

"(3) If the building be erected by contract, are the provisions of section 3373, G. C., with regard to advertising for bids and letting to the lowest bidder, applicable in this case?"

In examining the opinions to which you refer it will be observed that the former made particular reference to the provision found in section 7200, which requires the county commissioners to provide suitable places for housing and storing machinery. In fact, the opinion intimated that because this provision was found in the section relating to the duties of the commissioners and was not contained in the section relating to the duties of the trustees that such power should be denied the trustees. In fact, it is stated in the opinion that no logical reason can be seen why the legislature distinguished such powers in its legislation; but the opinion further intimates that because it did so, the inference is that the legislature intended that the township trustees should not exercise the power.

As stated in your communication, section 3373 as amended in 107 O. L. page 69, and as it existed prior to said amendment, did not contain the provision in reference to providing suitable places for housing and storing machinery. However, in the amendment in 108 O. L., Pt. 1, page 499, the provision was authorized in the language which you have quoted.

The opinion to which you refer in 1920, specifically held that such language "by necessary implication confers on county commissioners authority to purchase a site with building for the purpose of housing and storing machinery," etc.

It would follow as a proposition of law that there must be a necessity existing for such a purchase before such implied power would be authorized. It is believed reasonable to conclude that the county commissioners in the event that there is no site which contains a building suitable to purchase for such purpose, and in the event that it is essential to have such a building to house such tools, that the commissioners under such circumstances would be justified in purchasing real estate on which to erect a building, if in its judgment and discretion the same is necessary and essential to properly preserve the tools. No logical reason can be seen why the same power under section 3373, as it now exists, is not given to township trustees, if, as before indicated, the same is necessary and essential in order to properly preserve the tools and equipment which the statute make it mandatory to protect.

You are further advised, however, that section 3373 authorizes the trustees to proceed by force account in the maintenance and repair of roads. I would not regard this section as authorizing the erection of such a building by the township trustees by force account.

It would further be my opinion that any contract let for the erection of such a building would have to follow the provisions of the statute relative to advertising.

Respectfully,

C. C. CRABBE,

Attorney General.

2804.

SURPLUS REMAINING TO CREDIT OF WATERWORKS FUND MAY PROPERLY BE USED IN CONSTRUCTING A STACK FOR COMBINED WATERWORKS SYSTEM AND LIGHT PLANT.

SYLLABUS:

When a waterworks system and an electric light plant are properly combined under the provisions of section 4345-1, a surplus remaining to the credit of the water-

works fund may properly be used for the purpose of constructing a stack for the combined system.

COLUMBUS, OHIO, Sept. 25, 1925.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion upon the following:

“Section 4345-1 of the General Code authorizes a commission, appointed by the mayor, in cities, to combine a municipal waterworks and electric lighting system, etc.

“Section 3959 of the General Code governs the disposition of any surplus in the waterworks fund.

“The city of Martins Ferry had an electric light plant and a waterworks which they desired to combine, and bonds were authorized and sold for such purpose. The plans and estimate of cost of the combination contemplated the use of the electric light plant stack and the amount of the bonds issued was limited to such estimate. It seems that the use of the old light plant stack is impracticable and a new stack for the combined utilities will have to be constructed and funds must be provided therefor. There is a small balance in the electric light plant fund and approximately \$40,000.00 in the waterworks fund, which balances were accumulated through the operation of the separate plants. Bonds for the construction of the several plants are still outstanding and unprovided for.

“In the case of *Cincinnati vs. Roetinger*, 105 O. S. 145, it was decided that the waterworks funds could be used only for the purposes set forth in section 3959 G. C.

“*Question*: May all or any part of the surplus in the waterworks fund be legally used for the purpose of constructing a stack for a combined waterworks and electric light plant?”

Section 4345-1, to which you refer, among other things, authorizes the combining of a municipal waterworks system and a municipal electric lighting system. The general power is granted by said section, but no specific details are given as to the method of apportioning the cost of construction or maintenance; nor is there anything said in reference to the distribution of the balances left in the funds of the original waterworks department or the electric light department.

The case of *Cincinnati vs. Roetinger*, to which you refer, was decided, of course, after section 4345-1 was enacted. However, this particular statute was in no manner considered by the court in that case. The language of the court is clear that another use cannot be made of the fund other than that provided for by section 3959, which provides:

“After paying the expenses of conducting and managing the water works, any surplus therefrom may be applied to the repairs, enlargement or extension of the works or of the reservoirs, the payment of the interest of any loan made for their construction or for the creation of a sinking fund for the liquidation of the debt. The amount authorized to be levied and assessed for water works purposes shall be applied by the council to the creation of the sinking fund for the payment of the indebtedness incurred for the construction and extension of water works and for no other purpose whatever.”

This section, of course, inhibits the use of such moneys for any other purpose

than the construction and extension of the waterworks. The decision of the supreme court to which reference has been made is in accord with the express provision of the statute. However, it must be remembered that the section authorizing the combination of the two plants is later in the order of enactment than the former. It will be obvious that when there is a uniting of such departments, it is somewhat difficult to separate the two projects, and it is possible to argue that after such combination, any of the moneys remaining in either of the funds would be available to pay any part of the joint operation. However, for the purposes of this opinion it is unnecessary to go that far, for the reason that it is believed to be apparent that the building of a smoke stack, even though it be a part of the electric light plant, after such combination, when the same is to be used in connection with the operation of the waterworks system, it is an enlargement, extension or repair of the waterworks system within the provisions of section 3959.

Of course, if such a balance were used for the purpose of extending lines or other purpose as distinguished from a use which necessarily aids the waterworks system itself, then, of course, a different question is presented. However, as heretofore indicated, it will be unnecessary to determine that question at the present time.

Respectfully,

C. C. CRABBE,
Attorney General.

2805.

SCHOOL DISTRICT—BLANK ACCOUNT BOOK—SECTIONS 4778 AND 2519
G. C. CONSTRUED.

SYLLABUS:

(1) *Where a school district is partly within two or more counties, the county auditor of the county having the greater tax valuation in such school district should furnish the blank book provided for in section 4778.*

(2) *The necessary blank account book required by the provisions of section 4778 of the General Code for distribution by the county auditor should be provided by the county commissioners the same as other equipment and stationery, as required by section 2419, General Code.*

(3) *The county auditor is without authority to deduct the expense of such blank books from the funds due to the several school districts.*

COLUMBUS, OHIO, Sept. 25, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your communication in which you request my opinion on the following:

“Section 4778 of the General Code provides that the auditor of each county shall furnish to the clerk-treasurer of each school district in his county a suitable blank book, made according to the form prescribed by the bureau of inspection and supervision of public offices, in which each clerk must keep an account of the school funds of each district. Inasmuch as recent legislation will require new books to be kept by clerks of boards of education, the questions arise: