

3580

BOARD OF EDUCATION — MAY LEGALLY ALLOW PUPILS LEAVE OF ABSENCE FOR MORAL OR RELIGIOUS INSTRUCTION — ONE HOUR EACH WEEK — INSTRUCTORS, NOT REGULAR TEACHERS ENGAGED BY BOARD — SUCH ABSENCE NOT TO INJURIOUSLY AFFECT CLASS WORK STANDING OF PUPILS.

USE OF SCHOOL BUILDING OR ROOMS IN SCHOOL BUILDING — RELIGIOUS INSTRUCTION TO SCHOOL PUPILS AND OTHERS.

SYLLABUS:

1. *A board of education may legally allow pupils leave of absence for one hour each week, for moral or religious instruction given by persons other than the regular teachers engaged by the board, where it is determined by the board that such absence will not injuriously affect the standing of said pupils in their class work.*

2. *A board of education may lawfully permit the use of the school building or rooms in school buildings under its control, when the same are not in actual use for public school purposes, to be used and occupied by an organization or organizations for the purpose of giving religious instruction to school pupils and others, under proper rules and regulations with respect to such occupancy as may be promulgated by such board.*

Columbus, Ohio, March 19, 1941.

Hon. Carl W. Rich, Prosecuting Attorney,
Cincinnati, Ohio.

Dear Sir:

This is to acknowledge receipt of your request for my opinion, which reads as follows:

“The Board of Education, Rural School District, Delhi Township, has been approached for permission to allow pupils of the Delhi Township school one hour leave of absence, or to excuse them from their regular studies, one hour each week during the school year, for the purpose of moral or religious instruction by others than the regular school faculty. Therefore

we are asking you for an opinion on the legality of the following:

“May the Board of Education legally allow pupils leave of absence one hour each week, without effecting the standing of said pupils in their class work, for moral or religious instruction by others than the regular teachers engaged by the board?”

“May the Board of Education legally allow an organization or organizations to impart such instruction in any then unoccupied room or rooms of the school building to pupils who wish or whose parents or guardians wish them to receive such said instruction?”

By the terms of Section 7690, of the General Code of Ohio, each local district board of education is charged with the duty of maintaining and controlling all the public schools of whatever name or character in their respective school districts. Section 4750, General Code, empowers each board of education to make such rules and regulations as it in its discretion deems necessary for the government of its employes and the pupils in its district. The question presented by your inquiry is whether or not a board of education in pursuance of the powers delegated to it by statute, may lawfully make such regulations as will permit the pupils in the schools under its control to be excused from regular class work for a reasonable length of time during each day or week to receive moral and religious instruction from persons other than regularly employed teachers, and whether or not such instruction may be imparted in the public school buildings.

There is no statutory rule of law which requires a board of education to maintain the schools under its control a definite number of hours per week or per day. It is provided in Section 7644, General Code, that elementary schools shall be maintained for not less than thirty-two weeks per year, and Section 7763, General Code, which is part of the chapter relating to compulsory education, provides that every parent or guardian, or other person having charge of a child of compulsory school age, with certain exceptions not pertinent hereto, must send such child to a public, private or parochial school for the full time the school is in session, which, in no case shall be less than thirty-two weeks per school year. Section 7689, General Code, provides that a school week shall consist of five days, but makes no provision as to just what legally constitutes a day. Questions relating to the requirements for a pupil's graduation and promotion from one grade or class to another are likewise not specifically covered by statute. It is provided in Section 7702, General Code, that the superin-

tendent of schools shall classify, assign and control the promotion of pupils and perform such other duties as the board of education determines. If a board of education should in its discretion determine that a pupil or group of pupils might without interference with their regular class work be excused for any purpose for one hour a week or for any reasonable time it is my opinion that it is within the power of the board to do so.

So far as I have found, this question has never been the subject of an opinion of this office, and has not been considered by the courts of this state. However, the Court of Appeals in New York, in the case of *People ex rel. Lewis v. Graves*, State Commissioner of Education, 245 N. Y., 195, 156 N. E., 663, had the precise question under consideration, and therein held as stated in the second and third branches of the syllabus:

“2. Rule of Board of Education excusing pupils at request of parents for half hour each week to attend religious instruction outside of school, held not to violate the prohibition of Constitution, Article IX, Section 4, against using public property or money in aid of denominational schools.

3. Rule of board of education excusing pupils at request of parents for half hour each week to attend religious instruction outside the school held not violative of Education Law, Section 621, requiring regular attendance of pupils for entire time during which school is in session.”

Coming now to a consideration of your second question, reference will be made to the provisions of Section 7622, General Code, the pertinent part of which reads as follows:

“When, in the judgment of a board of education, it will be for the advantage of the children residing in any school district to hold literary societies, school exhibitions, singing schools, religious exercises, select or normal schools, the board of education shall authorize the opening of the school-houses for such purposes.”

The above provisions, which permit the use of school buildings under the conditions set out therein, were in the statute since the first enactment thereof, in 1889 (86 O. L., 11). Under this statute, the question of whether or not religious exercises may be permitted in the school building is left entirely to the board of education having control of the building. In *Ohio Jurisprudence*, Vol. 36, page 367, where the question of religions in the schools is considered, it is said:

“Moreover, the law confers upon the board of education full and unrestricted power to determine whether any religious

exercises of any character shall be permitted in the schools under its control. The powers of the board of education in such matters are unlimited, and its motives are not open to question or investigation by the court."

See also, Board of Education v. Paul, 7 O.N.P., 58, and Opinions of the Attorney General for 1927, page 795. In the 1927 opinion referred to it is held:

"1. When, in the judgment of a board of education, it will be for the advantage of the children residing in any school district to permit the use of the school building therein for the holding of religious exercises, when such use does not interfere with the use of the building for strictly school purposes, such permission may lawfully be granted even though such religious exercises are conducted under the auspices of some particular religious society.

2. Whether or not a board of education will permit a school building to be so used is a matter solely within the discretion of such board, which discretion will not be interfered with by the courts, except in a case of gross abuse thereof; and it goes without saying that the exclusive authority to permit such a use vested by law in the board includes the power to prohibit the same."

In specific answer to the question submitted, I am of the opinion:

First: A board of education may legally allow pupils leave of absence for one hour each week, for moral or religious instruction given by persons other than the regular teachers engaged by the board, where it is determined by the board that such absence will not injuriously affect the standing of said pupils in their class work.

Second: A board of education may lawfully permit the use of the school building or rooms in school buildings under its control, when the same are not in actual use for public school purposes, to be used and occupied by an organization or organizations for the purpose of giving religious instruction to school pupils and others, under proper rules and regulations with respect to such occupancy as may be promulgated by such board.

Respectfully,

THOMAS J. HERBERT,
Attorney General.