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EDUCATION, BOARD OF—FOOTBALL PRACTICE AND PLAYING AMONG STUDENTS—PART OF PHYSICAL EDUCATION PROGRAM—GROUPS OR TEAMS—PUBLIC FUNDS MAY NOT BE LAWFULLY USED TO PURCHASE HELMETS, SHOULDER PADS, UNIFORMS, EQUIPMENT FOR PARTICIPATING STUDENTS.

SYLLABUS:

Where a board of education establishes football practice and playing among the students in its school, as a part of its physical education program, and permits the organization of groups or teams for that purpose, it may not lawfully use public funds to purchase such items of equipment as helmets, shoulder pads and uniforms to be worn by the students participating.

Columbus, Ohio, June 10, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, reading as follows:

“May we respectfully request your opinion upon the following question:

“In a school district the playing of football is a part of the physical education program. Students who participate in this activity are divided into groups or teams, and games are played between such groups or teams.

“QUESTION: May the board of education use public funds to purchase such items of equipment as helmets, shoulder pads, uniforms, etc. to be worn by the students who participate?”

The statutes of Ohio recognize physical education as an appropriate and important phase of the educational program of the public schools. Section 4837, General Code, provides in part as follows:

“Boards of education * * * shall prescribe a graded course of study for all schools under their control subject to the approval of the superintendent of public instruction. In such graded courses of study there may be included the study of the following subjects: health and physical education, * * *; the

language arts, including reading, spelling, oral and written English, and literature; mathematics; natural science, including instruction in the conservation of our natural resources; and the fine arts, including music (both vocal and instrumental). * * *

Section 4836-4, General Code, relates to special schools in connection with the public school system. It provides in part, as follows:

“The board of education * * * may * * * pay from the public school funds, as other school expenses are paid, the expenses of establishing and maintaining such departments and schools and of directing, supervising and coaching the pupil-activity programs in music, language, arts, speech, government, *athletics* and any others directly related to the curriculum.”
(Emphasis added.)

Section 4834-10, General Code, reads as follows:

“The board of education of any school district, except a county school 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.”

In an opinion of one of my predecessors, found in 1938 Opinions of the Attorney General, page 2556, it was held:

“A board of education has authority to adopt the teaching of instrumental music, as a graded course of study in its schools, and to furnish to its pupils the instruments necessary for use in such instrumental course of study. If a board of education adopts instrumental music as a graded course of study in the schools, it has authority to accept as a gift, the band instruments from a band association for the use of the pupils and thereafter purchase all musical instruments and supplies for the pupils at the cost of the board of education. The board may also provide for practicing and playing in the school band as part of the work of such instrumental musical course.”

This opinion was rendered under a statute which authorized courses in instrumental music, as does Section 4837, *supra*. Reference was made in the course of the opinion to an earlier opinion to the same effect found in 1930 Opinions of the Attorney General, page 216, construing the same statute and making a like holding. The question presented was

whether the board could purchase the instruments which were essential to a successful school band or orchestra. In the course of the opinion it was said :

“It must be conceded that there is no express authority for a board of education to purchase instruments for the teaching of instrumental music. In my opinion, however, the power to prescribe a course of study in instrumental music carries with it the power to provide the means to carry the power into effect.”

My immediate predecessor in an opinion reported in 1939 Opinions of the Attorney General, page 733, held :

“A board of education may in its discretion provide flood lights so as to make the playgrounds and athletic field under its control available to the pupils and the community, for night use.”

In the course of the opinion it was said :

“The modern concept of what constitutes a public school includes as one of the essentials the physical education and athletic training of the pupils in co-ordination with regulations for the protection and conservation of health. In a recent report published in the federal office of education it is stated that health and physical education in this decade constitute the fastest growing part of the curriculum established for the public schools. This idea is reflected in the statutory law of this and every other state wherein power is extended to boards of education to provide for the physical as well as the mental education and development of the pupils attending the public schools. * * *

“It is apparent that the General Assembly by its legislation concerning physical education in the public schools meant to make this type of education as essential a part of public school work as other branches of knowledge taught in the schools and to repose in the proper school authorities great latitude in exercising their discretion as to what shall be included within courses of physical education in the public schools.”

I find in the case of *Board of Education v. Ferguson*, 68 O. App., 514, a somewhat thorough discussion of former Section 7620, General Code, which is now embodied in substantially the same terms in Section 4834-10, which I have already quoted. The court discussed the meaning of the words “necessary apparatus” and “all other necessary provisions for the schools under its control”. Several cases are referred to where the courts have undertaken the definition of “apparatus”, as used in the sections above referred to. In the case of *State ex rel. Dunn v. Freed*,

Treasurer, 10 O. C. C., 294, the court held that certain blocks intended for demonstration of lessons in arithmetic came within the meaning of the term "apparatus". In *State ex rel. Prosecuting Attorney v. Treasurer*, 2 O. C. C., 363, it was held that reading charts for use in the schools, constituted "apparatus" for the demonstration of certain branches of education. It seems clear that those conclusions were based on the obvious fact that the articles in question formed a direct part of the equipment considered necessary for the study courses to which they related. Can it be said that helmets, shoulder pads, etc, are a necessary part of the equipment for playing football?

The particular question which the court had before it in the case of *Board of Education v. Ferguson*, *supra*, was whether under the statute authorizing a board of education to provide special schools for children having a tendency to tuberculosis, it was allowable for the board to pay out of school funds, the cost of special sleeping garments and meals for the pupils attending such school. The court held that there was no authority in law to provide free meals even for pupils who were unable to pay for the same, and furthermore that sleeping garments could not be included within the scope of the term "apparatus" as used in Section 4837, General Code, authorizing the purchase of "necessary apparatus" for the schools.

It seems to me that this ruling against the use of school funds to pay for sleeping garments for the children in open air schools, must be applied to those accessories mentioned in your letter which are commonly worn by football players. It may be strongly urged that football is a rough game and that it is hard on the bodies and clothing of the players. But that does not in my opinion make these protective articles of wearing apparel a part of the "apparatus" incident to the prescribed course of physical training. If these articles are to be purchased, cleated shoes and sweaters are equally permissible. If we sanction this expenditure of public school funds for playing clothes for the boys who desire to play football, I can see no escape from the conclusion that the school board should also furnish baseball suits and shoes for those engaging in baseball, and sweaters, shorts and tennis shoes for the girls who get their physical education course through tennis, hockey or badminton.

It is by no means easy to draw a distinction between those things which are a necessary part of the "apparatus" or furnishings of a school

and those which are for the personal benefit or comfort of pupils while engaging in the various school activities. In the instances which I have cited, where purchases were sanctioned, the articles in question were directly a part of the equipment necessary to the conduct of the activities which the law contemplated. The purchase of musical instruments such as pianos and band instruments was certainly necessary if the school was to offer a course in instrumental music. The purchase of machines and tools would clearly be a part of the equipment of a school of mechanical arts. But it would be hard to justify the purchase of uniforms for the band or overalls for the shop students as being part of the "apparatus" necessary for the conduct of these schools.

Accordingly, it is my opinion that where a board of education establishes football practice and playing among the students in its school, as a part of its physical education program, and permits the organization of groups or teams for that purpose, it may not lawfully use public funds to purchase such items of equipment as helmets, shoulder pads and uniforms to be worn by the students participating.

Respectfully,

HUGH S. JENKINS,
Attorney General.