

Note from the Attorney General's Office:

1957 Op. Att'y Gen. No. 57-1086 was modified by 1958
Op. Att'y Gen. No. 58-1928.

1086

EDUCATION — COUNTY BOARD OF EDUCATION MAY APPOINT INDIVIDUALS TO ADMINISTRATIVE OFFICES CREATED IN THE COUNTY SCHOOL SYSTEM CREATED FOR PURPOSE OF MAKING AN EDUCATIONAL EVALUATIVE STUDY—REPORT OF SUCH STUDY MAY BE PUBLISHED BY COUNTY BOARD OF EDUCATION, § 3315.07 RC.

SYLLABUS:

1. A county board of education may appoint individuals to administrative offices created in the county school system for the express purpose of making an evaluation study of the county school system and formulating recommendations for consideration by the county board of education.

2. A county board of education has authority under Section 3315.07, Revised Code, to publish a report of an evaluation study made by administrative officers of the county school system.

Columbus, Ohio, September 26, 1957

Hon. Hugh I. Troth, Prosecuting Attorney
Ashland County, Ashland, Ohio

Dear Sir:

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

“Would you please advise this office by either a formal or informal opinion as to whether or not the Ashland County Board of education can pay for an evaluation of the county school system, including local schools and the county office, and pay for a published report on the findings.

“I have been advised by our County Superintendent of Schools that one of the state universities of Ohio would direct the

study, but the Ashland County Board of Education would have to pay their expenses and the Board would have to pay consultants employed to assist in the evaluation of the findings made.”

As I understand from reading your request the type of project contemplated by the county board of education is a study analyzing the efficiency of operation of the existing county school system. I realize that such a project may be very involved, encompassing aspects of school operations outside that area of school administration which may be familiar to the general public. Nevertheless, an administrative balance sheet of the educational picture in the county school system may well be of great value to the county board, local boards, and all county teaching and administrative personnel.

However, the legal question presented remains that of determining whether the county boards of education have been given authorization to undertake such a project as here contemplated. To find such authority the statutes must expressly confer such power or from some express power the authority must necessarily be implied. *Schwing v. McClure*, 120 Ohio St., 335.

Specific responsibilities of the county board of education are included among the following citations. Proposals for school consolidation are determined by the county board of education as provided in Chapter 3311., Revised Code. These pertinent sections enacted in Amended Substitute Senate Bill 278, 102nd General Assembly, change the entire procedure for school consolidation by county boards of education. Section 3313.60, Revised Code, places the responsibility upon the county board for prescribing courses of study. Section 3317.13, Revised Code, now provides for a new budget procedure for county school districts. Administration of the county school system is provided for in Section 3319.01, Revised Code.

In performing these and other duties assigned to them, county boards of education need information concerning the effectiveness of policies and programs already in operation together with findings relative to added duties imposed by the legislature.

Administrative personnel in the county school system are provided for in Sections 3319.01 and 3319.02, Revised Code. Section 3319.01, Revised Code, provides for the employment of a county superintendent of schools. Section 3319.02, Revised Code, provides in part :

“The board of education of each *county*, city or exempted village school district may appoint *one or more assistant superintendents and such other administrative officers as are necessary*. An assistant county superintendent or county supervisor employed on a part-time basis may also be employed by a local board as a teacher. In the case of assistant superintendents appointments shall be made, and in the case of other administrative officers may be made, upon nominations of the superintendent of schools for a term not to exceed four years except as authorized by Sections 3319.08 and 3319.09 of the Revised Code.” (Emphasis added)

Secretarial and other office personnel are provided for in Section 3315.06, Revised Code, reading in part:

“The board of education of each county school district may allow the superintendent and assistant superintendent of schools a sum not exceeding six hundred dollars each per annum for traveling expenses and may employ stenographers and clerks for such superintendent.”

Such a study as contemplated by the county board of education might conceivably be undertaken by the county superintendent himself. In using trained persons outside of the present county school system factors of time and impartiality are clearly involved. It is readily apparent that the objectivity necessary for such a study to be of value may well require the appointment of personnel unacquainted with the county school personnel.

In securing the services of individuals connected with a state university the county board of education would have the advantage of highly trained administration experts whose services would be secured by the expenditure of a minimum of funds, *i.e.*, expenses. These individuals could be appointed to administrative offices in the county school system created for this particular project, their compensation calculated so as to cover expenses. Stenographers and clerks may be employed in the manner prescribed by statute.

I deem it to be necessary for the county board of education to appoint these persons directly rather than for the board to attempt to contract with the state university for the same services because of the second paragraph of the syllabus of the decision in *State, ex rel. Stilson v. Ferguson*, 154 Ohio St. 139:

“The phrase, ‘employ such assistants,’ as used in Section 1178-17, General Code, does not authorize the director of highways to enter into a contract with a firm of professional engineers,

delegating authority to such firm to make surveys, plans and contract specifications for the improvement of a state highway, for which service compensation is to be a fee based upon a specified percentage of the cost of the proposed highway improvement.”

Involved in this case was the authority of the Director of Highways to contract with a firm of professional engineers for services and studies for the department. The director contended that his action was based upon authority to employ assistants. The court rejected this claim holding that the authority to employ assistants does not include the authority to contract with a firm. The court also recognized the fact that the assistant directors in the department were required to be engineers.

I find the doctrine of this case applicable to the situation you present in the following respects: (1) the authority to “appoint * * * such other administrative officers as are necessary” is very similar to the authority “to employ such assistants as are necessary”; (2) the county superintendent or his assistants could make the proposed study themselves if time permitted.

Since boards of education may act only where the statutes permit and since I find no such authority to contract with an organization for such services, I must hold that the county board of education must employ these persons directly.

What has been said already will answer your query as to consultants; however, it must be kept in mind that such a study can go no further than the authority of the county board of education.

The publication of the report of such a study is included within the provisions of Section 3315.07, Revised Code, reading in part:

“The board of education of each city, exempted village, local, or county school district may provide *bulletins or other materials necessary for the effective administration of the schools of such district.*”
(Emphasis added.)

Therefore, in specific answer to your query, it is my opinion and you are advised that:

1. A county board of education may appoint individuals to administrative offices created in the county school system for the express purpose of making an evaluation study of the county school system and formulating recommendations for consideration by the county board of education.

2. A county board of education has authority under Section 3315.07, Revised Code, to publish a report of an evaluation study made by administrative officers of the county school system.

Respectfully,

WILLIAM SANBE

Attorney General