

public building erected by a township and a village jointly. Section 3397, General Code, makes provision for the management and control of a town hall owned by a township. Said section provides:

“After such affirmative vote, the trustees may make all needful contracts for the purchase of a site, and the erection or the improvement or enlargement of a town hall. They shall have control of any town hall belonging to the township, and from time to time, may lease so much thereof as may not be needed for township purposes, by the year or for shorter periods, to private persons, or for lectures or exhibitions, in all cases having the rent paid in advance or fully secured. The rents received may be used for the repair or improvement of the hall so far as needed, and the balance for general township purposes.”

While there is no specific statutory provision for the management and control of a town hall or public building erected by a township and a village jointly, in my opinion Section 3397, *supra*, contains sufficient authority for vesting such management and control in the township trustees, so far as the township is concerned.

While there is no specific provision as to what officer, board or other body shall represent the village in the management and control of a joint town hall, your attention is directed to Section 4240, General Code, which provides:

“The council shall have the management and control of the finances and property of the corporation, except as may be otherwise provided, and have such other powers and perform such other duties as may be conferred by law.”

In view of the foregoing and in specific answer to your question, it is my opinion that the control, management and duty of maintenance of a town hall or public building erected by a township and a village jointly are vested in the board of township trustees and in the council of the village.

The above conclusion is in accord with the conclusions reached by one of my predecessors in an opinion found in the Annual Report of the Attorney General for 1912, Vol. 2, p. 1361, the syllabus of which reads as follows:

“The control of a hall built jointly by the township trustees and a village, is in the hands of these joint parties and when a majority of both bodies so agree, the village may rent a room in said hall for jail purposes.”

Respectfully,

EDWARD C. TURNER,
Attorney General.

2444.

TUITION—PAYMENT OF—NON-RESIDENT HIGH SCHOOL PUPIL—NOTICE TO DISTRICT BOARD OF EDUCATION.

SYLLABUS:

1. *A child eligible to admission to a high school, who resides in a school district which does not maintain a high school and which does not contract with another board of education which maintains a high school in the same civil township or in an adjoining township and three miles from where the child lives for the schooling of said child, may select the high school to be attended and the board of education of the district in which the*

child lives is liable for the tuition of such child in the high school which the child selects, provided of course proper notice is given in accordance with Section 7750, General Code.

2. *The amount of tuition with which a board of education is chargeable, when liable therefor at all, by reason of resident high school pupils attending high schools outside the district, is that fixed by the terms of Section 7747 of the General Code, unless such pupils are assigned to a high school four miles or less from their residence or to a high school more than four miles from their residence and transportation furnished thereto, in which event the amount of tuition with which the board is chargeable, in a school other than the one to which the pupils are assigned, should be based on the cost of tuition incident to attendance at the school to which they have been assigned, as provided by Section 7764, General Code.*

COLUMBUS, OHIO, August 16, 1928.

HON. H. B. CULBERTSON, *Prosecuting Attorney, Ashland, Ohio.*

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

“A Board of Education in this County has two pupils of high school age living in a district in which there is no high school. There is a high school at Lakeville in Holmes County, four miles from the residence of these children, one at Loudonville, seven and one-half miles, and one in Wooster, thirteen miles. The one at Wooster is in another county. The Board would prefer sending these children to Loudonville in our own County and at a cheaper tuition. They are being sent to Wooster, Ohio, by their parents, in disregard to the request of the Board.

Can the Board be made to pay the full tuition at Wooster, or need they pay only the amount that they would have to pay at Loudonville, is the question that I would like to have answered.”

Sections 7747, 7750 and 7764, General Code, provide as follows:

Section 7747. “The tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they have legal school residence, such tuition to be computed by the school month. An attendance any part of the school month shall create a liability for the entire school month, unless the annual session is terminated before the end of a full school month. No more shall be charged per capita than the amount ascertained by dividing the total expenses of conducting the high school attended, exclusive of permanent improvements and repair said total expenses to include interest charges not exceeding five per cent per annum and depreciation charges not exceeding five per cent per annum, based upon the actual value of all property used in conducting such high school, by the net annual enrollment in the high school.

In computing such total expenses of conducting such high school the amount of the state school levy retained in the county apportioned to such district on account of teachers and other persons employed in such high school, the amount of said common school fund apportioned thereto on account of transportation of high school pupils and the amount of such funds apportioned thereto on account of aggregate days of attendance of high school pupils shall be deducted from the gross expenses of conducting such school.

