

Ohio, acting by the Department of Public Works, for the Board of Trustees of Miami University, Oxford, Ohio, for the construction and completion of Contract for Ash Handling Equipment for a project known as Power Plant Improvements, Miami University, Oxford, Ohio, as set forth in Item 7, of the Form of Proposal dated September 9, 1938, which contract calls for the total expenditure of three thousand eight hundred and ninety-six dollars (\$3,896.00).

You have also submitted the following papers and documents in this connection: Encumbrance record No. 1684, dated October 11, 1938, estimate of cost, division of contract, notice to bidders, proof of publication, workmen's compensation certificate showing the contractor having complied with the laws of Ohio relating to compensation, the form of proposal containing the contract bond signed by the Globe Indemnity Company, its power of attorney for the signer, its financial statement and its certificate of compliance with the laws of Ohio relating to surety companies, the recommendations of the State Architect, the Board of Trustees and Director of Public Works, Controlling Board releases, approval of proposed award of contract by P. W. A., letter of certification from the Auditor of State showing that the necessary papers and documents are on file in said office, certificate of the Secretary of State showing the right of the company to do business in Ohio, and the tabulation of bids received on this project.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other documents submitted in this connection.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

---

3447.

BOARD OF EDUCATION—CITY SCHOOL DISTRICT—NO  
AUTHORITY TO EMPLOY PRINTER, PURCHASE  
PRINTING PRESS, UNLESS IT OFFERS PRESCRIBED  
COURSE IN STUDY OF PRINTING—NO AUTHORITY  
TO COMPILE AND PRINT HANDBOOK OF GENERAL  
INFORMATION, EXTRA-CURRICULAR AND ATHLETIC  
ACTIVITIES.

*SYLLABUS:*

*A board of education of a city school district is not authorized to*

*employ a printer or purchase a printing press and do its own printing, and the printing for the various school activity organizations, unless it offers a prescribed course of the study of printing in the school, and includes as part of the work of the prescribed course of printing the printing of forms and other matter for the board of education and for the various school activity organizations.*

*A board of education is not authorized to have compiled and printed a handbook which contains general information in regard to the aims of the high school, the management of the high school, its extra-curricular and athletic activities, and a list and description of all courses offered in the high school, along with other information.*

COLUMBUS, OHIO, December 23, 1938.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN: This will acknowledge receipt of your communication which reads as follows:

"A city high school has a printing press purchased and paid for by printing done for and charged to the board of education and various school activities.

A union printer operates this press under the supervision of a high school instructor. At times, some of the pupils in an advanced class in printing help on this work.

The supplies used are purchased by the instructor and all payments for same are made through the school activity accounts. The receipts from the board of education for forms, etc., printed for the board, as well as receipts from activities of the school are deposited in this account. A check is drawn upon this account, payable to the board of education, to cover the printer's salary, and he, in turn, receives his check from the regular board of education payroll account, in order that he may participate in the retirement fund.

We respectfully request your opinion upon the following questions:

1. May a school district legally employ a printer?
2. Is it legal for a school district to operate a printing press in the manner described; and if not, would it be legal for the board to purchase materials used for its own work, and pay for the operation directly from the board's funds?
3. Could the press be used for printing forms, etc., for outside school activities, such as the school paper and school annual?

4. Is it legal for the board of education to have compiled and printed a hand book such as the sample submitted, and if so, may a charge be made to the pupils for the cost of the hand book?"

From the contents of your communication I assume, and therefore, will answer your question based upon the assumption that printing is not a prescribed course of study in the school which includes as part of the work of the prescribed course of study offered in printing, the printing of forms and other matter for the board of education and for the various school organizations; and that, the printer is employed for the especial purpose of operating the printing press.

It is very important to observe that the authority of the board of education to employ a printer depends wholly upon whether or not printing has been adopted as a prescribed course of study. The importance of the existence of such fact is clearly shown in an opinion appearing in Opinions of the Attorney General for the year 1928, Volume I, page 612, wherein it was held in the fourth branch of the syllabus, as follows:

"There is no authority for a board of education to pay for the publication of a school paper. Such paper may, however, be published as a part of the activities of a trade school maintained by a board of education."

