

**OPINION NO. 1522****Syllabus:**

School Districts are without authority under the provisions of Section 3313.42, Revised Code, to enter into a lease purchase contract for the purchase of a school building by the terms of which the building would become the property of the School District at the expiration of the lease term.

Boards of Education may, however, purchase land under Section 3313.37, Revised Code, by entering into a lease-purchase agreement provided that payments of the purchase price shall not extend over a period of time more than five years and further provide a special tax levy shall be authorized by the electors for the purpose of meeting future time payments.

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To: Everett Fahrenholz, Preble County Pros. Atty., Eaton, Ohio  
By: William B. Saxbe, Attorney General, November 5, 1964

Your request for my opinion reads in pertinent part as follows:

"The College Corner Local School District in Preble County, Ohio, operates the College Corner School in conjunction with the adjoining Union County, Indiana, School District. The joint operation is authorized under Ohio Revised Code Section 3313.42.

" \* \* \* \* \* \* \* \* \*"

" \* \* \* The College Corner, Ohio Board of Education is interested in the possibilities of entering into a lease-purchase contract for its share of the building program with the Indiana Schoolhouse Holding Corporation. The contract with the corporation would be paid from general revenue of the Ohio District.

" \* \* \* \* \* \* \* \* \*"

"My question then is this:

"May the College Corner Ohio Board of Education enter into a lease-purchase contract for a school building built by the Indiana Schoolhouse Holding Corporation of its adjoining Indiana District, and pay the contract obligation from general revenue?"

Section 3313.42, Revised Code, states:

"When in the judgment of a board of education of any school district in this state, lying adjacent to a school district of another state, the best interests of the public schools can be promoted by purchasing school grounds, repairing or erecting a schoolhouse, and maintaining them jointly between the two adjacent school districts, the board of education of the school district of this state so situated may enter into an agreement with the school authorities of said adjacent school district for the purpose of purchasing school grounds, repairing or constructing a school building, purchasing school furniture, equipment, appliances, fuel, employing teachers, and maintaining a school. The board of education of this state may levy taxes and perform such other duties in maintaining such joint school as are otherwise provided by law for maintaining the public schools in this state.

"In carrying out this section the school

district shall pay such proportion of the cost of purchasing school grounds, repairing or erecting a building, and in maintaining the joint school as is equitable and just in the judgment of the board of education and trustees of the two adjacent school districts."

Boards of Education, being creatures of statutes, have only such powers as are clearly granted by statute or necessarily implied therefrom. The Ohio Supreme Court stated in the case of Verberg vs. Board of Education, 135 Ohio St., 246 at page 248:

"Boards of Education are created by statute, and their jurisdiction is conferred only by statutory provision. Just as any other administrative board or body, they have such powers only as are clearly or expressly granted."

A careful reading of Section 3313.42, Revised Code, reveals no expressly granted authority for lease-purchase of school buildings. In view of the express authority found in other sections of the Revised Code for the sale of bonds to finance school construction, I find no basis upon which authority for lease-purchase of school buildings could be necessarily implied from Section 3313.42, Revised Code.

Section 3313.37, Revised Code, states in pertinent part:

"The board of education of any school district, except a county school district, may build, enlarge, repair, and furnish the necessary schoolhouses, 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.

"The boards of education may acquire land by gift or devise, by purchase, or by appropriation. Lands purchased may be purchased for cash, by installment payments, with or without a mortgage, by entering into lease-purchase agreements, or by lease with an option to purchase, provided that if the purchase price is to be paid over a period of time, such payments shall not extend for a period of time of more than five years, and a special tax levy shall be authorized by the voters of the school district in accordance with section 5705.21 of the Revised Code to provide a special fund to meet the future time payments.

"For the purpose of section 5705.21 of the Revised Code, acquisition of land under the provisions of this section shall be considered a necessary requirement of the school district.

" \* \* \* \* \* "

This statute states that under lease-purchase agreements, payments shall not extend over a period of five years. A separate and additional requirement is that a special tax levy be authorized by the voters to provide for payment of the purchase price.

The factual situation presented by you is to be distinguished from a true lease with option to purchase agreement. The true lease-purchase agreement with option to buy was considered by this office in Opinion No. 501, Opinions of the Attorney General for 1963. The first branch of the syllabus of Opinion No. 501 states:

"A board of education may rent, with option to buy, portable buildings located on board owned property to be used as classrooms provided, however, that no portion of the rental payments apply to the prospective purchase price of the building."

My understanding of your request is that the rental payments under the lease would liquidate the bonds of the holding corporation and that, therefore, portions of the rental payments would apply to the purchase price of the building.

It is, therefore, my opinion and you are advised that:

1. School Districts are without authority under the provisions of Section 3313.42, Revised Code, to enter into a lease-purchase contract for the purchase of a school building by the terms of which the building would become the property of the School District at the expiration of the lease term.

2. Boards of Education may, however, purchase land under Section 3313.37, Revised Code, by entering into a lease-purchase agreement provided that payments of the purchase price shall not extend over a period of time more than five years and further provided a special tax levy shall be authorized by the electors for the purpose of meeting future time payments.