

and that is that it was the intention of the General Assembly when they adopted the conference committee report, to limit the provision providing for quarterly reductions of license fees to commercial cars.

It is therefore my opinion that Section 6295 of the General Code, as amended by House Bill No. 44, requires that persons purchasing license plates for any motor vehicle, other than a commercial car, after such bill becomes effective, must, pay the full year's tax for the year 1925, or any subsequent calendar year, regardless of the date on which the license is obtained.

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

2412.

BOARD OF EDUCATION—AUTHORITY TO ENFORCE RULES AND REGULATIONS IN CONNECTION WITH PHYSICAL EDUCATION COURSES DISCUSSED.

SYLLABUS:

1. *Under the provisions of section 7721 and section 7721-7, General Code, boards of education are required to establish and maintain physical education courses and all pupils in the elementary and secondary schools of the district shall receive instruction in such courses.*

2. *If, upon proper consideration and in the exercise of their discretion, a board of education finds it necessary and desirable to promulgate and enforce a rule requiring that all children enrolled in such physical education courses shall be provided with suitable suits to be used in such courses, they would have authority so to do. Attention is directed to the provisions of Section 7777, General Code, which should be taken into consideration in connection with the enforcement of such rule. The section referred to authorizes boards of education, under certain circumstances, to provide clothing and other personal necessities to enable children to take advantage of the school privileges.*

COLUMBUS OHIO, April 27, 1925.

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

DEAR SIR:—This will acknowledge receipt of your letter of recent date, in which you submit the following inquiries:

“Have school authorities the power to force students to take a course in physical education?”

“Have school authorities the power to enforce children to purchase suits for ‘setting up’ exercises which are in the physical education courses?”

In giving consideration to your questions, attention is first directed to section 7721 of the General Code of Ohio, which provides as follows:

“All pupils in the elementary and secondary schools of the state shall receive as part of their instruction such physical education as may be prescribed by the director of education, and the physical education provided shall occupy not less than one hundred minutes per school week. Modified courses of instruction may be provided or approved by the director of edu-

cation for pupils unable to take the course provided for normal children. Credits and penalties shall be applied for success or failure in physical education courses as in other school subjects."

The language, "All pupils in the elementary and secondary schools of the state shall receive as part of their instruction such physical education as may be prescribed, etc." is clear, mandatory language and needs little interpretation. The language of the above section clearly indicates that the legislature of Ohio intended to establish in the schools of the state physical education courses suitable for normal children; and, by the same enactment, it is equally clear that some modified form of physical education should be provided for pupils unable to take the course provided for normal children.

Attention is also directed to the provisions of section 7721-2 of the General Code, which provides as follows:

"Boards of education shall, in the institution and conduct of physical education, take due knowledge of the health supervision of school children maintained by boards of health or by boards of education and shall provide for the proper co-ordination of such work with the work in physical education. Where the board of education has not employed a school physician, the board of health shall conduct the health examination of all school children in the health district and shall report the findings of such examination and make such recommendations to the parents or guardians as are deemed necessary for the correction of such defects as may need correction. It is provided that this act shall not be construed to require any school child to receive a medical examination or receive medical treatment whose parent or guardian objects thereto."

A rule of any board of education attempting to require the pupils of such school to purchase suits for "setting up" exercises would necessarily need to take into consideration all of the provisions of the above sections and any such rule would need to be in entire harmony with the provisions of these sections. Attention is also directed to the provisions of section 7721-7, General Code, which is also a part of the general act providing for physical education in the public schools of the state and reads as follows:

"It shall be the duty of boards of education or other officials in charge of all schools in the state to make provision for the establishment and maintenance in their schools for the courses in physical education prescribed by section 7721 of the General Code."

In view of the above sections of the General Code, there can be no doubt of the right, if not the duty, of every board of education within the state of Ohio to provide courses in physical education as part of the instruction in the public schools.

However, your second inquiry presents a somewhat more difficult problem. In considering the second question, attention is directed to several sections of the General Code of Ohio, which are sometimes referred to as the "Power and Authority Sections," these being the sections that grant general power and authority to boards of education.

Section 7690, General Code, provides in part as follows:

"Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character

in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries."

Section 7620 of the General Code provides :

"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 sub-districts."

Section 4749, General Code, provides 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."

Section 4750 of the General Code provides :

"The board of education shall make such rules and regulations as it deems necessary for its government and the government of its employes and the pupils of the schools. No meeting of a board of education, not provided for by its rules or by law, shall be legal, unless all the members thereof have been notified, as provided in the next section."

Section 4749, above quoted, makes the board of education of each school district within the state of Ohio a body politic and corporate, and clothes such board of education with numerous specific powers and authority, and in the last clause of the section clothes such board of education with such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state.

The language of section 4750 clearly clothes all boards of education with authority to make such rules and regulations as it deems necessary for the government of the pupils of the schools.

Attention is also directed to the provisions of section 7620, which further clothes every board of education with power and authority to make all other provisions necessary for the convenience and prosperity of the schools within the sub-districts.

Further considering your second question having in mind the several "Power and Authority Sections" above quoted and discussed, and having also in mind especially the provisions of section 7721-7, which makes it the duty of the several boards of education to make provision for the establishment and maintenance in their schools of the courses in physical education prescribed by section 7721 of the General Code, there appears to be little doubt of the power and authority of a board of education to make and enforce any reasonable rule, regulation or requirement in

connection with the establishment and maintenance of the physical education course prescribed by section 7721 of the General Code.

