payment of a rental of three times the admitted rental value of the building in order to procure the installation by the owner of these improvements, when the board could only use the building for a period of two years. That course would appear to make the rental so excessive as to amount to an abuse of discretion.

You have, however, advised me that you will probably be able to negotiate a lease for the period of five years and that the Department of Industrial Relations would be willing to amend its order to permit the use of the building in case the alterations stipulated by it are made for such period. Upon that basis it appears to me that the cost of the alterations might be distributed over the term of the lease as a part of the rental, and that the board would not be open to the charge of abuse of its discretion in accepting the same.

3. You inquire whether it will be possible to pay the cost of the proposed remodeling either directly in the case of question No. 1, or indirectly in the case of question No. 2, from a building fund which has been created principally from the sale of a former school building and partly from money transferred by the board from its general fund to the building fund. Your attention is directed to Section 5625-10, General Code, the pertinent portion of which reads as follows:

“If a permanent improvement of the subdivision is sold the amount received for the same shall be paid into the sinking fund or the bond retirement fund of the subdivision, or into a special fund for the construction or acquisition of a *permanent improvement or improvements*; * * * ” (Emphasis added.)

This section of course applies to school districts since they are included in the definition of "subdivision" under the uniform tax law of which the above quoted section is a part. The "building fund" to which you refer is obviously one of the special funds which a subdivision is authorized by Section 5625-11, General Code, to create. Accordingly, if the board should decide to rent the building in question in its present condition and to make the required alterations, it certainly could not be said that the cost of these alterations was "for the construction or acquisition of a permanent improvement", and therefore such cost could not be paid from that fund. On the other hand, if it should be decided to have the landlord make the alterations and repairs and distribute the cost over the term of the lease, by an increase of the rental, certainly the rental paid could not be said to be "for the construction or acquisition of a permanent improvement."

Accordingly, it is my opinion that in either case the cost involved must be provided for out of general funds under the control of the Board of Education and not out of the building fund to which you refer.

Respectfully,

HUGH S. JENKINS,
Attorney General.