The district superintendent shall certify to the county superintendent each year the names of all pupils in his supervision district who have completed the elementary school work and are eligible for admission to high

school. The county superintendent shall thereupon issue to each pupil so certified a certificate of promotion which shall entitle the holder to admission to any high school. Such certificate shall be furnished by the superintendent of public instruction."

Section 7750. "A board of education not having a high school may enter into an agreement with one or more boards of education maintaining such school for the schooling of all its high school pupils. When such agreement is made the board making it shall be exempt from the payment of tuition at other high schools of pupils living within three miles of the school designated in the agreement, if the school or schools selected by the board are located in the same civil township, as that of the board making it, or some adjoining township. In case no such agreement is entered into, the school to be attended can be selected by the pupil holding a diploma, if due notice in writing is given to the clerk of the board of education of the name of the school to be attended and the date the attendance is to begin, such notice to be filed not less than five days previous to the beginning of attendance."

Section 7764. "The child in his attendance at school shall be subject to assignment by the principal of the public school or superintendent of schools as the case may be, to the class in elementary school, high school or other school, suited to his age and state of advancement and vocational interest, within the school district; or, if the schooling is not available within the district, without the school district, provided the child's tuition is paid and provided further that transportation is furnished in the case he lives more than two miles from the school, if elementary, or four miles from the school, if a high school or other school. The transportation of high school pupils under this section shall be in accordance with the provisions of 7749-1. The board of education of the district in which the child lives shall have power to furnish such transportation. Provided, however, that when a high school pupil shall attend a high school other than that to which such pupil has been assigned, the transportation and tuition shall be based on the cost of the transportation and tuition incident to attendance at the school to which they shall have been assigned."

I take from your statement that there is no high school in the same township in which the board of education about which you speak functions or in an adjoining township thereto and within three miles of the residence of the two pupils who attend high school at Wooster. It clearly follows from the terms of Section 7750, *supra*, that no contract could be entered into by this board with another board of education for the schooling of its high school pupils so as to exonerate it from the payment of tuition for these two pupils in any high school they may have selected.

The only question is whether the amount of tuition which the board is required to pay should be computed in accordance with the method set out in Section 7747, General Code, or whether that amount is governed by the terms of Section 7764, General Code, wherein it is provided that the amount of tuition which a board of education shall pay for pupils who attend a high school other than the one to which they have been assigned shall be based on the tuition incident to attendance at the high school to which they have been assigned.

The only authority for the assigning of high school pupils to a high school outside the district in which they reside is that contained in Section 7764, *supra*, and that authority, it will be observed, extends only to cases where the school to which the pupils are assigned is four miles or less from the pupils' residence and cases where the assignment is made to a school more than four miles from the residence of the pupils

and transportation furnished thereto. I assume no offer was made to transport the pupils to Loudonville High School, hence no assignment of these pupils to Loudonville School would be effectual even though it had been formally made.

If the Lakeville school is four miles or less from the residence of these pupils, or if more than four miles from such residence and transportation be furnished thereto an effectual assignment of these pupils to Lakeville might be made, and if they thereafter choose to attend some school other than Lakeville the amount of tuition for such attendance chargeable to the local board would be based on the tuition incident to their attendance at Lakeville.

I am of the opinion that the board about which you inquire is liable for the tuition of the pupils in question to the Wooster Board of Education, the amount of which tuition should be computed by the method set out in Section 7747, General Code, provided of course due notice in writing was given to the clerk of the board of education of the name of the school to be attended and the date when such attendance was to begin in accordance with the terms of Section 7750, General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2445.

**BANKRUPTCY—PRIORITY OF PERSONAL PROPERTY TAX OVER
CLAIMS OF GENERAL CREDITORS—SECTION 104, TITLE II, U. S.
CODE, DISCUSSED.**

SYLLABUS:

Under the provisions of Section 104 of Title II of the U. S. Code, personal property tax owing by a bankrupt has priority over the claims of the general creditors and is paid in full in advance of the payment of dividends to creditors.

COLUMBUS, OHIO, August 16, 1928.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“I would appreciate an opinion from your office with reference to the priority of personal property taxes. Take for example a case in bankruptcy where there is a large number of preferred claims and a large number of general creditors. Does the personal property tax come ahead of general creditors or are they paid pro rata with the claims of general creditors?”

We seem to have authority pointing both ways in this case and would appreciate your opinion.”

The answer to your question involves the consideration of the sections of the United States Code relating to bankruptcy. Title II of said Code provides for the procedure in bankruptcy. Section 102 of said title provides for the payment by the trustee of the actual and necessary expenses incurred by the officers in the administration of the estate. Section 103 of said title provides what debts may be proved and allowed against the bankrupt. Section 104 provides which claims shall have priority and reads in part as follows: