

2963.

APPROVAL, BONDS OF VILLAGE OF TROTWOOD, MONTGOMERY COUNTY, \$6,000.00.

COLUMBUS, OHIO, November 20, 1925.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

2964.

BOARD OF EDUCATION—NO AUTHORITY TO EXPEND SCHOOL FUNDS TO INSTALL AND MAINTAIN MOTION PICTURE EQUIPMENT FOR ANY PURPOSE OTHER THAN IN CONNECTION WITH THE REGULAR COURSES OF STUDY.

*SYLLABUS:*

*A board of education is without authority to expend school funds to install and maintain motion picture equipment or enter into contracts for films for entertainment purposes, or for any purpose other than in connection with the regular courses of study.*

COLUMBUS, OHIO, November 21, 1925.

HON. C. LUTHER SWAIN, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you submit the following inquiry:

“The board of education of Blanchester, Clinton county, Ohio, through me, has requested an opinion from your office as to their right to give motion picture entertainments in the high school auditorium, to which an admission is charged, the proceeds to be used for the benefit of the schools.

“I may state that the village of Blanchester has a population of about 1800; the school district is slightly larger, as it takes in some of the surrounding township. Blanchester has only one exhibitor of motion pictures, who has his shows on Tuesday, Thursday and Saturday nights of each week.

“The Blanchester board gave a program of pictures last winter, and have now showed their last picture under their old contract. And they desire your prompt opinion before making a contract for pictures for this winter.”

Examination of the several sections of the General Code granting boards of education power and authority, reveals no direct authority for a board of education to install and maintain motion picture equipment nor enter into contracts for the

use of films. In this connection attention is directed to the language of Shauck, C. J., in the case of *State ex rel. vs. Lynch*, 88 O. S., 72, wherein the question of the right of a municipality to expend public funds for the purpose of equipping and maintaining a motion picture show was determined, where the court said:

“Certainly the absence of plain statutory authority therefor denotes its absence.”

It is a general rule of law that money cannot be expended from the public treasury without proper authorization of statute; that is to say, a board of education in expending any of the public funds in its treasury should make such expenditures in compliance with some specific statute covering the same, or wherein such authority is clearly implied.

Section 4749 of the General Code, reads as follows:

“The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state.”

This section clearly clothes boards of education with certain corporate powers and establishes it as a body politic, and further grants such board authority to exercise such other powers and privileges as are conferred by the laws relating to the public schools of this state, but does not in any wise afford authority to do the things set forth in your inquiry.

The above quoted section is perhaps the principal section of the General Code granting to boards of education “power and authority.” Therefore, reference must be made to other sections of the General Code to ascertain whether a board of education has authority to expend public money in the manner suggested in your inquiry.

In this connection, attention is directed to the provisions of section 7620 of the General Code, which reads as follows:

“The board of education of a 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. It also shall provide fuel for schools, build and keep in good repair fences enclosing such school houses, when deemed desirable, plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.”

It will be noted in the above section that after specifically setting forth the powers of the board of education, the section further indicates that such board may provide the necessary apparatus and “make all other necessary provisions for the schools under its control,” and make all other provisions necessary for the convenience and prosperity of the schools of the subdistricts.

It has been argued in numerous cases that the above provisions of section 7620 of the General Code are sufficient to provide various and sundry expenditures by a board of education, but it is not believed that this section is sufficient justification for a board of education to expend the public moneys to install and maintain motion picture equipment or enter into contracts for films.

Attention is also directed to the provisions of section 7690 of the General Code, which reads in part as follows:

“Each board of education shall have the management and control of all the public schools of whatever name or character in the district.”

The above section, together with section 7620 supra, may be said to be the two principal sections of the Ohio school laws which give boards of education wide latitude in school affairs, but in considering section 7690 it can hardly be said that “the management and control” of the public schools of the district would go so far as to cover the installation and operation of a motion picture apparatus. Neither is it believed that any such authority would obtain under the provisions of section 7666 which reads as follows:

“Such board of education shall build, repair, add to and furnish the necessary schoolhouses, purchase or lease sites therefor, or rent suitable rooms, and make all other necessary provisions relative to such schools as may be deemed proper.”

