

In the absence of any direct provision, it is believed that the related statutes should be given an application consistent with their spirit and purpose. Such an application would require that the part time "superintendent" employed under section 4740 be treated as a "teacher" to the extent of the teaching service which he renders, and that a proportionate part of his compensation, arrived at strictly on a time basis, should be reported as the salary of a teacher and considered as such for the purposes of section 7600 and related sections.

This conclusion is justified on the same ground as the conclusions of the former attorney-general who arrived at a similar result for the purpose of the administration of the state aid law. It leaves, however, another troublesome question still unsolved. Section 7600 provides that there shall be a distribution of the state levy on the basis of "twenty-five per centum of the salary of each teacher receiving a salary of not less than eight hundred dollars" and distribution of the state levy retained in the county on the basis of twelve and one-half per centum of the salaries "of such teachers as are mentioned in this section." The question which now arises is as to whether or not in determining the amount of the salary of the superintendent employed under section 4740 for the purpose of applying the eight hundred dollar minimum requirement of the law, the whole salary paid to such "superintendent" shall be considered or merely such part of his salary as represents teaching service. It is believed that the latter is the only conclusion consistent with the principle which has been laid down herein; and that in determining whether or not a part time "superintendent" employed under section 4740 receives a salary of more than eight hundred dollars, only such part of his salary as, on a strict time basis, is referable to his teaching service can be considered.

Moreover, on the reasoning just outlined the portion of the salary of such part time superintendent referable to his teaching service should be the amount on which the percentage, on the basis of which the primary distribution of the state levy is made, should be computed.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1227.

VOCATIONAL SCHOOLS—CITY BOARD OF EDUCATION MAY ESTABLISH AND MAINTAIN SUCH A SCHOOL—ADULTS MAY BE ADMITTED—MAY ERECT AND EQUIP SUITABLE BUILDINGS FOR SUCH PURPOSE.

A city board of education may establish and maintain vocational schools to which adults may be admitted and may erect and equip suitable buildings or set apart and use buildings under the control of the board of education for such purposes in the same manner and within the same limitations as it establishes and maintains buildings for other school purposes. However, said schools should not be established for the exclusive use of adult pupils, but rather for all who are eligible to attend.

COLUMBUS, OHIO, May 8, 1920.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your communication of recent date, which reads as follows:

"We are today in receipt of the following communication from the city solicitor of Sidney, Ohio:

'Would like to have your opinion on the following questions, viz:

1. Can the board of education of a city school district issue bonds for, and build a school building, and equip the same, for the avowed purpose of conducting a school for, and the teaching of, vocational training to the adult citizens of the school district?

2. Can the board of education of a city school district issue bonds for, and build and equip a school building, and then use the same for the teaching of vocational training, exclusively, to the adult citizens of the school district?

3. Can the board of education of a city school district set apart one of its buildings and use it exclusively for the teaching of vocational training to the adult citizens of the school district?"

We are respectfully asking your written opinion upon the questions involved."

Your inquiry necessarily requires the consideration of sections 367-1 to 367-7 G. C., which were enacted March 21, 1917, in an act entitled:

"An act to create a state board of education and to accept the provisions of the act of congress providing for national aid for vocational education, and to provide for carrying the same into effect."

Sections 367-2, 367-5 and 367-6 G. C. were amended in 108 O. L. 357. Section 1 of said act, which is section 367-1 of the General Code, referring to the congressional act, provides:

"The provisions of an act of congress * * * are hereby accepted by the state of Ohio."

It being evident that the legislature accepted the act of congress known as the Smith-Hughes law relative to vocational education, the provisions of said congressional act must be considered in connection with your inquiry.

