

given in 1842, so that I am of the opinion that the dower rights, or other rights of a possible wife have been foreclosed by lapse of time.

(13) Item 21 discloses a mortgage by John M. Merriman and wife to Susan Bever and James B. Bever.

Item 22 discloses that Thomas Smith, executor of the will of Susan Bever, released the mortgage so far as her estate is concerned. However, the abstract does not disclose any administration of her estate, or any reference as to the appointment of Thomas Smith as executor.

Item 23 of the abstract discloses that the guardian of James Bowman Bever released the mortgage so far as the interest of James B. Bever was concerned. The imperfections in the release of this mortgage are cured by lapse of time.

(14) In Item 30 it appears that Merriman and wife deeded 71.37 acres of ground in the northeast quarter and 21 acres in the northwest quarter, exclusive of the land in the railroad right of way, to John P. Emerson, who in 1898 with his wife deeded approximately 15 acres on the east side of the tract, and east of the railroad right of way, to Margaret A. Bott.

Item 32 of the abstract discloses that there is no other deed by John P. Emerson on record covering the land obtained from Merriman, no administration of John P. Emerson's estate in the Probate Court of Wayne county, and nothing to show who his heirs were, except as shown in Items 33 and 35 hereafter noted.

(15) In Item 33 it appears that Sarah Emerson, widow of John P. Emerson, Harriett N. Emerson, J. W. Emerson, L. M. Emerson and wife, Mary J. Emerson, by quit-claim deed transferred their interest in said John P. Emerson tract to Emerillas Numbers. It appears by a statement inserted in the abstract by Daniel C. Funk an attorney of Wooster, that John P. Emerson died intestate, that Harriet M. Emerson never married, and that Emerillas Numbers was a daughter of John P. Emerson, and that the persons named in the foregoing deed were his only heirs at law.

This being true, I am of the opinion that the defects described in paragraphs numbered 11 to 15, both inclusive, are not sufficient at this time to constitute any cloud on the title.

The approval of the Controlling Board should be obtained, and a regularly certified encumbrance estimate should accompany this abstract.

The abstract, warranty deed and other data submitted are herewith returned.

Respectfully,  
EDWARD C. TURNER.  
*Attorney General.*

109.

INSPECTION OF BOILERS—DUTY OF DEPARTMENT OF INDUSTRIAL  
RELATIONS TO INSPECT BOILERS OWNED BY BOARDS OF EDU-  
CATION—FEES.

SYLLABUS:

1. *That it is the duty of the Department of Industrial Relations to inspect boilers owned by boards of education, except such boilers as are exempted from said inspection by Section 1058-7 of the General Code.*

2. *When such inspection is made by the Department of Industrial Relations, it is the duty of the board of education to pay to said department the fees provided by law therefor.*

COLUMBUS, OHIO, February 26, 1927.

HON. HERMAN R. WITTER, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR:—Acknowledgement is hereby made of your request for my opinion upon the question as to

“Whether or not boilers under the jurisdiction of boards of education in the state of Ohio are subject to inspection and payment of fees as is provided for in the Ohio Boiler Inspection Laws.”

This inquiry really consists of two questions, as follows:

(1) Are the boilers belonging to or under the jurisdiction of boards of education required to be inspected under our State Boiler Inspection Law?

(2) Is the board of education required to pay the fees provided by law for such inspection?

On consideration of the first question I find that Section 1058-7, General Code, provides:

“*All steam boilers and their appurtenances, except boilers of railroad locomotives subject to inspection under federal laws, portable boilers used in pumping, heating, steaming and drilling, in the open field, for water, gas and oil, and portable boilers used for agricultural purposes, and in construction of and repairs to public roads, railroads and bridges, boilers on automobiles, boilers of steam fire engines brought into the state for temporary use in times of emergency for the purpose of checking conflagrations, boilers carrying pressure of less than fifteen pounds per square inch, which are equipped with safety devices approved by the board of boiler rules, and boilers under the jurisdiction of the United States, shall be thoroughly inspected, internally and externally, and under operating conditions at intervals of not more than one year, and shall not be operated at pressure in excess of the safe working pressure stated in the certificate of inspection hereinafter mentioned. And shall be equipped with such appliances to insure safety of operation as shall be prescribed by the board of boiler rules.*”

Section 1058-26, General Code, provides:

“The inspection of boilers and their appurtenances shall be made by the inspectors mentioned herein *under the supervision of the chief inspector of steam boilers*, and it shall be the duty of the chief inspector to enforce the provisions of this act and of such rules as shall be promulgated by the board of boiler rules that have been approved by the governor.”

It might be pertinent at this time to call attention to the fact that by virtue of Section 871-24 of the General Code (103 Ohio Laws, p. 103) all of the duties imposed by law upon the chief inspector of steam boilers were transferred to and vested in the Industrial Commission of Ohio, and later by Section 154-45 of the General Code (109 Ohio Laws, p. 111) all of said duties relative to the inspection of steam boilers were transferred to and vested in the Department of Industrial Relations.

