

As a matter of practical information, this department is officially advised by the Department of Law of the city of Columbus, which city was involved in the building permit question in the opinion of the attorney general in 1914 supra, that "the city of Columbus does not collect fees for building permits where new schools are being erected by the board of education in the Columbus City School District."

Space will not be taken here to quote the familiar sections of the statutes which establish the fact that a board of education cannot be taxed or assessed for local matters or on local matters by other local subdivisions. For these sections and discussion thereon, see opinion number 3842, issued by this department on December 30, 1922, upon the question of assessing a board of education for boulevard lighting in front of abutting school property.

A board of education is permitted to spend public funds only for those things for which there is a clear or implied authority and a search of the statutes reveals that nowhere in the General Code is there any authority for a board of education to expend the funds (of which it is a mere trustee for the public) in the purchase of building permits where such charge has been made by a municipality.

In reply to your question, then, you are advised that it is the opinion of this department that:

1. The building department of a municipality governed by city charter or otherwise is without authority to require permit fees to be paid by the school district of which the municipality is a part when new school buildings are erected or additions are made to school buildings.

2. A board of education is without authority of law to expend its funds for building permit fees and where such building permit fees have been charged and collected, a recovery may be had by the paying board of education.

3. Under the general laws of the State (1035 G. C. et seq.) in a municipality having a regularly organized building inspection department the building plans of the city school district shall be approved by such local municipal building inspection department and it is the duty of the building inspector to pass upon the plans so submitted to him, without charging any fee for his services.

Respectfully,

JOHN G. PRICE,

Attorney-General.

3866.

MUNICIPAL CORPORATIONS—WATERWORKS DEPARTMENT MAY ENTER INTO AGREEMENT WITH CITY TO PAY OFFICE RENT FOR SPACE IN PUBLIC BUILDING.

*Under the provisions of sections 3958 and 3713 G. C., the waterworks department of a municipality may enter into an agreement with the city, to pay rental for office space occupied by said department in a public building under the control of the city.*

COLUMBUS, OHIO, January 4, 1923.

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

GENTLEMEN:—Receipt is acknowledged of your recent requests reading as follows:

"We are just in receipt of the enclosed communication from Mr. Blau, State Examiner in charge of the Cincinnati District. He has framed a specific question as to the right of the Water Department of that City to pay rent to the city for space occupied as offices in the City Hall. We would very much appreciate your opinion on the situation as it exists in Cincinnati, and are respectfully requesting an answer to the questions submitted in regard thereto."

"Answering your favor of the 12th, we respectfully advise:

The City Hall in the city of Cincinnati was built by moneys obtained from sale of bonds which are provided for by general tax levy. The maintenance and upkeep of the building is from general tax levy money.

The Waterworks of the city is self-sustaining, paying all interest and sinking fund charges on water debt, also all expenses of maintenance and operation of the waterworks department from the earnings of the waterworks, except that it pays no rent whatsoever for its offices, which occupy a considerable portion of the City Hall or City Building. This it can readily afford from its earnings.

Question—Can the City of Cincinnati legally charge the waterworks department rent for space occupied as offices in the City Hall, and can Waterworks legally pay same?

If so, shall it be done by contract between the two branches of municipal government, or shall council pass legislation covering or what is proper course."

In view of the above statement of facts, it is thought that your question may be briefly answered in the affirmative, since it would seem under the circumstances, that both the city and waterworks department are lawfully authorized to contract in respect to the subject mentioned in your inquiry.

In such a connection it is to be noted that Sec. 3958 G. C., authorizes the waterworks department to expend from its revenues derived from water rents, the expenses incident to the management and operation of the department, and under the statement of facts submitted, it would seem reasonable to conclude that "office rent" may be fairly termed a lawful expense authorized by this section.

On the other hand Section 3713 G. C., provides that councils of municipal corporations may permit the use of public buildings under their control, upon such terms and conditions as they by ordinance provide; hence under the facts stated no legal objection can be seen to that of the city charging a rental for the office space occupied by the Waterworks Department in the City Building. Since Section 3713 G. C., authorizes council to permit the use of the public buildings under its control, it is believed in the instance contemplated, the rental agreement between the city and the Waterworks Department, should be authorized by an ordinance of council, and a contract entered into between the two departments in conformity to such legislation.

Respectfully,  
JOHN G. PRICE,  
Attorney-General.