

cation to transport pupils to the schools, provided the board of education determines that it is physically possible for such teacher satisfactorily to perform both duties.

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

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2675.

MEMORIAL BUILDING—AUTHORITY OF TRUSTEES TO RENT, DISCUSSED—MILITARY ORGANIZATIONS MAY USE—EXPENSE CHARGES DISCUSSED.

*SYLLABUS:*

1. *A board of trustees of a memorial building is without authority to charge a rental for the use of a memorial building, when such building is being used for a public purpose.*
2. *Inasmuch as the Legislature has, by the language used in Section 3068, General Code, expressed its intent that military organizations, as such, exist for a public purpose, a board of trustees of a memorial building is without authority to charge a bona fide military organization rental for the use of a memorial building. Such board of trustees, however, may exact from such organizations such charges as are necessary to pay for the cost of heating, lighting, janitor service, etc., which charges must be reasonably commensurate with the cost of such items.*

COLUMBUS, OHIO, October 5, 1928.

HON. JAY S. McDEVITT, *Prosecuting Attorney, Mt. Vernon, Ohio.*

DEAR SIR:—This will acknowledge your letter dated September 19, 1928, which reads as follows:

“Upon a former occasion I have written to your office regarding certain questions relative to a county Memorial Building which we have in Knox County and which was built by a special tax levy. The building of the Memorial Building was done in accordance with law by a board of trustees, and after the completion of said building the trustees formally transferred the title to the building and site to the county and the same was formally accepted by the then president of the Board of County Commissioners. Whereupon the court later appointed three men as permanent trustees of the grounds and building. So far as I have been able to learn there have been no regular rules or regulations adopted by the Board of Trustees and submitted to the court for approval.

The Trustees have a policy of charging certain rental for the use of said building. One part of this building is used for theatre purposes but I am not concerned about that in this particular question. There is a large room known as the lodge room in the Memorial Building which is used for the regular meeting place of certain patriotic organizations, including the G. A. R., Sons of Veterans, Sons of Veterans Auxiliary, Daughters of Veterans, Women's Relief Corps, American Legion, American Legion Auxiliary, and Daughters of the American Revolution. These organizations are charged an annual rent based on the per capita membership which makes the charge run from

a minimum of \$15.00 to the Daughters of the American Revolution up to \$50.00 per annum which is paid by the Sons of Veterans and by the American Legion.

In Section 3068 of the General Code of Ohio the last paragraph reads as follows:

'Such memorial building shall be for the use of the general public, military organizations to be given the preference.'

The question which has arisen here and which I wish to ask your office for an opinion is whether or not the trustees of said Memorial Building can lawfully charge military or patriotic organizations a rental for the use of any part of said building. I might also add that the Red Cross has been granted the use of certain rooms and portions of the building free of charge."

The purpose for which memorial buildings are constructed is, as expressed in Section 3059, General Code,

"To commemorate the services of the soldiers, sailors, marines and pioneers of the county."

By the terms of Section 3067-1, General Code,

"There shall be provided in such building suitable apartments of sufficient dimensions, to commemorate the soldiers, sailors and marines of the county who have lost their lives while in the service of the country, and suitable tablets shall be maintained with the names of such soldiers, sailors and marines inscribed thereon *and said building may be otherwise devoted to the purposes of a community center, public library, or other public purpose.*" (Italics the writer's.)

Section 3068, General Code, provides in part that:

"\* \* \* Such memorial building shall be *for the use of the general public, military organizations to be given the preference.*" (Italics the writer's.)

From the provisions of the foregoing sections you will note that memorial buildings are constructed to commemorate the services of the soldiers, sailors, marines and pioneers of the county, and when so constructed, are dedicated to the use of the general public, military organizations to be given the preference. In other words, the Legislature has clearly expressed its intention that military organizations, as such, exist for a public purpose, and are entitled to a preferred use of such a building. Built with public funds, and dedicated to the use of the general public, it would seem that it was not the intention of the Legislature that a board of trustees in charge thereof, might exact a "rental" when such a building is being used for a public purpose. By this I do not mean that a board of trustees, which has the sole control, management and supervision of such a memorial building, may not, when such building is being used by a military organization, charge a reasonable fee in order to cover the cost of heating, lighting, janitor service, etc. The amount of such charges, however, must be reasonably commensurate with the cost of such items. Obviously, such a charge is in no sense a rental charge, but is in the nature of a reimbursement for the necessary heating, lighting, janitor service, etc., incident to such use.

On March 7, 1928, this office rendered its opinion to the Bureau of Inspection and Supervision of Public Offices, being Opinion No. 1818, upon certain questions presented regarding the power and authority of the board of trustees of the Knox

County Memorial Building to lease or rent the memorial building, or a part thereof, for a lawful private purpose. The first three paragraphs of the syllabus of this opinion read as follows:

"1. Section 3068, General Code, does not require a board of permanent trustees of a memorial building to adopt rules and regulations as a condition precedent before such board may assume sole control, management and supervision of such memorial building and grounds.

2. A board of permanent trustees, appointed by virtue of Section 3068, General Code, has authority to lease or rent a memorial building under such terms and conditions as it deems proper for any lawful, private purpose, when the same does not interfere with the public use of such building.

3. Upon the appointment by the Court of Common Pleas of a board of permanent trustees of a memorial building, as provided by Section 3068, General Code, such board has the sole control, management and supervision of such memorial buildings and grounds."

You will note that the opinion just referred to is confined to the power and authority of a board of trustees to lease or rent such a building for a private purpose, and does not discuss the power and authority of such a board of trustees to rent the same for a public purpose.

In view of the foregoing, and answering your question specifically, it is my opinion that a board of trustees of a memorial building is without authority to charge a rental for the use of a memorial building, when such building is being used for a public purpose. Inasmuch as the Legislature has, by the language used in Section 3068, General Code, expressed its intent that military organizations, as such, exist for a public purpose, a board of trustees of a memorial building is without authority to charge a bona fide military organization rental for the use of a memorial building. Such board of trustees, however, may exact from such organizations such charges as are necessary to pay for the cost of heating, lighting, janitor service, etc., which charges must be reasonably commensurate with the cost of such items.

I am enclosing herewith a copy of Opinion No. 1818, supra.

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

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2676.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN JEFFERSON COUNTY.

COLUMBUS, OHIO, October 5, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*