

joinder of the proceedings to foreclose the lien on distinct parcels of land, though included in the same delinquent tax certificate, are great. Indeed, a constitutional point may be involved. At any rate, in the absence of language like that found in Section 5721, this department is of the opinion that in spite of the language in Sections 5712 and 5718, which has been quoted, the true meaning of these sections is that a separate action must be brought against each parcel of land certified as delinquent."

As before stated herein, there have been no changes in Sections 5718 and 5719 of the General Code since 1917, and I, therefore, see no reason for changing the construction placed upon said Sections in the 1922 Opinion of the Attorney General. I am, therefore, of the opinion, specifically answering your question, that proceedings to foreclose the lien for taxes against lands certified as delinquent brought under Section 5718 of the General Code, must be separate in the case of each parcel certified as delinquent.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

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200.

APPROVAL, NOTES OF NEW RICHMOND VILLAGE SCHOOL DISTRICT,  
 CLERMONT COUNTY—\$37,500.00.

COLUMBUS, OHIO, March 16, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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201.

BOARD OF EDUCATION—EXTENT OF AUTHORITY TO EXPEND  
 MONEY FOR RELIEF OF CHILDREN—GRANGES AND SIMILAR OR-  
 ORGANIZATIONS—MAY USE SCHOOL BUILDINGS FOR MEETINGS IF  
 REASONABLE EXPENSES PAID.

*SYLLABUS:*

1. *By the plain terms of Section 7777, General Code, the authority therein granted to boards of ducation to expend school funds for the purpose therein mentioned extends only to cases where an attendance officer is satisfied that a child compelled by law to attend school is unable to do so because absolutely required to work at home or elsewhere in order to support himself or help to support or care for others legally entitled to his services. Such authority extends only to furnishing text-books, and such other personal necessities for the child or persons entitled to his services, and also such medical care in co-operation with the health commissioner of the district,*

as may be necessary to enable him to attend school, thereby relieving the child of the necessity of working, and thus interfering with his attending school. Other and further poor relief should, when necessary, be extended by the proper municipal, township or county authorities in accordance with Section 3476 and related sections of the General Code.

2. Grange and similar organizations are entitled as a matter of right to use the school buildings and grounds in their respective districts for the purpose of holding meetings of such organizations, provided there is paid to the board of education the actual expenses incident to the use of said buildings for such purposes. The amount of said expenses may, by agreement, take the form of a fixed charge, to be paid as a fee for the use of the building, provided the amount of such charge is based on and is reasonably commensurate with the actual cost to the board of education of such incidental use of the building.

COLUMBUS, OHIO, March 18, 1929.

HON. WINSTON W. HILL, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—This will acknowledge receipt of your inquiry which reads as follows:

“A question has arisen in my county in regard to the construction of Section 7777 of the General Code of Ohio.

The facts are as follows, there is a family of nine children, all of school age, residing in Oxford Township, Delaware County, and the father is unable to earn enough to send these children to school, he being a tenant on a farm. The whole thing being that the family is destitute, the father applied for aid from the township trustees about six weeks ago and since that time they have been taking care of the family in all respects, save as follows:

The Ashley School Board has since the first of the school season, been furnishing free books to these nine children. About three weeks ago, the trustees feeling that the township should not stand all the burden, demanded that the school board furnish these children with food and clothing, to enable them to attend school. The school board feeling that such would be an unduly heavy burden on the school funds, refuse to do as requested, and backed their refusal up with the statement that it would be illegal for them to do so.

The school board coming to me for an opinion, were told by me in writing that they were not required under Section 7777, to furnish these children food and clothing, and I based my opinion on the following reasons,—that the children were not required to work out to support themselves, or were they required to care for their parents at home, for both parents are able bodied, and the children are not of sufficient age to go to work, for an outsider; secondly, that the clause in the section giving the school board authority to furnish the children with personal necessities, was not mandatory but discretionary, that is, that such a power giving clause could be stretched to untold limits, and work a heavy burden on the school boards. Further if the school board wished to furnish the children with a few personal necessities, they could, but as to furnishing the children with food and clothing besides books, they were not required to do so. And lastly, that if the township trustees had given the family temporary relief and there was no change in the condition, then the county commissioners were required to act, and could take care of this family in their own home, which of course would be the best way to do.

There is still quite a lot of dissention upon the opinion that I rendered, so consequently I am requesting an opinion from you, so that the controversy can be settled once and for all times.

I would also like to ask, whether under Section 7622-3, of the General Code of Ohio, the school board of Sunbury Village, would have authority to charge the Grange at Sunbury a minimum rental fee for the use of the school building, the charge to take care of the light or electricity that is consumed and other incidental expenses.

