

You have also submitted a contract bond in the sum of three thousand (\$3,000.00) dollars, signed by Frank L. Jirouch, as principal, and the Columbia Casualty Company, as surety, conditioned upon the proper performance of the contract, together with proper evidence of compliance with the laws of Ohio on the part of the above named surety, and also an encumbrance certificate in the sum of six thousand (\$6,000.00) dollars, bearing No. 2806, and properly certified by the Director of Finance on November 28, 1927.

Finding said bond and encumbrance certificate in proper legal form and properly executed, I hereby approve the same.

I am returning the contract, bond, encumbrance certificate and other papers in connection with the above matter to you herewith.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1559.

BOARD OF EDUCATION—NO AUTHORITY TO ISSUE BONDS PART OF PROCEEDS OF WHICH ARE TO BE USED TO ERECT JANITOR'S DWELLING.

SYLLABUS:

There is no authority for a board of education to issue bonds, a part of the proceeds of which will be devoted to the construction of a janitor's dwelling house upon school property.

COLUMBUS, OHIO, January 10, 1928.

HON. W. M. MCKENZIE, *Prosecuting Attorney, Chillicothe, Ohio.*

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

“The board of education of Green township rural school district, Ross County, Ohio, submitted to the electors at the election in November a bond issue in the sum of \$41,000.00, as provided in General Code Sections 2293-2 and 2293-19 to 2293-23, for the purpose of building an addition to the school house and janitor's dwelling house. The question that I desire to know is, can the board of education issue bonds for building an addition to the school house including a janitor's dwelling house, the janitor's dwelling house to be erected on the same lot on which the school house is located?”

I informed the board of education that I did not know whether they could include the erection of the janitor's house in their bond issue. They stated to me that the present school house is a large centralized school building, which includes a high school, and is located at Centralia, Ohio; that they have a great deal of trouble with people breaking into the building and destroying property and claim that it is necessary for protection of property to have a janitor live at the school. They claim that the bond issue would not have passed had they not agreed to erect a janitor's dwelling house, which they claim is almost a necessity.

Will you kindly give me an opinion on this as soon as possible as I refused to O. K. their transcript of the record of the proceedings of the board until I hear from you on this particular point."

As has often been stated by this department, boards of education are purely creatures of statute and, as such, their powers are strictly construed. This is evident from the uniform rulings of the Supreme Court wherever the question has been presented. Typical of these expressions is the following language taken from the opinion in the case of *State ex rel vs. Cook*, 103 O. S., 465, at page 467:

"That boards of education are purely the creatures of statute is an old and uniformly accepted doctrine. Section 3, Article VI of the constitution adopted in 1912, provides, in part, that 'Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds.'

As administrative boards created by statute their powers are necessarily limited to such powers as are clearly and expressly granted by the statute. This same doctrine as to inferior boards or commissions was recently laid down in *State, ex rel. Locher, Pros. Atty., vs. Menning*, 95 Ohio St. 97. The following appears in a *per curiam* opinion concurred in by all the members of the court:

'The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.'

This doctrine as applied to boards of county commissioners in their financial transactions must in principle be equally obligatory upon boards of education in their financial transactions."

You will observe that the court lays particular stress upon the strictness of the rule when applied to financial matters. It necessarily follows that unless there is express authority for the construction of a janitor's dwelling house, the board of education has no such power, unless it may be said to be a necessary incident to other powers.

The uniform bond act, enacted by the 87th General Assembly, contains Section 2293-2 of the Code, which provides, in part, as follows:

"The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct. * * * "

I do not find, however, that there is any express authority whatsoever found in the statute for the construction of a janitor's dwelling house. Moreover, there is no provision of law requiring the constant presence of a janitor at a school building from which any inference can be drawn sustaining the necessity of providing a place of residence on public school property.

Section 7623 of the General Code, as amended in the uniform bond act, provides as follows:

"The taxing authority of any school district in addition to other powers conferred by law shall have power to purchase, construct, enlarge, extend, complete, improve, equip and furnish buildings and play grounds for public school purposes, and acquire real estate with or without buildings thereon, and easements, for such purpose."

The authority therein conferred does not, however, in my opinion extend beyond the plain language of the section. I feel that the authority therein conferred to construct buildings for public school purposes cannot possibly be extended to comprehend the construction of a dwelling house for the janitor in conjunction with the construction of the school house itself. While the reasons for such construction may be entirely meritorious, they do not constitute a justification for the expenditure of public funds in this manner.

I am, therefore, of the opinion that there is no authority for a board of education to issue bonds, a part of the proceeds of which will be devoted to the construction of a janitor's dwelling house upon school property.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1560.

TOWNSHIP TRUSTEE'S BOND—APPROVED BY JUSTICE OF THE PEACE—PROCEDURE WHERE THERE IS NO JUSTICE OF THE PEACE TO APPROVE SAME. (SEE OPINION NO. 1565.)

SYLLABUS:

1. *By the terms of Section 3269, General Code, bonds of newly elected township trustees are required to be approved by a justice of the peace of the township in which such bonds are given, and there is no authority for the examination and approval of such bonds by any other officer or officers.*

2. *In case there is no justice of the peace to approve the bond of newly elected township trustees, each of such trustees should enter into a bond with two good and sufficient sureties residents of the same township with the trustee, as required by Section 3269, General Code, (or with a duly authorized guaranty company as surety, as authorized by Section 9571, G. C.) and file the same with the township clerk for record. When such bond is so entered into and filed, said trustees are authorized to enter upon the duties of their office and no vacancy would be created therein.*

COLUMBUS, OHIO, January 10, 1928.

HON. EDGAR G. MARTIN, *Prosecuting Attorney, Norwalk, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of January 4, 1928, in which you request my opinion, your letter reading as follows:

"The following problem has been presented to me:

Section 3269 reads as follows,—'Before entering upon the discharge of his duty, each township trustee shall give bond to the state for the use of the township, with at least two sureties, who shall be residents of the same town-