OPINION NO. 1411

Syllabus:

A county board of education has no authority under Section 3315.06, Revised Code, to purchase or lease automotive equipment for the use of storing and transporting school library films.

To: Robert L. Marrs, Butler County Pros. Atty., Hamilton, Ohio
By: William B. Saxbe, Attorney General, September 28, 1964

I am in receipt of your inquiry in which you ask for my interpretation of Section 3315.06, Revised Code. In material part you state:

> "A question has been propounded to this office relative to an interpretation of Section 3315.06, O.R.C.
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> "The Board of Education of the Butler County School District has a program developed, consisting of a film library used by the various local school districts within Butler County. This film library is comprised of a great number of educational films which are shown throughout the county school district at the various local schools. Obviously, having a great number of films and going from school to school throughout the district to carry out the program of film education is a very difficult task without automotive equipment to store the films, as well as move them from place to place.
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> "Inasmuch as Section 3315.06 indicates that a county board may provide programs and other necessary equipment for the use of the county superintendent in furthering the instructional program of the district, our question is - 'may the county school board either purchase or lease automotive equipment for the purpose of storing and carrying from school to school the

films contained in the library to implement the county board program?'"

Section 3315.06, Revised Code, states in material part as follows:

> "The board of education of each county school district may provide programs, examinations, school records, diplomas, and other necessary supplies and equipment for the use of the county superintendent in furthering the instructional program of the county school district.* * *"

It is a fundamental proposition of law that the powers of a board of education are limited to those granted by statute or necessarily implied. In the leading case of Schwing v. Mc Clure, 120 Ohio St., 335 (1929), this rule of law is succinctly stated as follows in the first branch of the court's syllabus:

> "1. Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given."

I find no express power in Section 3315.06, Revised Code, authorizing a county board of education to purchase or lease the automotive equipment you mention in your inquiry. Therefore, if a county board of education has the authority to purchase the above mentioned automotive equipment it must be by reason of some power "necessarily implied from the powers that are expressly given." There seems to be no definitive statement that precisely described a "necessarily implied power." Accordingly, any attempt to put content and substance to this rule must be done by a case by case analysis in which this rule has been applied.

In Opinion No. 3920, Opinions of the Attorney General for 1954, page 302, it was stated in the syllabus as follows:

> "Boards of education are without authority to purchase from funds raised by taxation, band uniforms for the use of pupils playing in the school band."

The two sections of the Code under consideration in that opinion were Sections 3313.53 and 3313.37, Revised Code. Section 3313.53, Revised Code, after authorizing schools for manual training and other practical arts contained the following provision pertaining to boards of education of any city, exempted village, or local school district:

> "Such board may pay from the public school funds, as other school expenses are paid, the expenses of establishing and maintaining such departments and schools and of directing, supervising, and coaching the pupil-activity programs in music, language,

> arts, speech, government, athletics, and any others directly related to the curriculum." (Emphasis added)

Section 3313.37, Revised Code, as it was then constituted, stated:

> "The board of education of any school district, except a county school district, may build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control." (Emphasis added)

The then Attorney General in a well-reasoned opinion concluded that the uniforms for a school band were not to be considered as "necessary apparatus" and could not be included within the phrase "all other necessary provisions."

The 1954 opinion relied upon the case of Board of Education v. Ferguson, 68 Ohio App. 514 (1941). One of the questions presented in that case was whether a board of education which had organized open air schools for children found to be susceptible to tuberculosis, had the authority to provide such pupils with sleeping garments to protect them against the cold in the open air schools. It was held that the board was without authority under the law to provide such sleeping garments, as indicated by the headnote pertaining to that subject, which reads as follows:

> "The provisions of Section 7620, General Code relate to the physical properties constituting schools and not to those persons who attend them, and do not authorize a board of education to provide special care, attention and treatment for those pupils who are diseased or are susceptible to disease. The term 'apparatus' as used in this section is not broad enough to include the purchase of special sleeping garments."

Section 7620, General Code, then in force, was substantially the same as Section 3313.37, Revised Code, above quoted. In discussing the meaning of "apparatus" the court indicated that the term could only include such materials, implements or utensils as are appropriate for teaching and illustrating the particular subjects for which the board was authorized to provide. As to "all other necessary provisions," the court said that the term referred to the "physical properties constituting schools, and not to those persons who attend the schools." In other words to the lands, buildings and furnishings.

In Opinion No. 3293, Opinions of the Attorney General for 1948, page 279, the then Attorney General concluded:

> "Where a board of education establishes foot-

ball practice and playing among the students in its school, as a part of its physical education program, and permits the organization of groups or teams for that purpose, it may not lawfully use public funds to purchase such items of equipment as helmets, shoulder pads and uniforms to be worn by the students participating."

