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The officers of a school district must act within the limitation of their statutory authority, and, where they are by statute required to act in a specified manner, they must conform to the statutory requirements.

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In view of the provisions of Const. Art. 10, Sec. 3, requiring the establishment of district schools which shall be free to all children and in which no sectarian education shall be allowed, the provision of St. 1921, Sec. 40.16, Subd. 1 (c), authorizing a district in which schools have been suspended to provide transportation to and from the school for all children residing more than one mile from the nearest school, must be limited, as is the provision of the same section for the payment of tuition, to the attendants at public schools in another district, and does not authorize the district to provide free transportation for children who desire to attend private schools.

Where a contract for the transportation of all the children of a district to an adjoining city was entire, and was intended to provide transportation for children attending parochial schools, as well as those attending public schools, the contract was void in toto, and the fact that two of the children transported by the contractor were attendants at the public schools does not save the contract."

In a later Wisconsin case, *Milquet vs. Van Straten et al.*, 202 N. W. 670, wherein this same contract was under consideration, it was held:

"Public funds, paid by a school district for transporting children, only two or three of whom attended public schools could not be retained in taxpayers suit on the theory of quantum meruit, in that cost of transporting two or three was as great as transporting all, since contract under which money was paid was void, and district could make itself liable for transportation only in specified manner prescribed by the statute."

In view of the foregoing, I am of the opinion, in specific answer to your question, that a board of education in this state is not authorized to provide transportation and pay therefor from public funds for pupils who attend high school, unless such pupils attend the public schools.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2269.

#### SCHOOLS—USE OF BUILDINGS—AUTHORITY OF BOARDS TO LEASE BUILDINGS—SALE AFTER FOUR YEARS.

##### SYLLABUS:

1. *Boards of education may permit the use of school buildings under their jurisdiction, for community center purposes, so long as such use does not interfere with the use of the buildings for school purposes.*
2. *Schools which have been suspended upon the consolidation of the schools of a district, must be reestablished upon petition signed by the parents or guardians of*

*twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to the suspended school than to any other school in the district. The right to have such school established exists in favor of the petitioners so long as there is a suitable school building in the territory of such suspended school as it existed prior to suspension.*

3. *The power of a board of education, as authorized by Section 7730-1, General Code, to dispose of a school building located in the territory of a suspended school, does not empower said board to grant an exclusive lease of said building even though the building has not been used for school purposes for four years following the resolution of suspension of the school formerly conducted therein. The authority to dispose of said building extends only to its sale which should be consummated in the manner provided in Section 4756, General Code.*

COLUMBUS, OHIO, June 22, 1928.

HON. C. LUTHER SWAIN, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads as follows:

“In two different school districts in this county, the following state of facts have arisen:

The schools have been consolidated and various one-room buildings have been abandoned and are being sold. In each district there is one school house located in or near small communities, that might be called cross-road villages. The school board in each instance desires to turn over these buildings to the communities to be used as community centers.

Under Section 4756 of the General Code, is it possible for these boards to make leases to an association of individuals, such as Ladies Aid Society of a church, or a club organization, upon lease of five or ten years, with possibility of renewal? These leases would provide that the lessees would maintain the buildings and keep them in repair and also carry insurance upon them, the insurance being payable to the proper board of education.

But if this procedure can not be worked out under General Code Section 4756, could this procedure be worked out under any other section?”

By the terms of Sections 7622 to 7622-7, inclusive, of the General Code of Ohio, boards of education are authorized to permit the use of the school buildings under their control for literary societies, singing schools, school exhibitions, for holding political, grange or similar meetings, for holding educational, civic, social or recreational meetings and entertainments, and for any such other purpose as may make for the welfare of the community, providing such incidental use does not interfere with the primary purpose for which the buildings were erected, that is, for public school purposes.

In permitting the use of school buildings for any of these incidental purposes, the board may make such rules and regulations as in its judgment are necessary and proper; and in leasing or granting the use of the buildings to organizations or groups of citizens, the board is required to protect itself from responsibility for damage done or actual expense incurred by reason of such use.

The authority granted to boards of education in this respect is very broad, and the statutes seem to evince a policy that the public school buildings, through the several boards of education, may be constituted centers for community social, civic and recreational activities. In a former opinion of this department, reported in Opinions of the Attorney General for 1920, Volume II, page 885, it was said:

"Broadly speaking, the policy of the law in all secular educational activities and moral uplift work is centered in and about the public schools and it also favors what is known as community center work, as is evidenced in Section 7622, et seq., wherein ample authority is conferred upon a board of education to provide for the use of school grounds and buildings for educational, civic, social or recreational meetings and entertainments."

The authority thus conferred on boards of education to foster community center activities in the interests of the welfare of the community extends to the employment of persons to supervise, organize, direct and conduct social and recreational work in the district (Section 7622-4, General Code), and to levy a tax on all the taxable property in the district, not to exceed two-tenths of a mill, for a social center fund to be used for social and recreational purposes (Section 7622-7, General Code).

The law is clear that a board of education may permit the use of school buildings in its district by ladies' aid societies or other group organizations for community center purposes, so long as that use does not in any way interfere with the use of the buildings for school purposes.

To answer your specific inquiry it is necessary to determine whether, under the circumstances stated by you, a lease of the school building for a term of years would be an interference with the use of the building for school purposes.

