

things not within their descriptive terms, even though such cases appear to be of equal atrocity, or within the reason and spirit of the statute, or within the mischief intended to be avoided. It has been declared that only those transactions are included within penal statutes which are within both their spirit and letter. There is also authority in Ohio to the effect that all doubts in the interpretation of the penal statutes are to be resolved in favor of the accused."

Therefore, in specific answer to your question it is my opinion that, where a textbook publishing company forwards a new textbook to a superintendent of a particular county school district or a particular city school district, and such superintendent sells the textbook to a company that makes a business of collecting textbooks, and retains the money received for the same, such superintendent is not violating either the provisions of Section 7718 or Section 12876, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3486.

BOARD OF EDUCATION—SERVING MEALS, BANQUETS—
PERMITTED—PROVISO, CHARGE FOR FOOD—FOOT-
BALL, BASKETBALL TEAM, CERTAIN SOCIETIES,
CLUBS, CLASSES, ORGANIZATIONS, FACULTY—NO
AUTHORITY TO SERVE FOOD TO PARENT TEACHERS
ASSOCIATION, CHURCH OR W. P. A. CLUBS OR GROUPS.

SYLLABUS:

A board of education may permit the serving of meals or banquets to football and basketball teams, honor societies, school classes, school clubs and other school organizations whose members are attending school in the school district wherein the lunchroom or cafeteria is situated, and also, to the members of the faculty who teach in the school district wherein the lunchroom is situated, provided charges are made for the food served.

There is not any authority for a board of education to permit the serving of meals or banquets to the members of Parent Teachers' Associations, or of church, or of W. P. A. Clubs or groups.

COLUMBUS, OHIO, January 3, 1939.

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

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

"In some school districts over the state, the school cafeterias, operated by the board of education under authority of Section 4762-1, General Code, are used for purposes other than serving lunches to the pupils, teachers and employes of the school.

Among the activities for which banquets are served are: Parent Teachers' Association; Football and Basketball teams; Honor Societies; Faculty; School Classes and Clubs; Churches; WPA.

Part or all of these activities are for the benefit of the pupils of the schools involved, and such banquets are either served free of cost to the organizations, or charges are made to meet the expenses of the same.

May we respectfully request your opinion upon the following question:

'May a board of education permit the serving of banquets to organizations such as above named, either where charges are made to meet the cost of same; or where the banquet is served at the expense of the school district?'

Section 4762-1, General Code, is the only statutory authority that empowers a board of education to operate a lunchroom or cafeteria. Such section reads as follows:

"The board of education of any school district, may provide facilities in the schools under its control for the preparation and serving of lunches to the pupils, the teachers, and to other employes therein, and may provide the management of such lunchrooms, which shall not be operated for profit; provided that the privileges and facilities granted hereunder by any board of education shall apply to all pupils and teachers and no restrictions or limitations shall operate against any such pupil or teacher in the use of such facilities except for reasons applicable to all alike;

No board of education, the principal or teacher of any school room, or class organization of any school district will

be permitted to sell or offer for sale, or supervise the sale of merchandise, foods, candies, or like supplies for profit on the school premises except when the profit derived from such sale is to be used for school purposes or for any activity in connection with the school on whose premises such merchandise, food, candies, or supplies are sold or offered for sale. No individual student or class of students, acting as an agent for any persons or group of persons directly connected with the school will be permitted to sell or offer for sale for profit outside the school building any of the above mentioned and described merchandise, except when the profit derived from such sale is to be used for school purposes or for any activity in connection with the school.

The enforcement of this law will be under the jurisdiction of the state department of education.

The accounts of the receipts and expenses of school lunch rooms shall be kept in a lunch room fund, separate from other transactions of the board of education. A fund of operating capital for lunch rooms may be provided either by appropriations from the contingent fund or by accumulation from lunch room receipts.”

I assume from your letter that the football teams, basketball teams, honor societies and school classes and clubs to whom banquets are served, consist entirely of pupils attending school in the school district wherein the cafeteria or lunchroom is situated, and that the faculty referred to, consists of teachers of a school in the school district wherein the cafeteria or lunchroom is situated.

It is evident from a reading of the provisions of Section 4762-1, supra, that the serving of lunches is limited to the pupils, teachers, and other employes of the schools; that the privileges and facilities of the lunchroom must apply to all pupils and teachers alike. This language is broad enough to include the serving of lunches to the members of the football and basket-ball teams, and members of honor societies, faculty, school classes and school clubs whose members attend school in the school district wherein the lunchroom is situated. It can further be said that the provision in Section 4762-1, supra, that no board of education, principal, or teacher of any schoolroom or “class organization” be permitted to offer food for sale on the school premises for profit, unless the profit derived from such sale is to be used for school purposes or for any activity in connection with the school on whose premises such food is sold, evidences a clear intention on the part of the legislature to permit class organizations to sell food on the premises, provided that, if any

profit is derived from the sale of such food it is to be used for school purposes or for any activity in connection with the school.

If the statute permits class organizations to sell food on the school premises, no argument should be advanced against serving food to members of football and basket-ball teams, honor societies, faculty, school classes and school clubs, which are really school organizations, especially in the face of a provision in the statute that permits serving food in school lunchrooms to teachers and pupils.