I have given them my opinion, and that was that under the clause in the statute which provides that the school board can make such regulations as they may adopt in regard to the letting, after the payment of janitor fees, that they would have power under that clause to charge a minimum rent for the building to take care of expenses."

Section 7777, General Code, reads as follows:

"When an attendance officer is satisfied that a child compelled to attend school is otherwise unable to do so because absolutely required to work at home or elsewhere in order to support himself or help to support or care for others legally entitled to his services who are unable to support or care for themselves, such officer must report the case to the president of the board of education of the city, exempted village, village or rural school district in which such child resides. Upon proof of such fact the given board of education shall furnish free of charge text-books and such other personal necessities for the child or persons entitled to his service and also such medical care in cooperation with the health commissioner of the district as may be necessary to enable the child to attend school. The expense incident to furnishing such relief must be paid from the contingent fund of the school district. Such child shall not be considered a pauper by reason of the acceptance of such relief. If the child or its parent or guardian refuses or neglects to take advantage of the provision thus made for its instruction, action may be taken against the parent or guardian or child as provided in Sections 7773, 7774 or 1645, General Code."

Provisions similar to those now contained in Section 7777, supra, were first enacted in 1889 (86 O. L. 337, Section 10) as a part of the compulsory school law. It was there provided that when it was found that a child of compulsory school age was dependent on his or her labor for a living, or was the support of others unable to provide for their subsistence or was, in the opinion of the superintendent of schools or the board of education, required to contribute to the support of the family of which he or she was a member, it became the duty of the truant officer to report such case to the proper authorities whose duty it was to look after and care for the poor and to endeavor to obtain such relief as would release such child from labor for such a length of time each year as would be required to enable him to comply with the law relating to compulsory education. It was further therein provided that, if the truant officer failed to obtain such relief, "the superintendent of schools or the board of education may make suitable arrangements for the private instruction of such child while so adversely conditioned." The law was amended in 1893 (90 O. L. 289, Section 9). As amended, it provided:

" \* \* \* Boards of education, in urgent and deserving cases where no other relief is available, and where neither parents nor child are at fault, may make suitable temporary arrangements for the instruction of the child, described in this section, either at home or at school, and for such purpose may incur necessary expense to be paid out of the school funds of the district."

The language "the child described in this section" refers to the language at the beginning of the section, which says:

"When any truant officer is satisfied that any child, compelled to attend school by the provisions of this act, is unable to attend school because absolutely required to work, at home or elsewhere, in order to support itself or help support or care for others legally entitled to its services, who are unable to support or care for themselves, \* \* \* "

The statute was again amended in 1902 (95 O. L. 620). As then amended it provided that:

"In all cases where relief is necessary it shall be the duty of the board of education to furnish text books free of charge and said board may furnish any further relief it may deem necessary, the expense incident to furnishing such books and relief to be paid from the contingent funds of the school district."

In the statute, as then amended, the description of the child and the nature of the relief to be extended was the same as was set forth in the statute of 1902, *supra*.

The statute, then Section 4022-9, Revised Statutes, was again amended in 1908 (99 O. L. 477). By the terms of the statute as amended at that time it was made the duty of the board of education to provide such relief as would permit a child coming within the terms of the statute, which class of children was the same as that described in the former statutes, to attend school as required by law, without first appealing to the authorities charged with the duty of administering the poor laws for relief.

The statute was again amended in 1921 (109 O. L. 392) to read as it now reads, and as amended was contained in:

"An Act To Amend Sections 7690 \* \* \* 7777, General Code \* \* \* relating to duties of boards of education, and to compulsory education, the employment of minors, the establishment of part-time schools, the school census, and penalties for violations of laws relating thereto."

It will be observed upon consideration of the terms of Section 7777, *supra*, in the light of its history, that the obvious purpose of the statute is to substitute the board of education for the authorities in charge of the administration of the poor laws, and the school funds for the poor funds, for certain purposes. This purpose, however, does not embrace the substitution of the board of education and the school funds, for the poor authorities and the poor funds, in the extending of poor relief to an entire family simply because the family is poor and has one or more children in school. The obvious intent of the law is to provide means whereby the compulsory school law may be rendered effective as to children within the compulsory school age who are so poor that they are compelled to work to support themselves, or those dependent upon them. Relief is to be extended in such cases, but only to the extent of relieving the child from working so that it may have time and the necessary books and personal necessities, as well as medical care, to enable it to attend school. It will be observed that the statute applies only to

"any child, compelled to attend school \* \* \* unable to attend school because absolutely required to work, at home or elsewhere, in order to support itself or help support or care for others legally entitled to its services, who are unable to support or care for themselves."

