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HIGHWAYS, DEPARTMENT OF—WITHOUT LEGAL AUTHORITY TO PAY TUITION FEES OF TEN EMPLOYEES, HERETOFORE ENROLLED IN COURSE OF INSTRUCTION IN WELDING AT OHIO STATE UNIVERSITY.

SYLLABUS:

The department of highways is without legal authority to pay the tuition fees of ten of its employes who heretofore enrolled in a course of instruction in welding at Ohio State University.

Columbus, Ohio, June 15, 1946

Hon. Perry T. Ford, Director, Department of Highways  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

“Late in the fall of 1945, at the suggestion of the Department of Highways, the Ohio State University scheduled a course in welding in its Twilight School. The course was open to discharged veterans of World War II and to employees of the Department of Highways. Tuition for the course is \$10.00 per student. Tuition for the men of the Department of Highways who took the course and were veterans of World War II was paid under the G. I. Bill of Rights. There were ten employees of this department, enrolled in the course, who did not have the benefit of the G. I. Bill of Rights because they were not in mili-

tary service during World War II. These men enrolled in the course at the suggestion of their Bureau Chiefs, with the understanding that, if at all possible, the Department of Highways would pay their tuition. All employees of the Department of Highways who were enrolled attended classes on their own time after their day's work in the department had been concluded.

The courses afforded the first opportunity, to those who were enrolled from the Department of Highways, to thoroughly acquaint themselves with the theory and practice of modern welding methods. It was thought at the time the courses were offered, and it has been proved in practice, that the courses were very helpful to the employes in the performance of their duties and the Department of Highways has materially benefited from the knowledge of welding now possessed by those employees.

The question has now been raised concerning the legality of payment of the tuition by the Department of Highways. We feel that the Department is greatly benefited by having men well trained in the art of welding, and in the matter of rigid frames it has become the rule rather than the exception and our engineers need this knowledge. Will you please give me your opinion as to whether or not this department can legally pay the tuition to the Ohio State University?"

Section 154-3, General Code, provides for the creation of various state administrative departments. Included therein is the department of highways which shall be administered by the director of highways. Section 1178, General Code, refers to the duties of said department and in so far as pertinent reads as follows:

"The functions of the department of highways shall be to establish state highways on existing roads, streets and new locations and to construct, reconstruct, widen, resurface, maintain and repair the state system of highways and the bridges and culverts thereon; to cooperate with the federal government in the establishment, construction, reconstruction, improvement, maintenance and repair of post roads and other roads designated by the federal authorities; to conduct research and *to cooperate with organizations conducting research, in matters pertaining to highway design, construction, maintenance, material, safety and traffic*; to cooperate with the counties, municipalities, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance and repair and improvement of the public roads and bridges of the state; and to enforce the laws of the state relating to the registration and licensing of motor vehicles, the laws relating to their use and operation on the highways and all laws for the protection of the highways."

(Emphasis added.)

Your request adverts to the fact that Ohio State University scheduled a course in welding at the instance or suggestion of the department of highways. As a result of the establishment of such course of instruction various employes in said department enrolled therein. It is believed it cannot be seriously contended that the department of highways *cooperated with an organization* so as to make applicable the above emphasized language that is found in said Section 1178, General Code. To so conclude would, in my opinion, be ascribing to such language a much broader and more extensive meaning than it is felt should fairly and reasonably be given to the same. Consequently said Section 1178, General Code, affords no basis for the contemplated expenditure.

An examination of other sections of the General Code (Section 1178-1, et seq.) relating to the various functions and duties of the department of highways fails to disclose any specific authority for this expenditure. Hence consideration must be given to the question as to whether there is any implied power to make said expenditure. In this connection your attention is directed to the principle of law set forth in *State, ex rel. Smith, v. Maharry*, 97 O. S. 272. The first paragraph of the syllabus of that case reads:

“All public property and public moneys, whether in custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. *Said trust fund can be disbursed only by clear authority of law.*”  
(Emphasis added.)

It is also a well established principle of law, with respect to administrative boards, agencies, etc., that if the authority to act in financial matters is dubious or doubtful, the right to expend public moneys must be denied. See *State, ex rel. Locher, v. Menning*, 95 O. S. 97; and *State, ex rel. Bentley & Sons Co., v. Pierce, Auditor*, 96 O. S. 44.