Even though the schools of the district have been consolidated and the schools formerly conducted in the one-room buildings are thereby suspended, there still exists in favor of the patrons of the one-room buildings the right to have these schools re-established.

Sections 7730 and 7730-1, General Code, read in part as follows:

Sec. 7730. "The board of education of any rural or village school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause,  
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Ten days' notice of such suspension shall be posted in five conspicuous places within such village or rural school district by the board of education after the resolution providing for such suspension is adopted. Wherever such suspension is had on the direction of the county board of education then upon the direction of such county board, or upon the finding by the board of education ordering such suspension that such school ought to be reestablished, such school shall be reestablished.

Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year; provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension."

Sec. 7730-1. "In order to protect the rights of the petitioners mentioned in Section 7730, where a school has been suspended through either or any of the proceedings mentioned in such section, the school building and real estate located in the territory of such suspended school and in which property the board of education has legal title, shall not be sold by the board of education of the district until after four years from such date of suspension of said

school unless the said building has been condemned for school use by the Director of Industrial Relations of Ohio; \* \* \*

In any case, failure to use the school building for school purposes within the four years following the resolution of suspension of such school shall be considered a legal abandonment of such school and the school building and real estate in which the board of education has legal title may be disposed of by such board of education according to law."

It will be observed from the provision of Section 7730, contained in the last three lines thereof, that the right to reestablish a suspended school, which has been suspended by reason of its consolidation with another school, exists in favor of those school patrons, whose residence is nearer to the suspended school than to any other school of the district, so long as "there is a suitable school building in the territory of such suspended school as it existed prior to suspension."

This right to have a school reestablished, if not exercised for four years after the original suspension of the school, may be foreclosed by the board of education after four years, if it sees fit to do so, by disposing of the building according to law as provided in the last paragraph of Section 7730-1, *supra*. But if the board does not so dispose of the building according to law at the end of the four year period, the building is still there and, in my opinion, the right to have the school reestablished exists so long as the board owns the building and fails to dispose of it according to law.

Disposing of the building "according to law," in my opinion, means selling the building as provided by Section 4756, General Code, and does not mean a leasing of the building. Nor would leasing of the building, in my opinion, cut off the right of the residents of the district to have the school reestablished. To dispose of the building "according to law," that is, to sell it, the provisions of Section 4756 should be followed. Said section reads as follows:

"When a board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell such property at public auction after giving at least thirty days' notice thereof by publication in a newspaper of general circulation or by posting notices thereof in five of the most public places in the district in which such property is situated. When the board has twice so offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at private sale, either as an entire tract or in parcels, as the board deems best. Provided, however, that in case the board of education decides to dispose of such real property, it may sell and convey the same to any municipality or board of trustees of the school district library in which such real estate is situated, upon such terms and conditions as may be agreed upon. The president and secretary of the board shall execute and deliver deeds necessary to complete the sale or transfer provided for by this section."

If the board does not see fit to sell the building in accordance with the provisions of Section 4756, above quoted, it clearly is not required to do so, and may lease it or permit the use of it for community center purposes, but any such lease would be subject to the right of the residents of the district to have the school reestablished. To grant or lease the exclusive right to the use of the building is not disposing of the building according to law, and, in my opinion, would be an interference with its use for school purposes.

Moreover, it has been held in several former opinions of this department that it is not within the power of a board of education to lease school property under any

circumstances. An examination of the several sections of the Code, setting forth the powers of a board of education, particularly Section 4749 and related sections, discloses no express authorization for boards of education to lease school property; nor can this authority to, be implied as being necessary to carry out any express powers of the board.

I direct your attention to an opinion of the Attorney General, published in the Annual Report of the Attorney General for 1913, Volume II, page 1508, wherein it was held:

“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.”

A similar conclusion was reached in an opinion reported in Opinions of the Attorney General for 1918, Volume II, page 1354. Also in Opinion No. 76, rendered under date of February 12, 1927, and addressed to the Honorable Vernon E. Metcalf, Prosecuting Attorney, Marietta, Ohio.

You will note the language of the several statutes authorizing the use of school buildings for incidental purposes. By the terms of Section 7622, General Code, the board may “authorize the opening of the school house” for certain purposes. Section 7622-1, General Code, provides that school houses and school grounds shall be “available for use as social centers.” It is provided by Section 7622-1a that the board shall upon proper application for the use of the school building “permit the same to be used as a place wherein to hold meetings of electors for the discussion of public questions and issues.” By the terms of Section 7622-3 a board of education is directed under certain circumstances and for certain specified purposes, to “permit the use of any school house and rooms therein and the grounds and other property under its control.” At no place will be found any authority for the board to do more than to permit the use of the school house and school grounds for certain incidental purposes, which is quite different than for them to give a lease for such premises. Obviously, a school house under an exclusive lease to one or more individuals would not be available for use as authorized and directed in the above sections.

Specifically answering your question, therefore, it is my opinion that the board is authorized to permit the use of this school building for community center purposes so long as that use does not interfere with the use of the building for school purposes. Even though four years have elapsed since the resolution of suspension of such school was made, the board does not have a right to grant the exclusive use of said building for community center purposes, but any use which is granted will be subject to the right of the school patrons of the district to have the school reestablished as provided in Section 7730 of the General Code of Ohio.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*