

582.

BOARD OF EDUCATION—PHYSICAL EDUCATION—DISCRETIONARY TO PROVIDE FLOOD LIGHTS—PLAYGROUND AND ATHLETIC FIELD—AVAILABLE TO PUPILS AND COMMUNITY—NIGHT TIME.

SYLLABUS:

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.

COLUMBUS, OHIO, May 12, 1939.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“Millersburg Board of Education is an exempted school district. The question has arisen and they are desirous of knowing if they can expend school funds for the purchase of Flood Lights on the regular athletic field used by the athletic department for the purpose of holding night contests, rather than day contests.”

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.

Section 7721, General Code, providing that all pupils of the elementary and secondary schools of the state shall receive as part of their instruction such physical education as may be prescribed or approved by the Director of Education, provides also that:

“Credits and penalties shall be applied for success or failure in physical education courses as in other subjects.”

The language of this statute would seem to imply that courses in physical education are to be regarded as being as teachable as other cur-

ricular elements and as amenable to established standards of measurement of progress in education as are other recognized school courses.

Section 7721-1, General Code, provides that the superintendents of schools in all city, exempted village and county school districts shall submit annually to the Director of Education for his approval, courses in physical education to be pursued by the schools under their supervision, or shall indicate that the courses outlined by the Director of Education will be followed by these schools. At the close of each month a report is to be made to the Director of Education of the amount of time devoted in each school to physical education.

Section 7721-3, General Code, provides that all institutions for the training of teachers in the State of Ohio shall include courses of study designed to prepare teachers to give instruction in physical education, and that no state-wide certificate shall be granted after June 1, 1924, to persons who have not had such work in physical education in college or normal school as may be required by the Director of Education.

Section 7721-4, General Code, provides that after September 1, 1926, no person shall be granted a certificate or be employed to teach or supervise physical education as a special subject, who does not present satisfactory evidence of having creditably completed a special course in physical education of not less than two years, or its satisfactory equivalent, unless such person has served as a full time teacher or supervisor of physical education prior to January 1, 1925.

Section 7721-5, General Code, provides that the Director of Education shall publish a program covering the several subjects and activities required in physical education courses and these publications are to be distributed for the use of the teachers of the state.

Section 7721-6, General Code, provides that the Director of Education may appoint a supervisor of physical education to administer, supervise and direct the various programs and activities of physical education and to promote the training of teachers of physical education and to promote cooperation with the State Department of Health and district boards of health and to advise with boards of education and to assist the Director of Education in the performance of the various duties devolving upon him in the execution of laws relating to physical education.

Section 7721-7, General Codes, provides that it shall be the duty of boards of education or other officials in charge of all schools in the state to make provisions for the establishment and maintenance in their schools of the courses in physical education prescribed by Section 7721 of the General Code.

The Director of Education in pursuance of the duty reposed in him by Section 7651, General Code, to classify high schools into high schools of the first, second and third grades, has provided that a high school in each of such grades must provide for the uses of the school, gymnasiums and gymnasium appliances and equipment as well as playgrounds and

necessary equipment for the playing of games, including football, basketball, baseball and kindred types of games included in the curriculum prescribing courses in physical education for each grade of high school.

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.

It is equally clear that the necessary equipment and appliances to carry on the prescribed courses in physical education may be provided by boards of education and paid for from public funds.

Section 7620, General Code, expressly directs that boards of education shall among other things, provide playgrounds for children and provide the necessary apparatus and make all other necessary provisions for the schools under their control.

The statutes do not expressly, in terms, provide that a board of education may equip playgrounds. However, the present day conception of what constitutes a playground, includes with the grounds certain apparatus and equipment for the use of the children using the playground. The question of just how far a board of education is authorized to go in the equipping of playgrounds has not been the subject of any judicial pronouncements in this state so far as reported decisions are concerned and there are not many such reported decisions in other states. Some courts have gone so far, however, as to hold that the statutory authority to issue bonds to build schoolhouses includes issuing of bonds to build stadiums on playgrounds used for conducting athletic games where the statute permits the employment of teachers for physical education. See *Alexander vs. Phillips*, 254 Pac., 1056 (Ariz.), 52 A. L. R., 244.

In the case of *Juntila vs. Everett School*, decided by the Supreme Court of Washington, in 1934, 35 Pac. 2nd, 78, it is held:

“The district having power to acquire a site for recreation and exercise of the children attending its schools, it had the incidental power to do those things which made the site suitable for the purpose for which it was acquired. The construction of bleacher seats was incidental to the proper and reasonable use of Bagshaw Field.”

In *McNair vs. School District*, 87 Mont. 423, 288 Pac. 188, 69 A. L. R., 866, it was held that an outdoor school gymnasium and athletic field were part of the school plant. It was there said:

“What playgrounds, with their swings, chutes, teeters and the like, are to the grade schools, athletic fields are to the high

schools and stadiums to our universities: the difference is only in extent and dignity, not in kind, and it would seem that if the first are legitimate parts of the school plant, so are the second and third."

See also, Perkins vs. Trask, et al., 23 Pac. 2nd, 982 (Mont.).

From the few decided cases by the courts, it seems clear that where power is extended by statute to a board of education to provide playgrounds, and the board is expressly authorized and directed to include within its school activities the teaching of physical education, that the right and power to equip the playgrounds and to provide necessary apparatus for use of the pupils in the use of such playgrounds is implied.

Moreover, by force of Section 7722 et seq., General Code, the use of school premises, including playgrounds maintained in connection with schools, as community centers is becoming more and more general, and such use of the school property is universally considered to be a useful and we might say necessary adjunct to the present day organization of society.

While the use of flood lights to make available athletic fields and playgrounds for night use is of recent development, their use has become quite general, and it is generally considered that the use of playgrounds and athletic fields properly lighted at night is as much a proper use of the premises as is their use in the daytime.

If a board of education should feel that there is a demand for the use of the school playgrounds and athletic field at night, it may lawfully in its discretion provide flood lights so as to make the field available for such night use.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

583.

BONDS—CUYAHOGA COUNTY, \$100,000.00, SERIES D.

COLUMBUS, OHIO, May 12, 1939.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Cuyahoga County, Ohio, \$100,000, Series D (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of Bridge