In the body of the opinion, at page 617, it was stated, as follows:

"There are circumstances, however, where a publication of this kind might be justified as being incidental to courses of study. Where a school maintains a printing department as a part of its trade school activities, there could be no objection to the activities of these departments taking the form of publishing a school paper. Where the editing and printing are both done as a part of the school work and in furtherance of the prescribed courses of study in the school it clearly would be lawful to print and publish such a paper."

It is obvious that, if printing were a prescribed course of study in the school sufficient authority would exist for including as part of the work of such prescribed course of study offered the printing of forms and other matter for the schools and the various organizations of the school, provided, the board of education were compensated for the materials used in the work done for the various school organizations.

Section 7690, General Code, reads in part as follows:

“Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries. \* \*”

It is evident that if printing is offered as a prescribed course of study in the schools, and in order to teach the subject it would be necessary to employ a person to operate the printing press, the board of education would have authority so to do by virtue of the provisions of Section 7690, supra, and also the board of education would have authority to purchase a printing press by virtue of Section 7620, General Code, which authorizes a board of education to provide necessary apparatus. However, from the facts presented in your communication it appears that the main object or purpose of purchasing the printing press was in order to have all the printing done for the board of education and various school activity organizations.

The exclusive control and management of the public schools of Ohio is placed in the General Assembly by virtue of Article VI, Sections 2 and 3 of the Constitution of Ohio, which provides in part, as follows:

“Sec. 2 The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; \* \*”

“Sec. 3. Provision shall be made by law for the organization, administration and control of the public school system of the state supported public funds; \* \* \*”

Therefore, the authority of the board of education is derived solely from statute, both duties and authority being clearly defined by legislation.

In the case of *Perkins et al. Board of Education vs. Bright et al., Taxpayer*, 109 O. S., 14, it was held:

“Boards of education are creatures of statute, and their duties and authority are marked by legislation.”

It is a well established rule of law that the powers of a board

of education are limited strictly to such powers as are expressly granted or clearly implied. This rule of law is clearly set forth in the case of *Schwing vs. McClure, et al. Trustees*, 120 O. S., 335, as follows:

“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.”

To the same effect is the case of *Board of Education vs. Best*, 52 O. S., 138.

It is an equally well established principle of law that if the authority of a board of education to act is doubtful, the doubt is resolved against the exercise of its authority. This principle of law has been enunciated by the Supreme Court in the following cases: *State, ex rel. Locher, vs. Manning*, 95 O. S., 97, at 99:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

To the same effect in the case of *State, ex rel. The A. Bentley & Son Company vs. Pierce, Auditor*, 96 O. S., 44.

The duties and powers delegated and granted to a board of education appear in the three following statutes:

“Sec. 7620. The board of education of a district may build, enlarge, repair and furnish the necessary school houses, 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. It also, shall provide funds for the schools, build and keep in good repair fences enclosing such school houses, when deemed desirable plant shade and ornamental trees on the school grounds, and make all other provisions neces-

sary for the convenience and prosperity of the schools within the subdistricts.”

“Sec. 4749. The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state.”

Section 7690, General Code, hereinabove set forth.

It is evident from a reading of the above sections that express authority is not conferred on a board of education to purchase a printing press for the purpose of having its own printing done, as well as the various activity organizations of the school.

It cannot be said that it is necessary for a board of education to do its own printing in order to carry out any of the powers and privileges conferred on a board of education in Sections 4749 and 7690, supra, nor is it necessary to be done in order to carry out the duties of the board of education in building, or enlarging, or repairing, or furnishing schoolhouses, or in purchasing, or leasing sites, or renting suitable schoolrooms, or providing necessary apparatus and fuel for the schools, or keeping in repair fences, or planting shade and ornamental trees, as provided for in Section 7620, supra.

In two clauses appearing in Section 7620, supra, there is conferred on a board of education the power “to make all other necessary provisions for the schools under its control” and “to make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.”

The question then presents itself as to whether or not the board of education providing for the doing of the school's own necessary printing is making provision for the doing of something that is necessary for the convenience and prosperity of the schools.