In none of the above sections does there appear authority either specific or implied for an expenditure such as you indicate. Examination of the other sections of the General Code pertaining to the public schools nowhere reveals authority to a board of education to contract for or maintain motion picture entertainments in the public school building, or to use public funds in such enterprise.

Section 4752 of the General Code provides for the payment of all claims or debts by the board of education upon proper roll call of the members of the board, but these claims or debts must be those which are authorized by law.

In this connection, in the case of *Board of Education vs. Best*, 52 O. S. 152, we find the following:

“The authority of boards of education, like that of municipal councils, is strictly limited. They both have only such power as is expressly granted or clearly implied, and doubtful claims as to the mode of exercising powers vested in them are resolved against them.”

Attention is also directed to the unreported case of *Hauschild vs. Board of Education of the City of Lakewood*, 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, say:

“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 legislation or eventually the courts will be compelled to interfere.*"

Attention is also directed to the discussion by Foran, J., in the opinion in the case of *J. C. Heald vs. City of Cleveland, et al.*, 19 O. N. P. (N. S.) 305. This case was an action by a taxpayer to enjoin the erection of a hall for auditorium and exposition purposes by the city of Cleveland. In the second paragraph of the syllabus it was held:

"The city of Cleveland has authority to build a hall for auditorium purposes and to issue bonds therefor, and may use such auditorium for any lawful purpose and derive revenue from such use; but said city has no authority to issue bonds to be used primarily for a building for exposition purposes, or to use portions of its auditorium for lodge rooms, concert halls, show rooms, or theaters, as a purely private enterprise."

In discussing the issues in this case, the court at page 318 of the opinion said:

"It must be conceded that public moneys should only be used for a public purpose. 'No authority, or even dictum, can be found which asserts that there can be any legitimate taxation when the money to be raised does not go into the public treasury, or is not destined for the use of the government or some of the governmental divisions of the state.' 27 Iowa, 28.

"That legitimate taxation should be limited to public purposes is axiomatic. \* \* \* Beyond cavil there can be no lawful tax which is not laid for a public purpose. It may not always be easy to decide what is a public purpose. It is sometimes said, and it is claimed by counsel for defendant in

this case, that a public hall for auditorium and exposition purposes will be a benefit to the public, in that it will be the means of drawing to the city great crowds of people from other sections of the country who will expend money among our citizens. \* \* \* That taxes can only be used for a public purpose is also elementary. But there is a wide latitude of judicial opinion as to what constitutes a public purpose. There is general unanimity, however, that moneys cannot be lawfully used to promote private enterprises. And this is especially true if these enterprises are to come into direct competition with others of a similar character, such as are usually managed, owned and controlled by private persons. Practically all the authorities cited by plaintiff to support the contention that the purpose of the defendant city is *ultra vires*, fully sustain these general propositions; but the question still remains, is the erection of a building for auditorium and exposition purposes a municipal affair or a proper function of municipal government?"

Following the above quotations from the opinion by Foran, J., there appears a very lengthy discussion of the right and authority of a municipality to build an auditorium for civic purposes, which right the court seems to justify, but following this, concerning the right of a municipality to erect a hall or building for exposition purposes, the court makes the following observations:

"The use of the contemplated building for exposition purposes we think unwarranted, unless the doctrine of state socialism is to be considerably advanced, and so advanced as to foster, promote and encourage improvidence and poverty. This does not mean, however, that the auditorium which the city has power to build, erect and maintain, might not be used for such purposes after its construction. It only means that a municipality may not use or appropriate public funds for the erection and maintenance of a building designed primarily for exposition purposes. That a municipality has the right to make any lawful use of a building it has power to erect and the right to own and maintain, can not be denied, during such periods as its use may not be required by the public."

In view of the provisions of the several sections of the General Code above discussed, and the authorities cited, especially the case of Heald vs. City of Lakewood, supra, it is believed that a board of education is without authority to expend school funds to install and maintain motion picture equipment or enter into contracts for films for entertainment purposes, or for any purpose other than in connection with the regular courses of study.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

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2965.

APPROVAL, VILLAGE OF TERRACE PARK, HAMILTON COUNTY,  
\$8,200.00.

COLUMBUS, OHIO, November 20, 1925.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*