

2270.

APPROVAL, BONDS OF COVENTRY TOWNSHIP, SUMMIT COUNTY—
\$20,000.00.

COLUMBUS, OHIO, June 25, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2271.

BOARD OF EDUCATION—TRANSPORTATION OF PUPILS—AUTHORITY
TO LET CONTRACTS THEREFOR.

SYLLABUS:

1. *A board of education may use its discretion as to whether or not it will provide necessary transportation for pupils in the district by letting contracts therefor, or by purchasing vehicles and hiring drivers.*
2. *In the making of contracts for the convenience and prosperity of the schools under their control, boards of education are not required to let such contracts upon competitive bidding, except as provided by Section 7623, General Code.*
3. *A contract for the purchase of vehicles to be used in the transportation of pupils to school is not a contract within the contemplation of Section 7623, General Code, and may therefore be entered into by a board of education without advertising for bids.*

COLUMBUS, OHIO, June 25, 1928.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

“Where the board of education of a rural school district, having a centralized school desires to purchase a motor bus for the transportation of pupils is it necessary in the purchase of such motor bus that bids be advertised for, and the contract for such purchase awarded on the basis of such competitive bids?”

I have been unable to find any provision of law directly effecting the above question and have reached the conclusion that the rule laid down in the case of *Gosline vs. Toledo Board of Education*, 20 O. C. C. 503, would apply to such contract. I shall appreciate your reply to the above at your earliest convenience.”

Without quoting the several provisions of law authorizing boards of education to furnish transportation for children attending the public schools, it is sufficient to say, for the purposes of this opinion, that boards of education are authorized by

statute to furnish such transportation, and are directed and required to do so, under certain circumstances. There are no definite statutory provisions however, as to how the transportation shall be furnished, that is, as to whether or not the board should contract for the transportation, or purchase vehicles and employ drivers therefor.

The law is well settled that boards of education, being creatures of statute, have only such powers as are expressly granted to them by statute, or implied therefrom as being necessary to carry the express powers into execution.

Obviously, if a board of education is to furnish transportation, it must necessarily be authorized to provide the means by which such transportation is furnished. Inasmuch as the Legislature has not directed how the means of transportation is to be provided, it seems clearly to be within the discretion of the board to provide such means of transportation in any legal manner it sees fit.

By force of Section 4749, General Code, it is provided that boards of education shall be bodies politic and corporate, and "as such, capable of suing and being sued, contracting and being contracted with." By Section 7620, General Code, it is made the duty of boards of education, among other things, to "make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts."

By Section 7690, General Code, boards of education are given the "management and control of all of the public schools of whatever name or character in the district."

By force of the sections above mentioned and the statutory provisions with reference to the transportation of pupils, together with the fact that the Legislature has not specifically provided the manner by which boards of education are to provide transportation, it is my opinion that boards of education have full power to purchase vehicles for use in providing transportation of the school pupils.

It of course is necessary in the purchase of such vehicles to comply with the terms of Section 5625-33, General Code, wherein it is provided that, before any contract may be made by a subdivision or taxing unit, the fiscal officer thereof must certify that the money necessary to meet the contract has been appropriated and is in the treasury to the credit of an appropriate fund, free from any previous encumbrances.

Your inquiry, however, goes to the question of whether or not in making a contract for the purchase of a school bus it is necessary to advertise for bids and thereafter award the contract for such purchases on the basis of the competitive bids received. The only section of the statute, requiring boards of education to advertise for bids when making contracts and after due advertisement award the contract to the lowest responsible bidder, is Section 7623, General Code, which reads in part as follows:

"When the board of education determines to build, repair, enlarge or furnish a schoolhouse, or schoolhouses or make any improvement or repair provided for in this chapter, the cost of which will exceed in city districts, three thousand dollars, and in other districts one thousand dollars, except in cases of urgent necessity, or for the security, and protection of school property, it must proceed as follows:

* * * * *

The remaining portion of the statute, which is not quoted, sets forth the manner of advertising for bids, receiving the same and awarding the contract to the lowest responsible bidder.

The above statute clearly does not apply to all contracts that a board of education might enter into. By its terms it only applies to such contracts as a board of

education may enter into when it determines "to build, repair, enlarge or furnish a schoolhouse, or schoolhouses or make any improvement or repair provided for in this chapter."

That it does not apply to all classes of contracts or to any class other than those to which it is limited by its express terms, was decided in the case of *Gosline vs. Toledo Board of Education*, 11 O. C. C. (N. S.), 195. In the *Gosline* case, a tax payer sought to enjoin the board of education from entering into a contract for the purchase and sale of six thousand tons of coal for the use of the schools in the city of Toledo, claiming that among other things, it had not complied with the law by submitting the supplying of the coal to public competition. The points decided by the court in that case are stated in the headnotes, as follows:

"1. Neither Section 3987, Revised Statutes, specifically empowering boards of education, among other designated things, to provide fuel; nor Section 3988, (now Section 7623 General Code) prescribing for bids for certain designated supplies and contracts, but omitting mention of fuel; nor Section 4017, (now Section 7694, et seq. General Code) requiring the director of schools, where one is chosen, to advertise for bids etc., without providing when or how he shall advertise therefor requires advertising for bids for coal or purchase from the lowest responsible bidder.

2. A broad discretion is reposed in boards of education regarding the purchase of necessary supplies for schools; and in the purchase of fuel, gradation of quality of coal, heating capacity, adaptability to heating apparatus, and experience or skill of janitors and other persons managing school furnaces are essential facts to be considered in making selection therefor, which may render it inadvisable to accept the lowest priced coal offered; and where it appears that the board has complied with the requirement that it act in good faith for the best good of the schools according to the light and understanding of its members, acceptance of other than the cheapest coal will not be enjoined.

3. A director of schools is not required, under Sections 3988 and 4017, to go to the expense of advertising for bids for every trivial thing in the way of supplies which may have been ordered by the board to be purchased."

It would seem that a contract, providing for the purchase of a school van or bus, is as clearly not one of those kinds of contracts covered by Section 7623, General Code, as was the contract for the supplying of the coal with which to heat the school buildings, and I am therefore of the opinion that, when a board of education determines to purchase vehicles to be used for the transportation of the pupils of the district, it is not necessary that bids be invited therefor and thereafter the contract let to the lowest responsible bidder; but that the board may make the purchase without advertising for bids.

Respectfully,
EDWARD C. TURNER,
Attorney General.