And then the relief extended by the board of education is simply to

“furnish free of charge text-books and such other personal necessities for the child or persons entitled to his service and also such medical care in co-operation with the health commissioner of the district as may be necessary to enable the child to attend school.”

So far as children are concerned, who are not old enough to work, or who are physically incapacitated from working, and so far as families having such children are concerned, the statute has no application whatever. In cases, however, where a child is able, and of sufficient age, to earn its own living and to contribute to the support of the family, and the family is so poor that the child cannot go to school because it is absolutely required to work in order to support himself or others in the family, the board of education is authorized to furnish textbooks and other personal necessities for the child and the persons entitled to the child's services, to the extent that the child would contribute to those persons either by way of service or money if it were not required to attend school and were permitted to work. It is only to this extent, however, that the board of education is authorized by Section 7777, General Code, to extend relief.

In the instant case about which you inquire, it appears that there are nine children in the family; both parents are able bodied; and you state that the children are not of sufficient age to go to work for an outsider. That being true, such children do not come within the terms of said Section 7777, General Code, and the board of education has no authority to extend relief, as provided in said statute. The board may, however, by authority of Section 7739, General Code, furnish free textbooks for these children and, if the family is as poor as you say, textbooks should be furnished free of charge for these children, and it is possible that some of these children may be old enough to earn part of their own support, if they had an opportunity to do so. In that case, certain personal necessities, such as shoes and certain other clothing to enable the child to attend school, might lawfully be furnished by authority of the statute. The statute should not be extended beyond its plain terms, and yet judgment should be used in its administration, and the authorities charged with the administration of the poor laws and the board of education should co-operate in such a way as to insure the children being kept in school, remembering at all times that the primary duty of granting relief to the poor is on the township trustees and the county commissioners, who, by the terms of Section 3476, 3480 and related sections of the General Code, are granted full power to extend poor relief to those needing such relief.

Any further extension of the terms of Section 7777, General Code, than that which I have stated might easily lead to abuse in its administration. An apt illustration of the extension of the terms of this section to its very limits is found in the Opinions of the Attorney General for 1923 where, at page 729, it was said:

“Under the provisions of G. C. 7777, where the mother is an invalid, the family without property and no means of support other than the earnings of the father and husband, which earnings are inadequate to support the family and provide the proper care for the invalid mother, and when because of the above circumstances the services of a child (a daughter) are absolutely required to care for the mother, it is believed, upon satisfactory proof of such state of facts, the board of education, in co-operation with the health commissioner of the district, would have authority to furnish, in addition to such maintenance, care and personal necessities as the husband and father may be able to provide, additional care and personal necessities for the invalid

mother as may be necessary to enable the child to attend school and if proven necessary it is believed such care may include the services of an attendant for the invalid mother."

Opinion No. 1551, rendered under date of January 9, 1928, a copy of which is enclosed herewith, may be helpful in connection herewith.

Bearing upon your second question with reference to the use of the school buildings at Sunbury by the Grange, Section 7622-3, General Code, reads in part 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 schoolhouse 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:

\* \* \* \*

for holding grange or similar meetings."

Said Section 7622-3, General Code, was first enacted in 1915 as part of an act entitled:

"An Act \* \* \* to supplement Section 7622, General Code, by Section 7622-1 to 7622-7, inclusive, providing for the use of school buildings and other public buildings and grounds for educational and recreational purposes."  
(106 O. L. 552).

Section 7622, General Code, to which Sections 7622-1 to 7622-7, General Code, were supplementary, at that time, in substance authorized boards of education to open schoolhouses for the holding of literary exercises, school exhibitions, singing schools, religious exercises, select or normal schools or for any other lawful purpose, when such use did not interfere with the public schools in the district and when in the judgment of the board it would be for the advantage of the children of the district to permit such use of the building.

Said Section 7622-3, General Code, as enacted in 1915, was permissive in form and did not provide that janitor's fees need be paid before the incidental uses named in the statute were permitted. The first sentence of the statute as then enacted read as follows:

"The board of education of any school district may, subject to such regulations as may be adopted by such board, permit the use of any school house 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:"

Section 7622-1a, General Code, was enacted on March 20, 1917 (107 O. L. 449), in an act to "supplement Section 7622-1, of the General Code, by the enactment of supplemental Section 7622-1a, General Code, providing for a more complete use of school grounds as a place of holding public meetings;" and on March 21, 1917, Section 7622-3, General Code, was amended by the same General Assembly, the word "may" in the first clause of the first sentence being changed to "shall" and the words "upon request, and the payment of the proper janitor fees" being inserted immediately thereafter. (107 O. L. 607.)

