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PUBLIC SCHOOL MAY NOT WITHHOLD THE TRANSFER OF CREDITS OF, OR REFUSE A DIPLOMA TO, A STUDENT ON GROUNDS THAT SAID STUDENT HAS TO PAY SCHOOL FEES ASSESSED AGAINST HIM—§§3313.48, 3313.64, R.C.

SYLLABUS:

In view of the provisions of Sections 3313.48 and 3313.64, Revised Code, a public school may not withhold the transfer of credits of, or refuse a diploma to, a student on the grounds that said student has refused to pay school fees assessed against him.

Columbus, Ohio, November 29, 1960

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The superintendent of the Mahoning County Schools has requested an opinion on the following question:

“‘May a school legally withhold the transfer of credits or refuse a diploma to a student, who refuses to pay school fees assessed against him?’

“It is hoped that you will clarify this matter as it seems of ever present concern to school authorities.”

Section 3313.48, Revised Code, reads in part as follows:

“The board of education of each city, exempted village, and local school district shall provide for the *free education* of the youth of school age within the district under its jurisdiction, at such places as will be most convenient for the attendance of the largest number thereof. * * * (Emphasis added)

Section 3313.64, Revised Code, reads in part as follows:

“The schools of each city, exempted village, or local school district *shall be free* to all school residents between six and twenty-one years of age, but the time in the school year at which beginners may enter upon the first year’s work of the elementary school shall be subject to the rules and regulations of the board of education. * * *” (Emphasis added)

In view of the above-noted statutes there is a clear responsibility on each board of education to provide for the free education of the youth of school age within the district.

Your request does not state the nature of the school fees which have been assessed and I might add that I am unable to find any statutory authorization for the charging of any fees. (Except as relates to driver training courses, Section 3313.642, Revised Code.) In Opinion No. 679, Opinions of the Attorney General for 1927, page 1157, however, it was held that a board of education could adopt a rule requiring the payment of certain incidental laboratory fees. At page 1159 of that opinion it is stated:

“In view of the fact that such laboratory fees have been exacted by the school authorities for many years without question. I am of the opinion that a board of education may in its discretion, under the authority of Section 4750 of the General Code, prescribe rules requiring pupils in the public schools to pay reasonable incidental fees to cover the use of material and the breakage of test tubes, et cetera, used in laboratory work. Such rules must be reasonable and not such as to exact tuition fees under the guise of mere incidental fees. No charge, however, can be made for the use of any apparatus owned or used by the board of education.

“In the enforcement of such rules the provisions of Section 7777 of the General Code should be taken into consideration. This section in effect requires school authorities to furnish text books and other personal necessities, including medical care and such other relief as may be necessary to extend to children who are unable to attend school by reason of the inability of their parents or guardians to furnish the same for them. No such child should be or could be required to pay any incidental fees as a condition precedent to its receiving the benefits of a laboratory course.”

Assuming for the purpose of this opinion that the board of education would have authority to assess fees in the present case, the question is whether a refusal to pay such fees would be sufficient cause for the board to refuse to transfer credits of, or refuse to issue a diploma to the person concerned.

Regarding the issuance of a high school diploma, Section 3313.61, Revised Code, provides:

“A diploma must be granted by the board of education to any one successfully completing the curriculum in any high school, which diploma shall state the grade of the high school issuing it

as certified by the state board of education, be signed by the president and clerk of the board, the superintendent of schools, and the principal of the high school and shall bear the date of its issue. Such diploma shall be in such form as the board prescribes and shall be paid for out of the general fund.”

Under this section, therefore, a diploma *must* be granted to any student who has successfully completed the prescribed course, and the fact that such student has refused to pay school fees assessed against him does not authorize the board of education to withhold the diploma.

As to records, Section 3319.32, Revised Code, reads :

“Boards of education shall require all teachers and superintendents to keep the school records and to prepare reports in such manner as to enable the preparation of the annual reports required by law and shall withhold the pay of such teachers and superintendents who fail to file the reports required of them. The records of each school, in addition to all other requirements, shall be so kept as to exhibit the names of all pupils enrolled therein, the studies pursued, the character of the work done and the standing of each pupil ; and these records shall be as nearly uniform throughout the state as practicable.”

The keeping of status records such as provided in Section 3319.32, *supra*, would appear to be necessarily incidental to a school system where students often find it necessary to change from one school to another, and the purpose of the statute is clearly to allow such changes without loss of credit for past schooling. There is no specific authority for a board of education to withhold the credits of a student for refusal to pay fees, nor for any other reason for that matter ; and I cannot say that such authority may be reasonably implied from the existing statutes. Moreover, since under the state law public schools are to be free, requiring a student to pay fees before receiving credit for work done would be in violation of the intent and spirit of the law.

Accordingly, it is my opinion and you are advised that in view of the provisions of Section 3313.48 and 3313.64, Revised Code, a public school may not withhold the transfer of credits of, or refuse a diploma to, a student on the grounds that said student has refused to pay school fees assessed against him.

Respectfully,
Attorney General
MARK McELROY