

plan, such as in the case of township trustees in the purchase of road machinery equipment. However, the fact that the Legislature has specifically authorized such purchases in certain instances would indicate that in other instances the power does not exist. Of course, it is recognized that the practice is different with reference to leases. That is, the common practice in connection with leases is to provide for payment at stipulated intervals.

It is clearly the law that a board of education has no power to purchase a school bus unless the certificate required under Section 5625-33, General Code, is obtained to cover the entire purchase price. In the case you present, it is clear that the board under consideration desires to purchase a bus and does not have the available money. It follows that it may not do indirectly that which it cannot do directly. Of course, a board of education may lease a bus, with an option to purchase, if the stipulated rentals are commensurate with the use of the bus and it is not a purchase under the guise of a lease.

In view of the foregoing and in specific answer to your inquiry, you are advised that a board of education may legally lease a school bus for a two or three year period if in its judgment such action is for the best interest of the schools under its control. Such a contract of lease may contain a provision granting the board the option to purchase at expiration of lease. However, such a lease must provide for the payment of a rental commensurate with the use of such bus, and such a contract may not be in fact a contract of purchase under the guise of a lease.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2105.

APPROVAL, LEASE BETWEEN STATE OF OHIO AND OHIO STATE SAVINGS ASSOCIATION OF COLUMBUS, FOR OFFICE SPACE IN OHIO STATE SAVINGS BUILDING, COLUMBUS, OHIO, FOR USE OF OHIO STATE MEDICAL BOARD.

COLUMBUS, OHIO, July 18, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a lease between the Ohio State Savings Association of Columbus, Ohio, as lessor, and the State of Ohio, acting by and through yourself, as Superintendent of Public Works, for the Ohio State Medical Board, as lessee. By the terms of this lease, the State is granted the use for office purposes of Suite 202, 203 and 204 in the Ohio State Savings Building, Columbus, Ohio, for the period of two years beginning on the first day of February, 1930, and ending on the thirty-first day of January, 1932, in consideration of a total rental of six thousand dollars, payable monthly in installments of two hundred and fifty dollars.

You have also submitted encumbrance records bearing the certificate of the Director of Finance to the effect that there is legally appropriated an unencumbered balance sufficient to pay the first year's rental for the above mentioned premises in the sum of three thousand dollars.

You have further submitted a copy of the proceedings of the board of directors, certified to by the secretary of the association, authorizing the president and secretary to enter into the lease herein considered.

Finding said lease in proper legal form, I hereby approve it and am returning it, together with all other papers submitted in connection therewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2106.

COUNTY ROADS—MAINTENANCE AND REPAIR WORK WITHOUT
CONTRACT—LABORERS HIRED BY SURVEYOR.

SYLLABUS:

In the maintenance and repair of county roads which is authorized by the county commissioners to be done by force account and without contract, the employment of the necessary laborers for the prosecution of the work rests with the county surveyor and not with the county commissioners.

COLUMBUS, OHIO, July 18, 1930.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This acknowledges your recent communication as follows:

“A dispute has arisen between our county commissioners and surveyor over the employment of men for road work. The surveyor has been employing truck drivers and laborers who work under his general supervision in maintaining and repairing county roads, but the commissioners make the claim that they have the authority to employ these men. They claim that G. C. 2410 gives them authority to employ men to look after bridges and other property coming under their jurisdiction and control, and that the maintenance and repair of county roads is included in the phrase ‘other property under its jurisdiction and control.’ They concede the right of the surveyor to employ labor and teams to construct, reconstruct, maintain, improve and repair roads and bridges by force account, but contend that the general repair and maintenance of roads and bridges is under their supervision and truck drivers and laborers hired by the year to repair and maintain roads and bridges should be hired by them.

I have advised them that the surveyor has the power to employ these men and the only authority the commissioners have is to authorize their employment. They are not satisfied with this construction of the law and ask that the matter be submitted to you for your opinion.”

I believe that your inquiry is answered by an opinion of my predecessor found in Opinions of the Attorney General for 1927, at page 466. It was there held, as disclosed in the first branch of the syllabus:

“In the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account, the county surveyor may when authorized by the county commissioners, employ such laborers and teams as may be necessary.”

If you will examine that opinion, you will note that it refers to various earlier opinions of Attorneys General to the same effect, and these opinions clearly negative the right of the county commissioners to employ laborers and foremen direct.