The two clauses appearing in Section 7620, supra, which are here under consideration, were construed and interpreted in an opinion appearing in Opinions of the Attorney General for 1918, Vol. I, page 742, ad in an opinion appearing in Opinions of the Attorney General for 1935, Vol. I, page 683.

In an opinion, No. 3489, rendered by me on January 3, 1939, I quoted at great length from both of these opinions, and reached the conclusion that the authority conferred in these two clauses to make all other necessary provisions for the schools under its control and "to make all other provisions necessary for the convenience and prosperity of the schools" are limited to the doing of things incident to the purpose of building, or enlarging, or repairing, or furnishing schoolhouses, purchasing or leasing sites therefor, purchasing or leasing real estate to be used as playgrounds for children, or renting suitable rooms, or providing necessary apparatus, or fuel for the schools, or building or keeping in repair fences, or planting shade or ornamental trees on the school grounds; and that authority to provide for "purposes incident" are restricted to providing for the physical needs for the school.

It is my opinion that no conclusion can be reached other than that the board of education providing for the doing of the school's own necessary printing is not a "purpose incident" to the accomplishment of any of the powers or duties imposed upon a board of education by virtue of the provisions of Section 7620, *supra*. In reaching this conclusion, I am not unmindful that Section 7785, General Code, provides that the board of education of a city school district shall prepare and publish an annual report. This section reads as follows:

"Such boards may require superintendents and teachers to report matters the boards deem important or necessary for information in regard to the management and conduct of the schools and to make such suggestions and recommendations as they deem advisable relative to methods of instruction, school management, or other matters of educational interest. *The board of education of each city school district shall prepare and publish annually a report of the condition and administration of the schools under its charge, and include therein a complete exhibit of the financial affairs of the district.*" (Italics, the writer's.)

Also that Section 7787, General Code, provides in part, as follows:

"On or before the first day of August in each year, the board of education of each city school district \* \* shall report to the director of education \* \* the school statistics of its district. Such reports shall set forth the receipts and expenditures, the length of the school term, the enrollment

of pupils, including in the case of districts situated in more than one county the enrollment in each county, the aggregate days of attendance, the number, qualifications and salaries of teachers and other employes, the number of school houses and school rooms, and such other items as the director of education requires. \* \*”

However, to contend that the mandatory duty imposed upon a board of education to prepare and publish reports is sufficient authority for the board of education to make the necessary provisions to print its own reports, is of no greater argumentative force than to contend that the mandatory duty imposed upon a board of education under the provisions of Section 7739, General Code, to furnish free textbooks would be sufficient authority for the board of education to enter into the business of publishing textbooks.

It appears to me that the reasoning employed in the unreported case of *Hauschild vs. Board of Education of City of Lakewood* is very applicable herein. (See 2 Ohio Law Abstract, 377). In that case the Supreme Court denied a motion to certify the record. The Court of Appeals, in the opinion by Middleton, J., considering the right of the city board of education of Lakewood to operate a cafeteria in the Lakewood High School, said:

“It is further urged that Section 7620 G. C., which relates to the powers and duties of a board of education and, in addition to other provisions, contains the following:

‘and make all other provisions necessary for the convenience and prosperity of the schools within the subdistrict.’

‘is also authority for the things done by the defendant board which are complained of here. It is sufficient answer to this argument to say that the provisions referred to have been before the courts of this state in many cases, in none of which has the construction contended for been recognized. In a recent opinion of the Attorney General of this state (Opinion No. 3780, Vol. 2, Attorney General Reports, 1922) it is expressly stated:

“That there is no authority of law for a board of education to purchase and sell school supplies other than text books.”

Moreover, in the case of *Clark vs. Cook*, 103 O. S., 465, our Supreme Court held:

“That boards of education \* \* are limited in the exercise of their powers to such as are clearly and distinctly granted.”



It is further held in that case:

"If such authority is of doubtful import the doubt is resolved against its exercise in all cases where financial obligation is sought to be imposed upon the county."

"We must regard the doctrine of this case as determining adversely to the claims of the defendant board the right and authority of such board to operate this restaurant."