Sections 9390 $\frac{1}{4}$ cc and 9390 $\frac{1}{4}$ f, U. S. Compiled Statutes 1918, which are a part of said Smith-Hughes congressional Act, provide:

"Section 9390 $\frac{1}{4}$ cc. A federal board for vocational education is hereby created, * * * . The board shall have power to cooperate with state boards in carrying out the provisions of this act. * * * It shall be the duty of the chairman of the board to carry out the rules, regulations, and decisions which the board may adopt. * * * "

"Section 9390 $\frac{1}{4}$ f. In order to receive the benefits of the appropriation for the salaries of teachers of trade, home economics, and industrial subjects the state board of any state shall provide in its plan for trade, home economics, and industrial education that such education shall be given in schools or classes under public supervision or control; that the controlling purpose of such education shall be to fit for useful employment; that such education shall be of less than college grade and shall be designed to meet the needs of persons over fourteen years of age who are preparing for a trade or industrial pursuit or who have entered upon the work of a trade or industrial pursuit; that the state or local community, or both, shall provide

the necessary plant and equipment determined upon by the state board, with the approval of the federal board for vocational education, as the minimum requirement in such state for any given trade or industrial pursuit; that the total amount expended for the maintenance of such education in any school or class receiving the benefit of such appropriation shall be not less annually than the amount fixed by the state board, with the approval of the federal board, as the minimum for such schools or classes in the state; that such schools or classes giving instruction to persons who have not entered upon employment shall require that at least half of the time of such instruction be given to practical work on a useful or productive basis, such instruction to extend over not less than nine months per year and not less than thirty hours per week; that at least one-third of the sum appropriated to any state for the salaries of teachers of trade, home economics, and industrial subjects shall, if expended, be applied to part-time schools or classes for workers over fourteen years of age who have entered upon employment, and such subjects in a part-time school or class may mean any subject given to enlarge the civic or vocational intelligence of such workers over fourteen and less than eighteen years of age; that such part-time schools or classes shall provide for not less than one hundred and forty-four hours of class-room instruction per year; that evening industrial schools shall fix the age of sixteen years as a minimum entrance requirement and shall confine instruction to that which is supplemental to the daily employment; that the teachers of any trade or industrial subject in any state shall have at least the minimum qualifications for teachers of such subject determined upon for such state by the state board, with the approval of the federal board for vocational education: Provided, that for cities and towns of less than twenty-five thousand population, according to the last preceding United States census, the state board, with the approval of the federal board for vocational education, may modify the conditions as to the length of course and hours of instruction per week for schools and classes giving instruction to those who have not entered upon employment, in order to meet the particular needs of such cities and towns."

While the latter section above quoted authorizes the establishment of part-time schools or classes for pupils between the ages of fourteen and eighteen years, it is not believed that this provision limits the attendance to those under the age of eighteen. The further provision relative to evening schools seems to prohibit the attendance of those who have not reached the age of sixteen. However, said section does not indicate that there is any maximum age limitation as to those who may attend the classes of schools mentioned therein.

Section 9390 $\frac{1}{4}$ ee, U. S. Compiled Statutes, which relates to the teaching of agricultural subjects, provides for courses designed to meet the needs of those over fourteen years of age but does not indicate any maximum age limitation.

It will further be observed from the provisions of the former section that the federal board for vocational education may adopt rules, regulations and decisions in reference to the management of such schools, and the state board of education established in pursuance to said acts in a great measure is subject to the supervision of the federal board. In fact, the federal act provides that the state board must proceed upon a plan which is approved by the federal board.

In Bulletin No. 17, issued by the director of the executive staff of the federal board for vocational education, it is clearly indicated on page 70 that there is no maximum age limitation as to those who may study trade extension and trade preparatory subjects in part-time schools according to the ruling of the board.

In considering the meaning of the act as construed by the federal board in reference to the evening schools, the following is important which is quoted from page 15 of Bulletin No. 18, issued by the director of the executive staff of said federal board:

"According to the provisions of the Smith-Hughes act the controlling purpose of evening industrial schools is to fit for useful employment persons over sixteen years of age who have entered upon the work of a trade or industrial pursuit. Generally in evening industrial schools the entrance age of pupils will be considerably higher than the minimum required by law. Average age thus far has, in fact, usually been around 23 or 24. The maturity must be taken into account at every step since the character of instruction, methods of organization, and discipline must be such as will attract and hold adult workers."