Many opinions have been rendered with regard to the authority to expend public funds. But no useful purpose can be served by any extensive review thereof. On various occasions the matter to be considered was whether a municipality had the right to make an expenditure pursuant to an ordinance that specifically authorized the same. The opinions that I have examined make plain the fact that the expenditure of public funds is proper when they have some definite relationship or connection with the duties of the officer or employe as distinguished from his self-

improvement or education. As suggested, when that expenditure is solely for the purpose of permitting a person to acquire general information or knowledge with respect to the duties of his office or position, the expenditure is not a proper one. In this connection see Opinions of the Attorney General for 1938, Vol. II, page 1783, the syllabus of which reads:

“Neither Sections 1240-2 nor 1252-1, General Code, confer upon the State Department of Health authority to compel attendance of local officers to a general conference called by the Department of Health for information and education as to matters coming within those sections. The expenses of such officers therefore cannot be paid by their local subdivisions. However, should local subdivisions desire attendance of an officer to a conference called by the State Department of Health on Sewage Disposal and Water Purification because of information or training needed for some definitely contemplated course of action on water purification or sewage disposal, the subdivision may instruct said officers to attend such a conference and provide expenses therefor.”

When the expenditure sought to be made was principally for the purpose of benefiting the individual, although perhaps indirectly for the benefit of the public, the authority so to do has invariably been denied. See Opinions of the Attorney General for 1926, page 386; Opinions of the Attorney General for 1929, Vol. III, page 1906; Opinions of the Attorney General for 1931, Vol. II, page 772; Opinions of the Attorney General for 1939, Vol. III, page 1936; Opinions of the Attorney General for 1940, page 730.

It is apparent from your inquiry that attendance in the course of instruction at Ohio State University by various department of highways employes was to enable them to acquire a more extensive knowledge of the art of welding so that they would be able to perform more satisfactorily the duties incident to their employment. Manifestly, such attendance was primarily for their own benefit. And I have no doubt whatever that the information acquired in the technique of welding serves the purpose of making said employes more capable and efficient and that the department of highways is benefiting thereby. But of necessity the answer to your inquiry cannot pivot on that fact.

It is not unreasonable to believe that in many instances the State of Ohio would be materially benefited if its employes attended courses of instruction in various subjects that bear some relation to their duties. Knowledge as to improvement in the methods and ways of doing things all tends to promote greater efficiency. If, for example, the same welding operation that formerly took two hours could be consummated in one hour by the use of improved methods, it would not be denied that the newer method is the more efficient and, it certainly follows that in so far as practical should be followed. However, there is no authority for the State of Ohio to expend public funds for the education of certain employes so that they may be better enabled to perform the duties connected with their employment.

For the purpose of illustrating the distinction that it is desired to make I direct your attention to an opinion of one of my predecessors. In Opinions of the Attorney General for 1940, Vol. II, page 1039, it was held, as disclosed by the syllabus, as follows:

“The governing body of a city may, by ordinance or resolution, provide for a local course of training for the police department of the city and pursuant to such purpose the salary and expenses of a police officer may be paid while in attendance at a Federal Bureau of Investigation school to enable the officer to conduct such local course of training.”

While it may be true that the individual who attended the school in question acquired certain knowledge that unquestionably made him a more valuable employe, yet that was not the primary or underlying purpose for the expenditure. Instead the expenditure was for the direct or immediate public benefit and hence was legal.

You have stated in your request that there were ten employes whose tuition was not subject to payment under the Soldiers' and Sailors' Civil Relief Act (referred to in your request for my opinion as G. I. Bill of Rights and commonly so known). While it is not important to know precisely how many employes were enrolled in the course in question whose tuition was paid under the aforesaid act, it is manifest that the reason for attending said course was primarily for self-improvement rather than for the purpose of transmitting the knowledge so acquired to other employes. Directly bearing on the matter of payment of tuition is an opinion by one of my predecessors. See Opinions of the Attorney General

for 1938, Vol. II, page 2495. As disclosed therefrom, the Bureau of Inspection and Supervision of Public Offices sought the advice of the then Attorney General as to the propriety of some fifty-one expenditures by the Cleveland Public Library. The first question was whether the following expenditure was legal, viz., "Tuition paid to Western Reserve University for employes." At page 2504 of that opinion it is stated:

"No direct authority exists for payment of public funds to a college or university by a public library for the tuition of one of its employes. Such an expenditure cannot be considered as necessary or incident for the purpose of carrying out any of the duties imposed upon a board of trustees of a school district public library. *Such payment would amount to an employe of the library receiving compensation or remuneration in addition to the employe's salary.* It would result in expending public funds for the benefit of the individual, even though the employe may secure further knowledge in library work. It must be presumed that an employe is fitted by education and knowledge for the position for which he is employed and is paid in proportion to his fitness." (Emphasis added.)

Consequently it was held that there was no authority on the part of the trustees to pay such tuition.

For the reasons hereinabove set forth, I am of the view that the expenditure with respect to which you have sought my advice may not legally be made. Accordingly, and in specific answer to your inquiry it is my opinion as follows:

The department of highways is without legal authority to pay the tuition fees of ten of its employes who heretofore enrolled in a course of instruction in welding at Ohio State University.

Respectfully,

HUGH S. JENKINS  
Attorney General