3216.

1. SCHOOL BUILDING OR ROOMS THEREIN—BOARD OF EDUCATION MAY NOT LAWFULLY REFUSE USE OF SAME TO LOCAL LABOR UNION TO HOLD REGULAR MEETINGS — SUBJECT TO REQUEST OF UNION, OBSERVANCE OF REASONABLE RULES AND REGULATIONS —PROPER JANITOR FEES—PROPERTY NOT IN ACTUAL USE FOR SCHOOL PURPOSES — JURISDICTION, BOARD OF EDUCATION.
2. WHEN BUILDING OR ROOMS NOT IN ACTUAL USE FOR SCHOOL PURPOSES, THERE MAY BE NO LAWFUL REFUSAL OF SUCH USE TO LOCAL LABOR UNION FOR MEETINGS OPEN TO PUBLIC.

SYLLABUS:

1. *A board of education may not lawfully refuse the use of a school building or rooms therein, to a local labor union when the building or rooms are not in actual use for school purposes, for the holding of its regular meetings if the union requests the same and pays the proper janitor fees and observes such reasonable rules and regulations as to the occupancy of the building as may be prescribed by the board of education.*

2. *A board of education may not lawfully refuse the use of a school building or rooms therein to a local labor union when the building or rooms are not in actual use for school purposes for meetings to be open to the public, if request is made therefor and proper janitor fees are paid and reasonable rules and regulations prescribed by the board of education with respect to such occupancy of the building are observed.*

Columbus, Ohio, January 6, 1941.

Hon. E. N. Dietrich, Director of Education,
Columbus, Ohio.

Dear Sir:

I have your request for my opinion, in answer to the following questions:

"(1) May a board of education refuse the use of a school building to a labor union for its regular meeting, if the union pays the fees required by statute?

(2) May a board of education refuse the use of a school building to a labor union for meetings open to the public, if the union pays the fees required by statute?"

The powers and duties of boards of education with respect to permitting the use of school buildings for purposes which are not strictly public school purposes are fixed by Section 7622 et seq. of the General Code of Ohio.

As early as 1889, provision was made by what was then codified as Section 3987-1, Revised Statutes, which authorized and directed a board of education to permit the use of school buildings for certain community purposes when in the judgment of such board it would be to the advantage of the children residing in the school district to use the building for any of the purposes enumerated in the statute as then enacted (86 O. L., 11). After several subsequent amendments this statute eventually became and now exists as Section 7622, General Code. By subsequent enactments (Sections 7622-1 to 7622-7, General Code, inclusive) the authority extended to boards of education to make available the school buildings and school grounds under their respective jurisdictions for community purposes was considerably broadened and the purposes for which the buildings and grounds might be used was considerably extended. The pertinent statute to be considered in connection with your inquiry is Section 7622-3, General Code, which reads as follows:

"The board of education of any school district shall, upon request and the payment of the proper janitor fees, subject to such regulation as may be adopted by such board, permit the use of any schoolhouses and rooms therein and the grounds and other property under its control, when not in actual use for school purposes, for any of the following purposes:

1. For giving instruction in any branch of education, learning or the arts.

2. For holding educational, civic, social or recreational meetings and entertainments, and for such other purposes as may make for the welfare of the community. Such meetings and entertainments shall be non-exclusive and open to the general public.

3. For public library purposes, as a station for a public library, or as reading rooms.

4. For polling places, for holding elections and for the registration of voters, for holding grange or similar meetings."

The above statute when first enacted in 1915 (106 O. L., 552) was

not mandatory in terms as it now is. That is to say the provision in the statute as first enacted for a board of education to permit the use of school buildings for the purposes mentioned was permissive in character. As then enacted, the first few lines read as follows:

> "The board of education of any school district may subject to such regulations as may be adopted by the board * * * ."

It was amended in 1917 (107 O. L., 607) to read as it now does. It will be observed that as amended, the word "may" in the first sentence was changed to "shall" and the words "upon request and the payment of proper janitor fees" were inserted immediately after the word "must." That was the only change made in the statute by the 1917 amendment.