In the course of that opinion reference was made to the ruling in the case of Board of Education v. Ferguson, supra, and it was said:

"It seems to me that this ruling against the use of school funds to pay for sleeping garments for the children in open air schools, must be applied to those accessories mentioned in your letter which are commonly worn by football players. It may be strongly urged that football is a rough game and that it is hard on the bodies and clothing of the players. But that does not in my opinion make these protective articles of wearing apparel a part of the 'apparatus' incident to the prescribed course of physical training. If these articles are to be purchased, cleated shoes and sweaters are equally permissible. If we sanction this expenditure of public school funds for playing clothes for the boys who desire to play football, I can see no escape from the conclusion that the school board should also furnish baseball suits and shoes for those engaging in baseball, and sweaters, shorts and tennis shoes for the girls who get their physical education course through tennis, hockey or badminton." (Emphasis added)

See also Opinion No. 2456, Opinions of the Attorney General for 1961, page 471, in which my predecessor in office limited a board's implied powers under Section 3313.37, Revised Code, supra. In construing that section it was held as follows in the first branch of the syllabus:

"1. Section 3313.37, Revised Code, does not authorize the board of education of a city, exempted village, or local school district to contract for comprehensive school surveys and studies, including building - related studies."

In both of the immediately preceding opinions, the Attorney General recognized that an implied power must be incident to an express power and cannot be implemented to enlarge an express power. Hostetter v. Muskingum Watershed Conservancy District, 58 Ohio App., 161 (1938).

In a slightly different context, construction and application of the predecessor to Section 3315.06, Revised Code, supra, (to which you refer in your inquiry) was before the then Attorney General in 1942. Opinion No. 5363, Opinions of the Attorney General for 1952, page 554. In this opinion the Attorney General sought authority to authorize a county board of education to purchase an automobile for the use of the county superintendent of schools and other school officers whose duties under the Code compelled them to travel to the

various schools in their jurisdiction. It was specifically ruled that a county board of education had no such authority. While this opinion is not actually dispositive of your inquiry, nevertheless, I cite it here as another illustration of limiting a board's scope of implied authority. It was stated therein:

> "It will be observed from the provisions of the above statute that after the enumeration of programs, examinations, school records and diplomas, the words 'other necessary supplies and equipment' are used. Such things as automobiles and transportation equipment are not expressly named in the statute and by the application of the rule of ejusdem generis, it would appear that 'other necessary supplies and equipment,' refers to supplies similar to those which are expressly named. This rule is stated in Lewis' Sutherland Statutory Construction, 2nd Ed., Sec. 422, as follows:
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> "'When there are general words following particular and specific words, the former must be confined to things of the same kind.'
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> "The rule is founded upon the idea that if the legislature intended the general words to be used in an unrestricted sense, the particular classes would not have been mentioned. See Crawford on Statutory Construction, Sec. 191. In 37 Ohio Jurisprudence, page 779, it is said with reference to this rule:
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> > 'where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be constructed as restricted by the particular designation and as including only things or persons of the same kind, class, or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose.'
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> "Manifestly, automobiles and transportation equipment are not of the same kind, class or nature as programs, examinations, school records and diplomas and therefore, in my opinion, the authority extended to county boards of education by the statute above mentioned does not include the authority to purchase automobiles or transportation equipment, and inasmuch as the legislature has provided means for the reimbursement of county superintendents of schools and county attendance officers, by providing that their expenses shall be allowed and paid, and has not made any other provision with reference thereto, it clearly follows, in my opinion that the method provided by the legislature is exclusive."

Your letter suggests that the purchase or lease of automotive equipment for the purpose of storing or carrying library

films is a "necessarily implied power" needed to implement the county-wide program of film education. While this reasoning is not unpersuasive, precedent, as noted above, indicates that a more restrictive meaning is to be given to the term "implied power" in this area. It was stated in Opinion No. 7255, Opinions of the Attorney General for 1944, page 694, 697, that " [t]he courts in interpreting authority to purchase motor vehicles have been inclined to strictly construe such authority." It appears that the courts and my predecessors have implied a power only where essential to make express powers effective. In the case at hand while the purchase or lease of motor vehicles may be convenient to the educational film program, I cannot conclude that it is essential to such program. It was stated in the case of State ex rel Denormandie v. Commissioners of Mahoning County, 10 C.C. (N.S.) 398, 399, (1907), as follows:

> "If the Legislature intended to have county commissioners supply sheriffs with horses, vehicles and harness, or to allow them the expense necessarily incurred in their purchase, it certainly would have so provided in unambiguous terms. Simple words only were needed to make such a provision."

I am also mindful of the doctrine set forth in the case of Board of Education v. Best, 52 Ohio St., 138 (1894), wherein it is said at page 152:

> "The authority of boards of education like that of municipal councils is strictly limited. They both have only such powers as are expressly granted or clearly implied and doubtful claims as to the mode of exercising the powers vested in them are resolved against them." (Emphasis added)

At the very least there is doubt as to the power sought to be exercised here. Therefore it is my opinion and you are accordingly advised that a county board of education has no authority under Section 3315.06, Revised Code, to purchase or lease automotive equipment for the use of storing and transporting school library films.