

In reaching my conclusions I have not overlooked the provisions of the general corporation act, particularly Sections 8623-3 and 8623-4, which authorize the formation of corporations under general law with dual purposes. The general corporation law is inapplicable by its express terms (General Code 8623-132) where special provision is made in the General Code for the incorporation of corporations formed for specified purposes. There being express provision found in the banking laws for the incorporation of banks, in my opinion the provisions of the general corporation act with respect to the purposes for which such corporations may be formed are inapplicable.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2258.

BOARD OF EDUCATION—CERTIFICATE OF CLERK SHOWING APPROPRIATION OF FUNDS UNNECESSARY TO TEACHER'S CONTRACT.

SYLLABUS:

A certificate of the clerk of a board of education to the effect that the amount required to meet contracts made by the board of education with teachers "has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any encumbrances" is not necessary.

COLUMBUS, OHIO, June 20, 1928.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

"I respectfully request your opinion on the following:

A board of education now employing teachers for the school year 1928-1929 is in uncertainty whether the funds necessary to pay these teachers to December 31, will be available during the fiscal year 1928. Is the clerk of the board of education in the contracts drawn up for presentation to these teachers obliged to certify that the necessary funds are in hand or in process of collection? In fact, is the clerk's certificate necessary to a teacher's contract, and is it necessary to the action taken by the board in employing the teacher?"

Sections 5625-1 and 5625-33, General Code, as amended by the 87th General Assembly (112 O. L. 391 and 406) read in part as follows:

Sec. 5625-1. "The following definitions shall be applied to the terms used in this act:

(a) 'Subdivision' shall mean any county, school district, except the county school district, municipal corporation or township in the state.

* * *

(i) 'Taxing unit' shall mean any subdivision or other governmental district having authority to levy taxes on the property in such district or issue bonds which constitute a charge against the property of such district including

Conservancy Districts, Metropolitan Park Districts, Sanitary Districts, Road Districts and other districts.

* * * "

Sec. 5625-33. "No subdivision or taxing unit shall:

* * *

(b) Make any expenditure of money unless it has been appropriated as provided in this act.

* * *

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. * * *

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* * * *The term 'contract' as used in this section, shall be construed as exclusive of current payrolls of regular employes and officers.*" (Italics the writer's).

It seems clear that the obligations incurred when contracts are made with teachers come within the classification designated "current payrolls of regular employes and officers."

I am therefore of the opinion that the clerk's certificate to the effect that the amount required to meet contracts with teachers "has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances" is not necessary.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2259.

SCHOOLS—TRANSPORTATION OF HIGH SCHOOL PUPILS RESIDING MORE THAN FOUR MILES FROM A HIGH SCHOOL—WHEN ELEMENTARY SCHOOLS OF DISTRICT ARE NOT CENTRALIZED—PAYMENT OF TUITION IN ANOTHER DISTRICT.

SYLLABUS:

High school pupils, who reside more than four miles from the high school maintained by the board of education in a rural school district where the elementary schools have not been centralized, are not entitled to transportation to such high school unless the county board of education deems and declares such transportation to be advisable and practicable; but if transportation is not furnished to such pupils, and they choose to attend a nearer high school in another district, the board of education is responsible for their tuition in the nearer high school.