

exist; consequently it would follow that specific answer to your inquiry may only be made in the negative.

It is true special provision is made by the General Code, in the event of the loss of a warrant issued by the auditor of state under section 246 G. C., which provides, that whenever it is made to appear to the satisfaction of the auditor of state, that any warrant by him issued upon the state treasury, has been lost or destroyed prior to its presentation for payment, and there is no reasonable probability of its being found or presented, the auditor may issue to the proper person a duplicate of the lost or destroyed warrant provided that he shall require of the person making such application a bond in double the amount of such claim, payable to the state of Ohio, with surety to the approval of said auditor and the treasurer of state, conditioned to make good any loss or damage sustained by any person or persons on account of the issuance of said duplicate, and the subsequent presentation and payment of the original. It may be noted, however, that section 246 G. C. cited supra pertains only in the case of the auditor of state, and could not be extended to apply in the case of a county auditor. However, it is thought as a practical solution of your question, the general policy as expressed in section 246 G. C. might be followed by the county auditor in the instance cited, and a duplicate warrant issued by him upon receipt from the township treasurer, of bond in double the amount of the lost warrant, to secure himself against any loss resulting from the issuance of said duplicate warrant, and under the circumstances it would seem incumbent upon the auditor to require good and sufficient sureties upon such bond, since it is believed that a failure of the same would not relieve that official from personal liability, should such a contingency arise.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3213.

BOARD OF EDUCATION—MAY PURCHASE REAL ESTATE AND ERECT SCHOOL BUILDING OUTSIDE OF LIMITS OF DISTRICT—SEE SECTION 7620 G. C. (108 O. L. 187).

Since section 7620 G. C. has been amended as set forth in 108 O. L., Part I, page 187, a board of education may purchase property and erect a school building and control a school outside of the territorial limits of the district, under its control.

COLUMBUS, OHIO, June 12, 1922.

HON. JESSE C. HANLEY, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department on the following:

“The city of Salem is located in the center of Perry township, this county. The balance of the township, which for school purposes is under the control of the Perry township school board, surrounds the city of Salem on all sides. The township school board desires to centralize their schools, acquire real estate and erect a building within the corporate limits of the city of Salem.

“QUESTION: Can this school board purchase property, and erect and control a school outside of the territorial limits of the district under its control?”

This is a practical question, inasmuch as you indicate that Perry township surrounds the city of Salem on all sides and has its own school organization. Under the provisions appearing in the recently enacted compulsory attendance law (H. B. 111), each board of education in the state is required to furnish work in high school branches at some school within four miles of the residence of each child of compulsory school age.

It has been held by this department that the board of education could transport its pupils to any recognized high school, if it desired to do so, rather than furnish the high school work in its own district. This high school work is specifically mentioned in section 7764-1 and the language appearing therein is mandatory upon each board of education. In meeting this mandate, boards of education are at once confronted with the proposition of providing the work set forth in the compulsory education law from a practical standpoint. A township rural school district may not desire to furnish a limited amount of high school work in its district and it may find it more expensive to pay the tuition of eligible pupils attending outside the district, as well as transportation charges in certain cases, than to enlarge its own school system and retain control of the same. The question then is the location of centralized school activity of the township at some central point, available to all the pupils of the township, but this location desired to be selected lies within the confines of a municipality located and lying within the township school district.

Your question has likely arisen because the holding in Opinion 298, issued in 1917, reads:

“A board of education has no authority to erect a school building outside of its district.”

At that time section 7620 read in part as follows:

“The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used for playgrounds for children or rent suitable schoolrooms, provide the necessary apparatus and make all other necessary provisions for the schools under its control. It also shall * * * make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.”

Section 7620 was thereafter amended in 108 O. L., Part I, page 187, to read as follows:

“The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either *within or without the district*, and provide the necessary apparatus and make all other necessary provisions for the schools under its control. It shall also provide fuel for schools, build and keep in good repair fences enclosing such school houses, when deemed desirable plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.”

The power of a board of education to acquire, hold and possess real property as and for its corporate use, appears in section 4749 G. C., which reads in part as follows:

"The board of education of each district * * * shall be a body politic and corporate and as such capable of * * * contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the law relating to the public schools in this state."