It is quite clear that according to the regulations of the federal board, adults may attend vocational schools when properly established, regardless of whether they are all-day, part-time or evening schools. It is the opinion of this department that the rulings of the federal board are within the powers given to them by the acts of congress heretofore referred to and it follows, the state having adopted said acts, that the rulings of said federal board must control in the management of such schools as are established in pursuance thereof.

We will now consider whether or not the authority is provided to enable a city board of education to establish such vocational schools. Section 367-5 G. C. provides:

"The state board of education shall have all necessary authority to co-operate with the federal board for vocational education in the administration of said act of congress and of any legislation pursuant thereto enacted by the state of Ohio, and in the administration of the funds provided by the federal government and the state of Ohio under the provisions of this act, for the promotion of vocational education in agriculture, commercial, industrial, trade, and home economics subjects. The board shall have authority to appoint such directors, supervisors and other assistants as may be necessary to carry out the provisions of this act, and fix their compensation; such appointments to be made upon the nomination of the secretary of the board. The salaries and traveling expenses of such directors, supervisors and assistants, and such other expenses as may be necessary to carry out the provisions of this act, shall be paid upon the approval of the board. They shall have full authority to formulate plans for the promotion of vocational education in such subjects as an essential and integral part of the public school system of education in Ohio; and to provide for the preparation of teachers of such subjects, and to expend federal and state funds appropriated under the provisions of this act for any purposes approved by the federal board for vocational education. They shall have authority to make studies and investigations relating to pre-vocational and vocational education in such subjects; to promote and aid in the establishment by local communities of schools, departments and classes, giving training in such subjects; to co-operate with local communities in the maintenance of such schools, departments and classes; to establish standards for the teachers, supervisors and directors of such subjects; and to co-operate in the maintenance of schools, departments, or classes supported and controlled by the public for the preparation of teachers, supervisors and directors of such subjects."

In this connection further provisions of the General Code should be considered, as follows:

"Section 7649. A high school is one of higher grade than an elementary school, in which instruction and training are given in approved courses in the history of the United States and other countries; composition, rhetoric, English and American literature; algebra and geometry; natural science, political or mental science, ancient or modern foreign languages, or both, commercial and industrial branches, or such of the branches named as the length of its curriculum makes possible. * * *

"Section 7667. Such board of education may regulate and control the admission of pupils from the elementary schools under its charge to such high school or high schools, according to age and attainments, may admit adults over twenty-one years of age, and pupils from other districts on such terms and under such rules as it adopts. It shall maintain such high school or high schools not less than twenty-eight nor more than forty weeks in any school year."

There seems to be no doubt but that the board of education has power under the two statutes last quoted to provide for the teaching of commercial and industrial branches in connection with a high school to which adults may be admitted. This authority would imply power in the board of education to erect and equip a building for this purpose or to set apart a building under its control for such a use. It further is a matter of common knowledge that such schools have been maintained by various city boards of education in the state of Ohio long before the adoption of the federal act on the part of the state. The act of the state adopting said federal act tends to strengthen the conclusion that such a school may be established. Of course in the event that the board of education desires to avail itself of the provisions of the federal act, the same must be done by co-operating with the state board of education, in which event there would perhaps be different requirements relative to the course of study, etc., than where a similar school or class is maintained exclusively by the board of education. However, it is the intentment of the law that adults may be admitted to vocational schools regardless of whether they are such schools as are partly supported by federal or state aid or maintained exclusively by the local board of education.

It is therefore the opinion of this department that a city board of education may establish a vocational school and that there is no maximum age limitation as to those who may attend. It is further believed that a city board of education in the establishment and maintenance of such schools may erect and equip suitable buildings or set apart and use buildings under the control of the board of education for such purposes in the same manner and within the same limitations as it establishes and maintains buildings for other school purposes. As above indicated, said schools should not be established for the exclusive use of adult pupils, but rather for all who are eligible to attend.

Inasmuch as it is believed that the foregoing general reply covers your inquiries, your questions will not be separately considered.

Respectfully,
JOHN G. PRICE,
Attorney-General.