And in the closing paragraph of the opinion appears the following statement:

"We reiterate, however, that while the plaintiff has made no case justifying action by a court of equity, nevertheless a board of education has no right to engage, directly or indirectly in any business unless so empowered by the statutes, and the situation in this state in respect to the matters involved here is one demanding the attention of the legislature and one which should be protected by special legislation or eventually the courts will be compelled to interfere."

The answer to your first question that a board of education of a city school district is not authorized to employ a printer or purchase a printing press and do its own printing makes it unnecessary to answer your second and third questions.

As an aid to answering your fourth question, you submitted a copy of the "Lakewood High School Handbook." Upon examination of this book, I find it was compiled by The Student Council under faculty supervision. The book is divided into four parts. The first part contains information as to aims of the school admission and graduation requirements. Part two deals with the management. It sets forth general information as to visitors, library, hospital permits, vaccination, cafeteria and locker regulations, honor roll, care of books, report cards. Part three is limited to extra-curricular activities. The various clubs and organizations of the schools are described therein, and the purposes of the same are set forth. In this part three there is also described the athletic activities. Part four gives a complete list and description of all courses offered in the high school. The handbook also contains a list of the members of the board of education, of the faculty and of the officers of administration.

In making a research of the various opinions that have been rendered by my predecessors in office, I find that they have all consistently held that without any statutory authority, an administrative board is not authorized to publish bulletins, directories or reports

of the activities of the board, or reports of any of the officers or employes of the board.

I herewith set forth several of the opinions referred to, in which I concur, and also which I am of the opinion are entirely responsive to your fourth question:

*Opinions of the Attorney General for 1925, Vol. I, p. 34:*

“A board of education is without authority to use school funds to publish a book entitled, ‘Industrial Mathematics, First Half of Ninth Year,’ as submitted with your communication, and described as ‘A Course designed for pupils who are finding difficulty with the regular course in mathematics for the ninth year,’ and is without authority to adopt or cause such a book to be used.”

*Opinions of the Attorney General for 1932, Vol. I, p. 178:*

“A county board of education is without authority to pay from school funds for the publication of a directory of teachers within the school district.”

*Opinions of the Attorney General for 1927, Vol. I, p. 969:*

“A city board of health may not legally expend its funds to pay the cost of printing and distributing to the public a quarterly or other periodical report showing the activities of the board of health.”

In the 1927 opinion there was in question the authority of a board of health to publish a four-page bulletin which contained a tabulation of infectious and contagious diseases reported, the nurse's report, sanitary report, report of food and milk inspection department, report of food condemned and destroyed, physician's report, report of milk inspection, and various recommendations of the department.

From the foregoing, it is my opinion that the board of education does not have authority to have compiled and printed a handbook which contains general information in regard to the aims of the high school, the management of the high school, its extra-curricular and athletic activities, and a list and description of all courses offered in the high school, along with other information.

It is further my opinion that a board of education of a city school district is not authorized to employ a printer or to purchase a printing press for doing the school's own necessary printing, and the

printing for the various school activity organizations unless it offers a prescribed course of study of printing in the school, and includes as a part of the work of the prescribed course of printing, the printing of forms and other matter for the board of education and for the various school activity organizations.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

---

3448.

APPROVAL—ARTICLES OF INCORPORATION, THE ATLAS  
MUTUAL CASUALTY COMPANY.

COLUMBUS, OHIO, December 27, 1938.

HON. WILLIAM J. KENNEDY, *Secretary of State, Columbus, Ohio.*

DEAR SIR: I have examined the articles of incorporation of The Atlas Mutual Casualty Company which you have submitted for my approval.

Finding the same not to be inconsistent with the Constitution or laws of the United States or of the State of Ohio, I have endorsed my approval thereon and return the same to you herewith.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

---

3449.

APPROVAL—CONTRACT, STATE OF OHIO, THROUGH DI-  
RECTOR OF PUBLIC WORKS, WITH HARRY A. FULTON,  
ARCHITECT, CLEVELAND, OHIO, FOR BOARD OF TRUS-  
TEES, KENT STATE UNIVERSITY, KENT, OHIO, PLANS  
AND SPECIFICATIONS, W.P.A. PROJECT NO. 67-6209.

COLUMBUS, OHIO, December 27, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract by and