Soon after the enactment of Section 7622-3, General Code, in its present form, in 1917, the then Attorney General in considering the question of whether or not a

grange organization was entitled as a matter of right to the use of the school buildings for holding meetings of the organization, held that it had such right. It will be observed that the statute specifically mentions the holding of Grange and similar meetings, as among the purposes for which the use of school buildings should be permitted.

In the opinion above referred to, Opinions of the Attorney General for 1917, Volume 3, page 2339, it is said:

"I advise you that \* \* \* from the fact that the language of said Section 7622-3 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 public' does not so modify or change the effect of such mandatory language in reference to grange meetings as to prevent the same."

Upon consideration of the provisions of Sections 7622, et seq., of the General Code, in the light of their history, there is revealed a clear legislative intent to constitute school buildings and school grounds community centers in furtherance of the educational, civic, social and recreational activities of the community in which they are located, it being provided that responsible organizations or groups of citizens and certain other agencies have the right to the use of the school buildings and grounds for certain purposes if such organizations meet the requirements of the statutes and conform to the rules of the board of education in the use of the premises.

From the fact that Section 7622-3, General Code, before it was amended in 1917, contained the clause "subject to such regulations as may be adopted by such board" and, when amended, there was added the clause "upon request, and the payment of the proper janitor fees," it seems clear that the Legislature considered that the authority to make regulations was not broad enough for the board to require the payment of janitor fees, and hence added that requirement. Be that as it may, however, the statute now requires that janitor fees be paid by an organization such as a Grange which uses the school building. A strict construction of this language would perhaps indicate that it is not necessary that anything but janitor fees be paid. Just what is included in janitor fees is somewhat of a question.

Section 7622-12, General Code, provides that when the school building is put to certain uses, the candidate or committee so holding a meeting shall be responsible for any damage done or "expenses incurred by reason thereof."

Section 7622-2, General Code, provides that when the building is put to any of the uses specified in Section 7622-1, General Code, there shall be paid if required "the actual expense incurred for janitor services, light and heat."

The several sections of the Code above referred to all have reference to the same subject and should be construed together. There is obviously contained therein the expression of a legislative intent that the school district should not bear any of the cost of the incidental uses to which the school premises may be put, other than the ordinary wear on the premises; nor is it intended that the school district should make a profit on account of permitting the buildings to be used for the incidental purposes specified in the statutes. In practice it would be difficult to determine with mathematical certainty just what the cost of janitor services, heat, light and other incidental services would be for a single meeting or for a series of meetings. At the best, those costs could only be estimated, and exactness approached, and for that reason I am of the opinion that a fixed reasonable sum may be charged as a fee for the use of the building so long as that fixed sum is based on, and is proportionate to,

what, with reasonable certainty, would cover the actual expenses incurred by a board of education in permitting a Grange or other organization to use the building.

In an opinion rendered by this office under date of October 5, 1928, being Opinion No. 2675 wherein was discussed the right of a board of trustees of a county memorial building to make a charge for the use of the building for a public purpose, it was said:

“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 the heating, lighting, janitor services, 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 services, etc., incident to such use.”

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

First, the board of education of Oxford Township School District in Delaware County, has no authority to expend school funds for the purpose of extending relief to the family spoken of in your letter of inquiry, other than to provide textbooks for the children attending school and to extend such relief as may be necessary to provide personal necessities for any of the children or their dependents when such children are able to, and are absolutely required to work to support themselves or those dependent upon them, if in fact there are any children in the family who answer that description, and then only to the extent that may be necessary to relieve such child or children from the necessity of work, so that they may attend school, in compliance with the compulsory school laws of the State.

Second, the Grange at Sunbury has a right to the use of the school building in Sunbury village for the purpose of holding meetings of the Grange and the Board of Education of Sunbury Village School District is required by law to permit the use of the buildings for that purpose, provided the actual expenses incident to such use which the board of education incurs on account thereof, are paid. This, by agreement, may take the form of a stipulated charge, providing the amount of such charge is based on what would reasonably amount to the actual expenses incident to the use of the building by the Grange.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

202.

DELINQUENT LANDS—PUBLICATION OF LIST BY AUDITOR—MAY BE  
MADE ONLY BETWEEN DATES SPECIFIED BY STATUTE.

**SYLLABUS:**

*The publication of the list of delinquent lands for any year, must be made “between the twentieth day of December and the second Thursday in February, next ensuing” as provided in Section 5704 of the General Code, and where said list is not published between said dates, there is no authority for the publication of said list at a later date.*