It will be noted that section 7620 G. C., as it read in 1917, did not contain the words "within or without the district" and hence there was no authority at that time in such section for the board of education to acquire property or to build a building without the district, but the words "within or without the district" were added by the very next General Assembly at its regular session, thus giving a clear inference that it was the intention of the legislature that the powers granted in section 7620 G. C. were not only to continue to exist as theretofore, but were to be enlarged so that the powers might be exercised either "within or without the district".

It is held in Dillon on Municipal Corporations, 5th Edition, Volume III, section 980:

"Municipal corporations being created chiefly as governmental agencies and for the attainment of local objects merely, the general rule is that they cannot purchase and hold real estate beyond their territorial limits *unless the power is conferred by the legislature.*"

It clearly appears that specific power has been conferred by the legislature in amending section 7620 G. C., as appears in 108 O. L., Part I, page 187. It will be noted that section 4690, bearing upon the transfer of school property to a city or village and providing that school property does not pass in certain cases until transferred by warranty deed, was also amended in House Bill 140 (109 O. L., p. 588) so that the section does not now read as it did in 1917, when Opinion 298, supra, was issued by the then Attorney-General.

For a case holding that school property may be owned by a board of education outside of its district, see Board of Education vs. Board of Education, 46 O. S., 595. In Opinion 298, supra, proper notice was taken of this decision of the Ohio supreme court in the following language:

"The above permission to hold property outside of the territorial limits of a district is an exception instead of the general rule. *Unless otherwise provided by statute*, the general rule is that school property must be owned and controlled by the boards of education having jurisdiction over the territory in which such school property is located."

However, as it appears in 108 O. L., Part I, page 187, section 7620 G. C. does now provide by exact language that a board of education may build, purchase or lease sites or rights of way for playgrounds, or rent suitable school rooms "without the district". It may be said that the use of the word "subdistricts", appearing at the end of section 7620, might have some bearing on this matter, but attention is

invited to the decision of the court of appeals for Tuscarawas county in the case of Dover Township vs. State ex rel. Frederick E. Hershey, as reported in 30 O. C. A., page 302, the first branch of the syllabus reading as follows:

"1 Under the present school code of Ohio there is no provision for what were known in the past as subdistricts, and the subdistrict school is, therefore, now without authority or legal existence."

It would appear, then, that the use of "subdistricts" in section 7620 G. C. means "districts", that is, the schools under the control of the board of education referred to in the section.

A question similar in a way to the one now under discussion is covered in Opinion 1616, issued on October 15, 1920, upon the question of vocational education activities, and the first branch of the syllabus of this opinion, appearing on page 1031, Vol. II, Opinions of the Attorney-General for 1920, reads as follows:

"1. A board of education can conduct its vocational classes outside the limits of the school district and can use its educational funds in the conduct of such classes."

The section of the law under which this conclusion was arrived at is section 7620 G. C., as amended in 108 O. L., page 187, the same section upon which your question rests in the present inquiry.

In reply to your inquiry it must therefore be held, as the opinion of this department, that since section 7620 G. C., has been amended as set forth in 108 O. L., Part I, page 187, a board of education may purchase property and erect a school building and control a school outside of the territorial limits of the district under its control.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3214.

MOTOR TRUCKS—GROSS WEIGHT OF VEHICLE AND LOAD THAT MAY BE CARRIED UPON ONE AXLE IS INDEPENDENT OF LIMITATIONS PLACED BY SECTIONS 7246, 7247, 7248 AND 7248-1 G. C.

The provisions of section 7248-1 G. C. (109 O. L. 546-548) placing a limitation upon the percentage of gross weight of vehicle and load that may be carried upon one axle of motor trucks driven upon the public highways are independent of the limitations placed upon maximum weight of vehicle and load by sections 7246 and 7247 G. C., and independent of the limitations prescribed by section 7248, based upon tire width; and the provisions of said section 7248-1 are to be applied to all motor trucks without reference to such maximum weight or tire width.

COLUMBUS, OHIO, June 12, 1922.

HON. JOHN L. LOTT, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—You have recently requested the opinion of this office as to section 7248-1 G. C., reading as follows:

"No vehicle having more than seventy per cent of the gross weight of vehicle and load on any one axle, no vehicle having a gross weight, includ-