

in the General Conditions and the specifications for same, and as covered by form of proposal dated May 22, 1939. This contract calls for an expenditure of \$450.00.

You have submitted the following documents and papers in this connection: Form of proposal containing the contract bond signed by New York Casualty Company; its power of attorney for the signer thereof; its certificate of compliance with the laws of Ohio relating to surety companies; Workmen's Compensation Certificate showing a compliance with the laws of Ohio relating to Workmen's Compensation; Controlling Board's release permitting the advertisement for bids but once for the project; division of contract; notice to bidders; proof of publication; certificate of availability of funds; estimate of cost; tabulation of bids; record of proceedings of the Board of Trustees of Ohio State University in regard to the project together with letter from the Secretary of said Board of Trustees certifying the subsequent approval of PWA authorities for this project; letter from the Auditor of State, showing all necessary paper are on file in his office.

Finding said contract in proper legal form, I have noted my approval thereon, and same is transmitted herewith to you together with all other papers submitted in this connection.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

790.

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MEMORIAL BUILDING—FRANKLIN COUNTY—COUNTY COMMISSIONERS—POWER TO CONTROL, MANAGE AND SUPERVISE—COMMON PLEAS COURT—DOES NOT HAVE AUTHORITY TO APPOINT BOARD OF PERMANENT TRUSTEES—SECTIONS 3068 ET SEQ. G. C.

**SYLLABUS:**

*The Common Pleas Court of Franklin County, Ohio, does not have the authority to appoint a board of permanent trustees to control, manage and supervise the Franklin County memorial building, as provided in section 3068, General Code.*

COLUMBUS, OHIO, June 22, 1939.

HON. RALPH J. BARTLETT, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of a request from your office for my opinion, which request reads as follows:

“This office has been requested to ask you for your opinion whether the Common Pleas Court of this county would have the

authority to appoint a board of permanent trustees to have control, management and supervision of the Franklin County Memorial Building, as provided in Section 3068 of the General Code of Ohio.

The Franklin County Memorial Building was constructed in 1904 and is under the control of the County Commissioners at the present time."

Provisions for the erection and maintenance of county memorial buildings are contained in Chapter 2, Division IV, Title X of the Ohio General Code. Said chapter consists of sections 3059 to 3069-3, inclusive. For the purpose of your inquiry, there is no need to discuss any of these sections other than section 3068, General Code, which deals with the transfer of the completed memorial building to the county, and further provides for the control, maintenance and supervision of such building and the grounds upon which it was erected.

The section above referred to was originally enacted in 1902 (95 O. L. 41, 44), as follows:

"Section 10. Upon the completion of the memorial building authorized, the board of trustees shall turn over the same to the county commissioners who shall provide for the maintenance of said building as a memorial for the purpose aforesaid in the same manner as they are authorized to maintain other property of the county, and shall levy an annual tax, in addition to all other levies authorized by law, sufficient to care for said building and to carry out the purposes for which the same is constructed."

By virtue of this enactment, the board of trustees, appointed to supervise the erection of the proposed memorial building, was required to turn over the same upon completion, to the county commissioners who were then charged with the duty to provide for its maintenance in the same manner as they provided for other county buildings. Since its passage this section has been amended a number of times by succeeding general assemblies, as follows: 98 O. L., 126, 1906; 99 O. L., 126, 1908; 100 O. L., 19, 1909; 101 O. L., 151, 1910; 109 O. L., 284, 287, 1921. The amendments of 1906, 1908, 1909 and 1910, in substance, contain the same provision for the care of the completed memorial buildings as was provided in the section as originally enacted in 1902 as set forth above. The 1921 amendment, incorporated in the present General Code as Section 3068, however, changed the method for maintenance of the completed memorial buildings as follows:

"Upon the completion, equipping and furnishing of the memorial building, the trustees shall transfer the same to the county,

and the title of such site and building shall thereupon vest in the county and the tenure of office of said trustees shall terminate and end and said board of trustees shall cease to exist as an official board and thereupon the court of common pleas shall appoint a board of permanent trustees or if the said memorial building is to be used as a public library, may designate any board of public library trustees within the county as a board of permanent trustees ex-officio who shall have sole control, management and supervision of such memorial building and grounds under such rules and regulations as they may from time to time adopt, subject to the approval of the court. Such board of permanent trustees unless it consists of a board of library trustees shall be composed of three members who shall be appointed by the court of common pleas, one for two years, one for four years and one for six years, and at the expiration of their terms their successors shall be appointed in the same manner for terms of six years each. Such memorial building shall be for the use of the general public, military organizations to be given the preference."

An examination of the above section reveals that those county memorial buildings completed after the effective date of said section were to be transferred to the county and placed under the control of a permanent board of trustees appointed by the Common Pleas Court. It will be noted that no mention is made of memorial buildings which were in existence at the time said section was enacted.

You state in your communication that the Franklin County memorial building was completed in 1904 and in accordance with the then existing law was placed under the control of the county commissioners. You then inquire whether the Franklin County Common Pleas Court possesses the authority to appoint a board of permanent trustees to have the control, management and supervision of the Franklin County memorial building as provided in Section 3068, supra, or whether such control still remains with the county commissioners as was the case at the time said memorial building was completed.

As a general rule of statutory construction, it may be said that in determining whether particular duties are controlled by a statute in its original or amended form or by a statute which has been repealed, the first inquiry to make is as to the intention of the law-making body. When, in 1921 by Section 3068, supra, the Legislature transferred the duty of maintaining memorial buildings completed after the effective date of said section from the county commissioners to permanent boards of trustees, it failed to state specifically where the duty to maintain existing memorial buildings would rest. The act itself does not reveal the legislative intent on that question.