It now becomes necessary to determine whether the statute limits such lunchrooms or cafeterias to the serving of lunches only, and thereby excludes the serving of banquets. It must first be said that although the statute provides that such lunchrooms "shall not be operated for profit", that this provision cannot be interpreted or construed as permitting the serving of food in such a lunchroom at the expense of the school. The food cannot be served at a profit, but there is no authority given in the statute for serving it at the expense of the board of education.

Webster's New International Dictionary defines "lunch," as:

"A luncheon, or light repast;"
and defines "banquet," as:

"A feast; a sumptuous entertainment of eating or drinking:
often a complimentary or ceremonious feast, followed by
speeches."

The distinction between a lunch and a banquet is that at the latter more food is served, and either while the food is being served, or after it is eaten, a program is presented.

It may be advisable to parenthetically make the observation that what is herein referred to as a "banquet" served to the members of a football or basket-ball team, or honor society, etc., is customarily a complete meal, and not the elaborate sumptuous feast that the word "banquet" implies.

To hold that a lunchroom operated by a board of education is permitted to serve lunches to pupils and teachers but not a meal, such as is usually served at a banquet, would be placing an absurd construction on Section 4762-1, *supra*. It would be interpreting and construing the statute as limiting the amount or degree of food that may be served to pupils and teachers. We are aware that for many persons lunches are light meals, but that there are also many persons who consume as much food for a lunch as they are served at a meal or banquet.

The law abhors construing a statute that fairly permits a reasonable construction so as to produce unreasonable or absurd consequences. This

principle of law is well stated in 37 Ohio Jurisprudence, p. 643, wherein it was held:

“It is to be assumed that the legislature intends to enact only that which is reasonable, and courts sometimes refer to the presumption against absurdity in the provisions of a legislative enactment. It is clear that the general assembly will not be assumed, or presumed to have intended to enact a law producing unreasonable or absurd consequences.

One of the established rules for the construction of statutes is that doubtful provisions should, if possible, be given a reasonable, rational, sensible, or intelligent construction. Accordingly, it is the duty of the courts, if the language of a statute fairly permits, or unless restrained by the clear language of the statute, so to construe it as to avoid unreasonable, absurd, or ridiculous consequences. Accordingly, in interpreting an ambiguous statute, the reasonableness or otherwise of one construction or the other is a matter competent for consideration.”

In answer to your second question it must first be stated that, Section 4762-1, supra, is the only statutory authority that exists for a board of education to serve food within the schools in its district.

Before the passage of Section 4762-1, supra, the question of the authority of a board of education to operate a cafeteria was considered in Opinion No. 2168, found in Opinions of the Attorney General for 1925, page 33, wherein it was said:

“In the unreported case of *Hauschild vs. Board of Education of the City of Lakewood*, 2 Law Abs. 377, in which the Supreme Court denied a motion to certify the record, the Court of Appeals in the opinion by Middleton, presiding judge, 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 fact that the legislature the following year (1925), enacted Section 4762-1, supra, and limited its provisions to the serving of food “to pupils, the teachers, and to other employes therein”, evidences an intention on the part of the legislature to exclude the serving of food to all others.

Therefore, in specific answer to your question it is my opinion that, a board of education may permit the serving of meals or banquets to football and basket-ball teams, honor societies, school classes, school clubs and other school organizations whose members are attending school in the school district wherein the lunchroom is situated, and also, to the members of the faculty who teach in the school district wherein the lunchroom is situated, provided charges are made for the food served. There is no authority for a board of education to permit the serving of

meals or banquets to the members of Parent Teachers' Associations, or church or W. P. A. clubs or groups.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3487.

APPROVAL—LEASE, RESERVOIR LAND, STATE OF OHIO, THROUGH CONSERVATION COMMISSIONER TO GAIL SESLER, LANCASTER, OHIO, DESIGNATED LAND, SUMMERLAND BEACH, BUCKEYE LAKE, OHIO, FOR BOATHOUSE AND DOCKLANDING PURPOSES, ANNUAL RENTAL, \$28.00.

COLUMBUS, OHIO, January 3, 1939.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a reservoir land lease in triplicate executed by you as Conservation Commissioner of the State of Ohio, for and on behalf of said State, to one Gail Sesler of Lancaster, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$28.00, payable in semiannual installments of \$14.00 each, there is leased and demised to the lessee above named the right to occupy and use for cottage site, boathouse and docklanding purposes that portion of the state reservoir property that is included in Lot No. 12, of the Abdalla, Van Gundy and Heibert's Subdivision of C. M. Wagner's Allotment of lands at Summerland Beach, Buckeye Lake, said subdivision being part of the southwest quarter of the southwest quarter of Section 27, Town 17, Range 8, Walnut Township, Fairfield County, Ohio.

This lease is one executed by you under the authority conferred upon you by Section 471, General Code, which, among other things, provides that no state lands in or adjacent to Buckeye Lake shall ever be sold but that the Conservation Commissioner may lease such lands, including marginal strips and marsh lands around said lakes, the outer slopes of artificial embankments, islands, borrow pits and state lands adjacent thereto as he deems proper under the laws governing the leasing of canal lands. The laws relating to the leasing of canal lands therein referred to are those provided for by Section 13965, General Code. In