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EDUCATION; TRAVEL EXPENSES—BOARD HAS NO AUTHORITY TO COMPENSATE PROSPECTIVE EMPLOYEES FOR SUCH EXPENSES INCURRED WHEN REPORTING TO BOARD FOR INTERVIEWS.

SYLLABUS:

A board of education is without authority to expend the funds under its control in payment of the travel expenses of prospective employees reporting to the board of education for interviews in connection with employment by the school district.

Columbus, Ohio, December 12, 1957

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion as to whether or not a school district may lawfully expend public moneys to pay for the travel expenses of prospective employees reporting to the school district for interviews in connection with employment by a school district.

We may start with the proposition which is very well settled in this state that boards of education, being creatures of statute, have only such powers and authority as are expressly conferred by the law of their creation or clearly implied therefrom. This proposition was emphatically stated in the case of Board of Education vs. Ferguson, Auditor, 68 Ohio App., 514, decided by the Court of Appeals of Franklin County. The first paragraph of the headnotes of that case reads as follows:

“The authority of boards of education is derived solely from the statutes and is limited strictly to such powers as are expressly granted or clearly implied.”

This proposition has been reiterated in many other cases including Board of Education vs. Volke, 72 Ohio St., 468 and State *ex rel.*, Clark vs. Cook, Auditor, 103 Ohio St., 465.

In Opinion No. 5846, Opinions of the Attorney General for 1943, page 108, it was said:

“It is equally well settled that the authority of administrative boards, such as boards of education, to act in financial transactions must be clearly 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 political subdivision for which the board acts.”

In Opinion No. 97, Opinions of the Attorney General for 1945, page 36, it was held as shown by the syllabus:

“Expenses incurred by the teachers of a local school district in attending a meeting of teachers called by the county board of education and held in a city school district or elsewhere, may not legally be paid by the local board of education from the service fund created under the provisions of Section 4845-8, General Code.”

The provisions of Section 4845-8, General Code, above referred to are now found in substantially the same terms in Section 3315.15, Revised Code, and that section provides that the board of education of any school district “may by resolution set aside from the general fund or, in the case of a county board of education, from the county board of education fund, a sum not to exceed five cents for each child so enrolled, or three hundred dollars, whichever is greater, * * * such sum of money to be known as the ‘service fund’, to be used only in paying the expenses of such members actually incurred in the performance of their duties, or of their official representatives when sent out of the school district for the purpose of promoting the welfare of the schools under their charge, * * *”

If the above opinion is sound, and I believe it is, and the school board cannot use its expense fund for paying the expenses of its own teachers called to a meeting by its own invitation, I certainly cannot concede the right to pay out of that fund the expenses of persons who are not in its employ, but who may be seeking employment or even may be sought for such purpose by the board.

It is evident that the statute above quoted would authorize the board of education, if it deems it necessary, to send its representatives out of the district to interview prospective teachers or other employees, but following the rule of strict limitation of powers, to which I have alluded, I must hold that there is no authority to use the expense fund above mentioned for paying the expenses of applicants for positions, as teachers or otherwise, or of prospective teachers that the board may seek to interest in coming for a conference with the board. A search of the statutes reveals

no other provision which would authorize such expenditure from the public funds under the control of the board of education.

It may be admitted that a board of education might find it convenient to call prospective teachers from a distance and offer to pay their traveling expenses. It might well be argued at the present time that there is a scarcity of teachers and that good teachers are hard to get, but it must be borne in mind that public bodies do not have the same freedom of action which is enjoyed by private organizations. Public officers and boards are surrounded by many restrictions as to the power and method of procedure, which are in the judgment of the legislature necessary to prevent extravagance, favoritism, and sometimes fraud.

Accordingly, it is my opinion and you are advised that a board of education is without authority to expend the funds under its control in payment of the travel expenses of prospective employees reporting to the board of education for interviews in connection with employment by the school district.

Respectfully,
WILLIAM SAXBE
Attorney General