In the instant case there is no need to construe or interpret Section 3068. Its language is very clear and unambiguous with regard to the maintenance of county memorial buildings erected after 1921. Our problem is concerned with the determination of where the Legislature intended to place the duty of maintaining county memorial buildings which were built prior to the passage of the 1921 act. Whatever conclusion we reach should not be such as to defeat the intent of the Legislature or do violence thereto in any respect, but rather should be one which would carry such intent into effect.

As an aid in determining the legislative intent with regard to the problem at hand, I direct your attention to two paragraphs of Section 3068-2, General Code (111 O. L., 76), as follows:

“In any and all cases where the erection and maintenance of a county memorial building under the provisions of the law relating thereto as existing prior to the passage of the act of April 26, 1921 (Vol. 109, Ohio Laws, pages 284 and 287), was authorized by a popular vote prior to said date, and in accordance with provisions of the law relating thereto then existing, and where since said date such county memorial building has been erected, or is in course of erection, but has not yet been furnished, equipped and decorated under said prior law, the same board of trustees that was appointed by the governor to construct such memorial building shall proceed to provide the equipment, decoration and furnishing thereof.

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Upon the completion of the additional duties hereby given to it, said board of trustees shall proceed to transfer said building to the county in accordance with the provisions of section 3068 in the said act of April 26, 1921, and then and thereafter said building, or buildings, shall come within the provisions of said act, including the provisions of section 3068-1, which shall thereafter apply to it, or them.”

By the enactment of this section the Legislature broadened the scope of Section 3068, supra, to apply not only to those county memorial buildings the erection of which was authorized by popular vote after the passage of said section, but also to those county memorial buildings the erection of which was duly authorized by popular vote prior to April 26, 1921, or were in the course of construction but not yet furnished, equipped and decorated under the then existing law.

It will be noted that the Legislature again failed to make provision for existing county memorial buildings. It did, however, provide for the control, management and supervision of those memorial buildings the erection of which was authorized prior to the act of April 26, 1921, but

had not been completed by said date. Had the Legislature intended to divest the board of county commissioners of all control over county memorial buildings which were in existence in 1921, it might easily have done so in supplemental Section 3068-2, *supra*.

In further support of this view, I call your attention to section 3068-3, General Code (113 O. L., 492), the last paragraph of which provides as follows:

“The permanent board of trustees of any memorial building or such other persons as may, under the law, have the duty of maintaining such memorial building, may contract upon such terms as they may deem expedient with any such private corporation, association or organization for such services as can be rendered by such corporation, association or organization in making such building available for use by the general public, and in encouraging and promoting such use.”

Once again, some eight years after the enactment of Section 3068, *supra*, in 1921, the Legislature in using the words “or such other persons as may, under the law, have the duty of maintaining such memorial building,” apparently recognized the fact that county memorial buildings may be under the control of persons other than permanent trustees appointed by a Common Pleas Court in accordance with the provisions of section 3068, *supra*.

In the course of a discussion of Section 3068, *supra*, I find the following pertinent language in Opinion No. 1818, in the Opinions of the Attorney General for 1928, at page 611:

“Your attention is invited to the fact that the provisions of Section 3068, *supra*, relating to the appointment of a board of permanent trustees are applicable only to such county memorial buildings as may be completed on and after the effective date of the act of April 26, 1921 (109 v. 284), at which time Section 3068, *supra*, was enacted to read as it now appears in the General Code. In other words, as regards county memorial buildings completed before such effective date, the control and management of such buildings is vested in the board of county commissioners.”

The view expressed therein appears in accord with the one set forth in the instant opinion.

In view of the above and in specific answer to your inquiry, I am therefore of the opinion that the Common Pleas Court of Franklin County does not have the authority to appoint a board of permanent trustees to

control, manage and supervise the Franklin County memorial building, as provided in Section 3068, General Code.

Respectfully,

THOMAS J. HERBERT,

*Attorney General.*

791.

TOWNSHIP TRUSTEES, BOARD OF—NOT AUTHORIZED TO TRANSFER FUNDS FROM GENERAL FUND TO ROAD AND BRIDGE FUND—SECTIONS 5625-13a ET SEQ., G. C., PROVIDE THAT TRANSFER EFFECTED BY APPLICATION TO TAX COMMISSION OF OHIO AND COMMON PLEAS COURT—SUCH BOARD NOT A “DISTRICT AUTHORITY”—SECTION 5625-13f G. C.

*SYLLABUS:*

1. *A board of township trustees is not authorized to transfer funds from the general fund of the township to the road and bridge fund by mere resolution of the Board.*

2. *A transfer of funds from the general fund of a township to its road and bridge fund can be effected only by application to the Tax Commission of Ohio and the Common Pleas Court, in accordance with the provisions of Sections 5625-13a et seq. of the General Code of Ohio.*

3. *A board of township trustees is not under any condition a “district authority” within the meaning of the term as used in Section 5625-13, paragraph (f) of the General Code of Ohio.*

COLUMBUS, OHIO, June 22, 1939.

HON. ROBERT C. CARPENTER, *Prosecuting Attorney, Seneca County, Tiffin, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“In the year of 1938, Seneca County entered into a contract providing for the surface treating of numerous county roads. The project was sponsored by the federal government, which contributed forty-five per cent of the cost, the respective townships paying fifty-five per cent of the cost upon township roads. When the project was finally approved, it became necessary for the townships to deposit immediately their portion of the cost with a depository approved by the Federal government. A good many of the fifteen townships in this county did not have sufficient