This conclusion leads us to the further and more difficult question of what may be considered a "reasonable rule, regulation or requirement", in this connection.

Before attempting an analysis and answer to your particular inquiry, attention is directed to several leading cases in other states, in which the question of the reasonableness of a given rule is considered.

In the case of *Jones, et al., vs. Day, et al.*, decided November, 28, 1921, in the Mississippi Supreme Court and reported in 18 A. L. R. 645, 89 So. 906, the following rule was laid down:

"Where the trustees of an agricultural high school adopted a rule that the pupils of the school should wear a uniform of khaki when in attendance upon the school and when visiting public places within five miles of the school even on Saturdays and Sundays, this rule is not *ultra vires*, unreasonable and void, and applies to all students boarding in the dormitory of the school and until their return to the custody of their parents. It applies to those students who live with their parents when they are in the custody of the school authorities; that is to say, after they leave the home of their parents to attend school, and until they return to the home after the school is over. It does not apply to those children on holidays, when they are within the care, custody and control of their parents."

In the annotations in 18 A. L. R., at page 649, following the above case, the following statement is found:

"A case upholding the right of school authorities to prescribe the kind of dress to be worn by students in *Connell vs. Gray* (1912) 33 Okla. 591, 42 L. R. A. (N. S.) 336, 127 Pac. 417, Ann. Gas. 1914 B, 399, which held that the board of regents of a state college has power to prescribe the kind of uniform or gymnasium suit, and to require the same to be worn by the students, and may require the students, at the time of entrance, to provide themselves with such uniform or suit, or make a reasonable deposit to cover the cost of the same.

"But an order of a school board, depriving a pupil of his diploma for refusal to wear cap and gown at graduation, is unreasonable and *ultra vires*, *Valentine vs. Independent School Dist.* (1919) 187 Iowa, 555, 6 A. L. R. 1525, 174 N. W. 334, same case, later appeal, in (1921)—Iowa—, 183 N. W. 434. The court, in the opinion on the later appeal, said: 'Conceding appellant's contention that there was a rule formally adopted and effective at the time in question, we hold that such rule is unreasonable and a nullity as a condition precedent to receiving the honors of graduation and a diploma. The wearing of the cap and gown on commencement night has no relation to educational values, the discipline of the school, scholastic grades, or intellectual advancement. Such a rule may be justified in some instances from the viewpoint of economy, but from a legal viewpoint the board might as well attempt to direct the wearing of overalls by the boys and calico dresses by the girls. The enforcement of such a rule is purely arbitrary, and especially so when the offending pupil has been passed for graduation after the performance upon her part of all prescribed educational requirements.

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"This plaintiff, having accepted the benefits of education tendered by the public school system established in the independent school district of Casey, and having complied with all the rules and regulations precedent to gradua-

tion, may not be denied her diploma by the arbitrary action of the school board subsequent to her being made the recipient of the honors of graduation.'"

"The court in the opinion last cited, however, said that school authorities may deny the right of a graduate to participate in public ceremonies of graduation unless cap and gown are worn."

Other cases in which consideration is given to the question of the reasonableness of rules and regulations promulgated by boards of education are found in the annotations to the case of *Wright vs. Board of Education*, 27 A. L. R. 1061, the annotations beginning at page 1074. In these cases the weight of authority is to the effect that rules by a board of education or other school authority forbidding membership of pupils in so-called Greek letter fraternities and providing for punishment for violation, by expulsion of the pupils or rendering them ineligible to participate in certain school activities, are valid. See

*Wilson vs. Board of Education* (1908) 233 Ill. 464, 15 L. R. A. (N. S.) 1136;  
*Favorite vs. Board of Education* (1908) 235 Ill. 315;  
*Smith vs. Board of Education* (1913) 162 Ill. App. 342;  
*Wayland vs. Hughes*, (*Wayland vs. School Dist.* 1906), 43 Wash. 441, 7 L. R. A. (N. S.) 325.

Coming now to the answer to your particular inquiry, and having in mind the statutory authority clothing the boards of education of Ohio with various specific and general powers and authority, as herein set forth, and having in mind the discussions and rulings made in the several cases herein cited, I am of the opinion that if, upon proper consideration and in the exercise of their discretion, a board of education finds it necessary and desirable to promulgate and enforce a rule requiring that all children enrolled in the physical education courses (Section 7721, General Code, 110 O. L. 18) be provided with suitable suits to be used in such courses, they would have authority to do so.

Attention is directed to the provisions of Section 7777, General Code, which should be taken into consideration in connection with the enforcement of such rule. The section referred to authorizes boards of education under certain circumstances to provide clothing and other personal necessities to enable children to take advantage of the school privileges.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

2413.

CORPORATION ORGANIZED UNDER PROVISIONS OF SECTION 3516 ET SEQ.—HOW SAID CORPORATION MAY SURRENDER CORPORATE POWERS.

SYLLABUS:

*Where a corporation is organized under the provisions of section 3516 et seq. and all proceedings are taken excepting that no officers are elected, such a corporation is without powers to perform any functions. Under such circumstances there is no method provided by statute whereby it may undo what has been done, except by*