

to any contention that such employment is "relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief".

However, a reading of the Federal Civil Works Administration Rules and Regulations No. 10, referred to supra, shows that persons receiving CWA funds on Civil Works Service projects are receiving "relief."

Specifically answering your inquiry, it is my opinion that work under the PWA or CWA projects, as distinguished from Civil Works Service projects, does not constitute "relief under the provisions of law for relief of the poor or relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief", within the purview of Sections 3477 and 3479 of the Ohio General Code, but workers or recipients of relief under Civil Works Service projects do receive "relief under the provisions of law for the relief of the poor or relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief", within the purview of Sections 3477 and 3479 of the Ohio General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2474.

BOARD OF EDUCATION—SALE OF PROPERTY AS PRESCRIBED BY
SECTION 4756, GENERAL CODE, MANDATORY—PROPERTY MAY
BE SOLD AT PRIVATE SALE WHEN.

SYLLABUS:

1. *The terms of Section 4756, General Code, with respect to the manner of selling property held by a board of education in its corporate capacity, are mandatory.*

2. *A board of education is without power to sell real estate or personal property held by it in its corporate capacity exceeding in value \$300.00, at private sale, until after an attempt has been made to sell the same at public auction in the manner provided by Section 4756, General Code, and a failure to sell the property in that manner, unless such property is sold to a municipality or to the board of trustees of the school district library in which such real estate is situated.*

COLUMBUS, OHIO, April 7, 1934.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Warren County, Lebanon, Ohio.*

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

"Situate in the Village of Franklin, Warren County, Ohio, is an abandoned school house located upon a sizeable lot along the main street of said village.

Recently, the United States Government requested bids for a site upon which to erect a new Post Office Building. Some thirteen (13) bids were submitted, and included therein was the bid of the Board of Education of Franklin Village School District, offering to sell their school property for the sum of \$7,500 00. This proposal bid was accepted by the Post Office Department, and I have been called upon to examine the title.

The Board of Education has not complied with the provisions of Section 4756 of the General Code of Ohio; in fact, it had no time to do so in order to submit its bid.

Accordingly, will you please advise whether or not the board must comply with the provisions of Section 4756 of the General Code, or whether this bid so submitted, is legal and can be accepted."

Section 4756, General Code, 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 clerk of the board shall execute and deliver deeds necessary to complete the sale or transfer provided for by this section."

It is a rule of universal application that boards of education have such powers and such only, as are expressly granted to them by statute, together with such other powers as are necessary to carry out the express powers so granted. This rule has been applied a great many times by the courts of Ohio. *State ex rel. Clark vs. Cook, Auditor*, 103 O. S., 465; *Schwing vs. McClure*, 120 O. S., 335. See also Ruling Case Law, Vol. 24, page 569, Corpus Juris, Vol. 56, page 294, McQuillin on Municipal Corporations, 2d Ed., Sections 135, 137, 138 and 2598. The first branch of the syllabus of *Schwing vs. McClure*, *supra*, is as follows:

"Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given."

The rule is stated in McQuillin on Municipal Corporations Second Edition, Section 138, as follows:

"The powers of school districts are derived wholly from the statutes.

Incidental or implied corporate powers do not belong to them, as is held with respect of the municipal corporation proper, constituted for the purposes of local government. Unless the statute confers the right to exercise any given power courts usually deny the power. One who deals with a school board must take notice of, and is bound by, the limitations on its powers. All powers must be exercised in substantial conformity with the statutes applicable."

Section 4756, *supra*, grants to boards of education the power to dispose of real estate held by them in their corporate capacity and expressly provides how such sales shall be made. Except as such power is reposed in a board of education by virtue of the said statute, a board of education possesses no power whatever to sell or dispose of the property held by it in its corporate capacity, and it clearly follows that a board of education in exercising this power, is limited by the terms of the statute. In the course of the court's opinion in the case of *Schwing vs. McClure, supra*, the court said with reference to the power of public officers to dispose of public property under their control:

"Public officers intrusted with public funds or public property cannot give them away, nor can they pass title to public property except when acting within their strict powers. Property devoted to public use can only be disposed of by express authority, and a school corporation must pursue the statutory method of disposing of its property. *Caldwell vs. Bauer*, 179 Ind., 146, 99 N. E., 117."

Inasmuch as the board of education in question has not complied with the terms of Section 4756, General Code, with respect to a sale at public auction and publication or posting of notices thereof, it follows, in my opinion, that this board is without power to sell the property in question at private sale and convey title thereto. The fact that the Federal Government is involved in the matter makes no difference. The attempted sale in the manner stated is nothing more or less than a private sale, which the board of education is not empowered to make until after an attempt is made in compliance with the statute, to sell the property at public auction.

I am therefore of the opinion that the bid submitted by the Federal Government, for this property, cannot lawfully be accepted at this time, nor until after due advertisement and the receipt of bids as provided by the statute.

In my opinion, the terms of Section 4756, General Code, with respect to the manner of making sales of property by boards of education are mandatory. *Board of Education vs. Best*, 52 O. S. 138.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2475.

CONTRACT—IN ABSENCE OF CHARTER PROVISION ORDINANCE OF CITY COUNCIL AUTHORIZING CONTRACT FOR FIRE HYDRANT RENTAL WITH PRIVATE WATER COMPANY NEED NOT BE RATIFIED BY ELECTORS—LIABILITY OF CITY DISCUSSED.

SYLLABUS:

1. Where the council of a city enacts an ordinance authorizing and directing