

It also appears from a copy of minutes herewith enclosed that said purchase has been approved by the Controlling Board. A regularly certified encumbrance estimate should accompany this abstract.

The abstract, warranty deed and other data submitted are herewith returned.

Respectfully,
C. C. CRABBE,
Attorney General.

3902.

THE BOARD OF EDUCATION OF A RURAL OR VILLAGE SCHOOL DISTRICT IS WITHOUT AUTHORITY TO PAY ITEMS OF TRAVELING EXPENSE INCURRED BY THE CLERK OF SAID BOARD.

SYLLABUS:

The board of education of a rural or village school district is without authority to pay items of traveling expense incurred by the clerk of said board.

COLUMBUS, OHIO, December 21, 1926

MR. A. B. PECKINPAUGH, *Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge yours of recent date, in which you submit the following inquiry:

“You are respectfully requested to furnish this department with your written opinion upon the following questions:

Question 1: May the clerk of a rural or village board of education be legally allowed his expenses in traveling upon business of the board of education?

We frequently find allowances of expenses to clerks of rural districts for trips to the county seat for one reason or another said to be on business of the board. It has been our practice to hold these expenses as illegal and make findings for recovery.

Question 2: Would such expenses be legal if at the time of the appointment of the clerk and the fixing of his salary, the board of education passed a resolution fixing the salary at a certain amount and expense.”

Your question involves an analysis of Section 4781, which reads as follows:

“The board of education of each school district shall fix the compensation of its clerk and treasurer, which shall be paid from the contingent fund of the district. If they are paid annually, the order for the payment of their salaries shall not be drawn until they present to the board of education a certificate from the county auditor stating that all reports required by law have been filed in his office. If the clerk and treasurer are paid semi-annually, quarterly, or monthly, the last payment on their salaries previous to August thirty-first, must not be made until all reports required by law have been filed with the county auditor and his certificate presented to the board of education as required herein.”

The provisions of the above quoted Section were considered in a recent decision of the Ohio Supreme Court, in the case of the Board of Education of the city school district of the city of Cleveland, vs. Featherstone, 110 O. S. 669, in which the judgment of the Court of Appeals of Cuyahoga county was affirmed.

In this connection, attention is directed to the discussion in the opinion of the Court of Appeals by Levine, Judge:

"The law does not require that the Board of Education fix the compensation of its clerk and make the same operative during the whole term of his appointment. He is merely an employee of the board, and it is deemed the part of wisdom to lodge discretion in the hands of his employer to fix his compensation in accordance with the duties he is called upon to perform, and the work which he is required to do.

There is a clear distinction between the case of state ex rel. Clark vs. Cook and the case at bar. Not only is it not conceded that the clerk of the board of education is a public officer, but it is successfully maintained that, viewing him in the light of the duties he is called upon to perform, which do not in any way entail an exercise of any part of the sovereign power, that he is merely what his name designates, a person called upon to perform purely clerical duties. The statute which requires the board of education to fix his remuneration, denominated the same not a 'salary', but instead 'compensation.' It does not fix any minimum compensation such as is found in the provision relating to the salary of the county superintendent.

What constitutes compensation? It means an equivalent for the value of the service rendered. The board may fix the equivalent for services rendered. The duties to be performed and the work which the clerk is called upon to do, must be considered in fixing an equivalent for the value of same. Changed conditions which entail the expenditure of a great deal more time because of the increased details which he is called upon to do and perform may render the compensation formerly fixed far less than an equivalent for the value of the services rendered.

It may, therefore, be reasonably inferred that the use of the term 'compensation' as found in section 4781, and the utter silence of the statute as to the amount of compensation, was not accidental, but intentional. That the legislature intended to vest discretion in the board of education to fix the remuneration of the clerk and to at all times strive to make it the equivalent for the value of the services rendered by him and that as circumstances change the compensation may be changed, in order to make it the equivalent for the value of services rendered."

Upon analysis of the above quoted discussion from the opinion of Levine, Judge, as well as Section 4781 General Code, supra, it appears that each Board of Education shall,

"fix the compensation of its clerk,"

and thereby vests certain discretion in the Board of Education to determine the amount of such compensation, and to change same as the varying duties and circumstances of the employment may require, but nowhere in said section or in the discussion by the court does there appear the lightest justification for the payment of travelling expense items incurred by such clerk.

Therefore, I am of the opinion that the Board of Education of a rural or village school district is without authority to pay items of travelling expense incurred by the Clerk of said Board.

Respectfully,

C. C. CRABBE,

Attorney-General.