Therefore, in answer to your first question it is quite clear that it is the duty of the Department of Industrial Relations, by the means provided in Section 1058-26 of the General Code, to inspect all steam boilers in this state, except those exempted by Section 1058-7 of the General Code. The boilers belonging to boards of education are not included in those exemptions.

In answer to the second part of your inquiry, as to whether or not the fees provided by law shall be paid by the board of education, it is my opinion that since a duty has been placed upon the Department of Industrial Relations to inspect all of the boilers in the state, including those belonging to boards of education, all of the other sections of the statute relating to said inspection are applicable thereto. This includes the provision relative to getting the boiler in shape for inspection and carrying the load permitted by the department, and the provisions of Section 1058-25 of the General Code, which reads in part as follows:

“The owner or user of a boiler *herein required to be inspected shall pay* to the chief inspector upon inspection five dollars for each boiler internally and externally inspected, and two dollars for each other boiler inspected while in operation. \* \* \* ”

I believe that in construing these sections they disclose a plain intention of the legislature to provide that the Department of Industrial Relations should be paid the fees mentioned in Section 1058-25 of the General Code on all boilers which the law requires said department to inspect, regardless of who may be the owner thereof. Therefore, when a boiler belonging to a board of education must be inspected by the Department of Industrial Relations, the law imposes a duty upon the board of education to pay the fee prescribed by law therefor.

In consideration of this question I am not unmindful of other opinions rendered by this department along the line as found in Opinions of the Attorney General for 1922, Volume II, p. 1103, relative to boards of education not being required to pay fees for approval of plans for school buildings. This opinion, however, is not in conflict therewith for the reason that said opinion was based largely upon the provisions of Section 1035 of the General Code, which reads as follows:

“The plans for the erection of such structure, and for any alterations in or additions to any such structure, shall be approved by the inspector of workshops and factories, except in municipalities having regularly organized building inspection departments, in which case the plans shall be approved by such department.”

The question in that case was whether or not the board of education should pay to the municipality fees required by ordinance for the approval of the plans, for school buildings which they were about to construct or repair. In that instance the general provision of law was that all the plans for such work must be submitted to the department of workshops and factories for approval, *and the law did not require a fee to be paid for such approval*. The section further provided that this duty should be performed by the building inspection department in cities having such departments, instead of being done by the department of workshops and factories. Therefore, in that case the duty of the municipal department to act was imposed by law and not by ordinance, and since the law did not provide that fees should be paid in such case, and there was no other provision of law relative thereto, no fee could be charged by the municipality for such approval.

This distinction is pointed out by our Supreme Court in the case of Niehaus vs. State ex rel. Board of Education, 111 Ohio St., p. 47.

This opinion is also in conflict with a former opinion of this office (Opinions of Attorney General, 1916, Volume II, p. 1858). In that opinion no consideration was given to the provisions of Section 1058-26 of the General Code and sufficient consideration was not given to the fact that the legislature when making exceptions in section 1058-7 did not designate boilers under the jurisdiction of state governmental agencies, although specially exempting those "under the jurisdiction of the United States."

It is therefore my opinion

(1) That it is the duty of the Department of Industrial Relations to inspect boilers owned by boards of education, except such boilers as are exempted from said inspection by Section 1058-7 of the General Code.

(2) When such inspection is made by the Department of Industrial Relations, it is the duty of the board of education to pay to said department the fees provided by law therefor.

Respectfully,

EDWARD C. TURNER.

*Attorney General.*

110.

NEITHER WORKMEN'S COMPENSATION NOR TEACHERS' RETIREMENT FUND CAN LAWFULLY BE USED FOR THE PURPOSE OF ERECTING A STATE OFFICE BUILDING.

*SYLLABUS:*

*Neither the Workmen's Compensation Fund nor the Teachers' Retirement Fund can lawfully be used for the purpose of erecting a state office building.*

COLUMBUS, OHIO, February 28, 1927.

*Committee on State Buildings, Parks and Public Works, House of Representatives, Columbus, Ohio.*

Attention: H. S. Keifer, Chairman; F. A. Burkhardt, Secretary.

GENTLEMEN:—I am in receipt of your request for opinion, reading:

"The committee on state buildings, parks and public works, of the House of Representatives, finds that there are several proposals before the General Assembly for financing the purchase of land and construction of a new state office building by the investment of the workmen's compensation fund or the teachers' retirement fund in such land and building. While there is some variation in methods suggested, the act enacted by the last Assembly which was Senate Bill No. 300 and House Bill No. 124 of this session, which amends said act, are typical of the proposals of this character.

This committee respectfully requests an opinion as to the constitutionality of Section 9 of said act and of the proposed amendment of said Section 9 by said House Bill No. 124. Copies of said act and bill are herewith enclosed.

The reason for this request is that the committee believes that one of the most urgent problems before this Assembly, which demands effective action, arises in the deplorable conditions in regard to the housing of the offices and records of important state departments, combined with the fact that there is strong sentiment in favor of a method of financing along the line suggested