Soon after the amendment of Section 7622-3, General Code, in 1917, it came to the attention of the then Attorney General, by reason of a request for an opinion as to the right and duty of a board of education to permit a grange organization which, it was pointed out is a secret society, and its meetings ordinarily are not open to the general public, to use the school buildings for the purpose of holding their meetings. In passing on the question, the Attorney General noted particularly that in amending the statute the Legislature had changed the word "may" to "shall." He also commented on the fact that the statute was divided into paragraphs or numerical divisions. In subdivision two, provision is made for permitting the use of school buildings and schoolrooms therein for the holding of educational, civic, social or recreational meetings and entertainments, and for such other purposes as may make for the welfare of the community, and then provides with respect to such uses: "Such meetings and entertainments shall be non-exclusive and open to the general public." The next numerical subdivision refers to public libraries and reading rooms, and subdivision four provides for holding elections in the school buildings and for holding grange and similar meetings. It will be noted that the clause, "such meetings and entertainments shall be non-exclusive and open to the general public" does not appear except in subdivision two, and can not therefore, be said to modify the provision with respect to the holding of "grange or similar meetings." The first of the Opinions of the Attorney General, in 1917, appears in the published Opinions of the Attorney General for that year, page 442 (No. 168). The second opinion on the same subject will be found on page 2438, of the published Opinions of the Attorney General for 1917. The latter opinion concludes:

> "Answering your question, then, I advise you that following said opinion No. 168, a copy of which I am enclosing herewith, and from the fact that the language of said Section 7622-3, General Code, was changed from that which is directory in its nature to that which is mandatory in its nature, I must advise you that the grange organization of your county has a right, under the provisions of said act, to hold their regular sessions in the auditorium of the school building and that the clause 'shall be non-exclusive and open to the general public' does not so modify or change the effect of said mandatory language in reference to grange meetings as to prevent the same."

I find no reason to disagree with the reasoning of the Attorney General, as contained in the 1917 opinions referred to, and believe his conclusion as stated therein is sound. Moreover, these opinions have been cited with approval by three succeeding Attorneys General. By Attorney General Turner, in an opinion found in the reported Opinions of the Attorney General for 1928, page 284; by Attorney General Bettman, in Opinions of the Attorney General for 1929, page 289; and by Attorney General Bricker, in Opinions of the Attorney General for 1934, page 1177. In the last mentioned opinion it is held, as stated in the syllabus:

> "A Board of Education cannot lawfully refuse to permit the use of a school building and grounds under its control for the holding of meetings of grange organizations when the building and grounds are not in actual use for school purposes, providing the janitor fees and other proper expenses incident to such use is paid by the grange, subject, of course, to proper and reasonable regulations imposed by the Board."

In view of the express language of subdivision four, of said Section 7622-3, General Code, supra, grange organizations have no greater right to the use of the school buildings than "similar" organizations. The question to be determined then, is whether or not a labor union is an organization similar to a grange, for which there is no statutory definition.

The word "grange," as applied to organizations of the kind here under consideration, is defined by Webster, as,

> "A secret organization of farmers, designed to further their interests, and particularly to bring producers and consumers, farmers and manufacturers into direct commercial relations without intervention of middlemen or traders."

The same authority defines "labor union," as

> "a trade union of laborers."

"Trade union," is defined as,

> " * * * a voluntary association of working people organized to further and maintain their rights, privileges and interests with respect to wages, hours, and conditions of labor, efficiency, education, and customs."

Supplementing this definition, it might well be stated that a trade union or labor union has for one of its main objectives, the extension, maintenance and enforcement of the right of collective bargaining. In the Encyclopaedia Britannica, it is stated with reference to a labor or trade union:

> "In its popular signification it is an organization of workmen for the purpose of improving the conditions of their employment."

Certainly, a grange and a labor union are both organized primarily to improve the economic condition of their members, and I am not able to say that they are not similar organizations, as the expression is used by the Legislature in subdivision four of Section 7622-23, supra.

It should be borne in mind, however, upon consideration of the entire body of legislation relating to the use of school buildings for other than strictly public school purposes (Section 7622 et seq. General Code), that the purpose and object of this legislation is to further community interests and community purposes. The right of a grange or similar organization to the use of the school building would only exist, in my opinion, when the membership of the organization was composed in large part, at least, of residents of the district. An organization whose membership was made up largely of non-residents of the school district would not, in my opinion, be entitled to the use of the school building for the purpose of holding meetings —at least not under the provisions of subdivision four of Section 7622-3, supra. It shoull also be borne in mind that the board of education in charge of the building may make reasonable rules and regulations with respect to the occupation of the building for the purpose herein mentioned, and might lawfully refuse to permit the use of the building to organizations which do not honestly attempt to comply with and observe the regulations and rules prescribed by the board.

In conclusion, and in specific answer to your questions I am of the opinion:

First, a board of education may not lawfully refuse the use of a school building or rooms therein, to a local labor union when the building or rooms

are not in actual use for school purposes, for the holding of its regular meetings if the union requests the same and pays the proper janitor fees and observes such reasonable rules and regulations as to the occupancy of the building as may be prescribed by the board of education.

Second, a board of education may not lawfully refuse the use of a school building or rooms therein to a local labor union when the building or rooms are not in actual use for school purposes for meetings to be open to the public, if request is made therefor and proper janitor fees are paid and reasonable rules and regulations prescribed by the board of education with respect to such occupancy of the building are observed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.