

2440.

STATE SCHOOL FOR THE BLIND—DIRECTOR OF EDUCATION—DISCRETION TO ERECT STAND ON CAMPUS OF TYPE USED IN FEDERAL BUILDINGS AND TRAIN PUPILS IN ITS OPERATION WHERE MERCHANDISE, FOOD, CANDIES AND LIKE SUPPLIES SOLD TO PUBLIC FOR PROFIT—SCHOOL AND ITS ACTIVITIES WOULD HAVE USE OF SALES PROFITS.

*SYLLABUS:*

*It is within the discretion of the Director of Education and the Superintendent of the State School for the Blind, to offer as a course of study to the pupils of the State School for the Blind instruction in stand operation. In order to effectively train such pupils in operating such stand the Director of Education and the Superintendent of the State School for the Blind have authority to erect and equip upon the campus of such school a model stand, erected and equipped in exact conformity with the type of stand adopted for use in federal buildings, wherein there would be sold or offered for sale merchandise, foods, candies, or like supplies, to the public, for profit, and all profit derived from such sales would be used for the purpose of the State School for the Blind or for any activity in connection with such school.*

COLUMBUS, OHIO, May 12, 1938.

HON. W. G. SCARBERRY, *Superintendent, State School for the Blind, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

“Through the passage of the Randolph-Sheppard Bill by Congress, the Ohio Commission for the Blind, as agent, is permitted to establish in federal buildings, stands to be operated by blind persons. In these stands are sold candy, tobacco, newspapers, magazines and light refreshments. As a school where blind boys and girls are trained for future usefulness, it is quite necessary that we give them proper training in stand operation and maintenance. In order to do this in the most effective manner possible, it is deemed advisable to construct on our campus, which is located at Main Street and Parsons Avenue, a building which will house a model stand. This would be open to the public, and we would sell articles, such as those mentioned above,

in this letter. It is possible that the question will be raised as to whether or not we can legally carry on such a training project. We are, therefore, before proceeding with the construction of the building, asking your opinion regarding the matter. If we have not furnished sufficient details, we shall be glad, upon your request, to go into the matter more fully."

The Randolph-Sheppard Bill, to which you refer, is Section 107 of Title 20, Chapter 6A, United States Code, Annotated, provides:

"For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting, blind persons licensed under the provisions of Sections 107 to 107g of this title shall be authorized to operate vending stands in any Federal building where, in the discretion of the head of the department or agency in charge of the maintenance of the building, such vending stands may be properly and satisfactorily operated by blind persons."

Section 107b, reads, in part, as follows:

"(a) A state commission for the blind or other state agency desiring to be designated as the agency for licensing blind persons for the operation of vending stands shall make application to the Commissioner of Education, and agree—

(1) To cooperate with the Commissioner of Education and with the division of vocational rehabilitation of such state in training, placing and supervising blind persons;

(2) To provide through loan, gift, or otherwise, for each blind person licensed to operate a stand, an adequate initial stock of articles to be vended therefrom."

It is to be observed from a reading of the foregoing statute that the state agency may agree to cooperate with the commissioner of education and with the Division of Vocational Rehabilitation of the state in training, placing and supervising blind persons in the operation of such vending stands; and that, there is nothing in the statute that can be construed as requiring that the training of such blind person be in a stand that is constructed and arranged exactly in conformity with the type of stand that has been adopted for use in federal buildings. It would appear from a reading of this statute that any theoretical training offered by the State School for the Blind that would teach a blind person how to operate such a stand, would be a sufficient compliance with the provisions of paragraph

(1) of Section 107b, supra, in cooperating in "training" blind persons in the operation of such vending stands.

The Randolph-Sheppard Bill has opened a new gainful occupation to blind persons who, because of lack of sight, are limited to a very small sphere of remunerative occupations.

It cannot be denied that training in the operation and maintenance of a stand at the State School for the Blind erected and "stocked" exactly in conformity with the type of stand that has been adopted for use in federal buildings would result in giving invaluable experience and training to a blind pupil who later became licensed to conduct such a stand in a federal building.

There is no direct authority which authorizes the erection of a model stand on the campus of the State School for the Blind, and the selling therefrom to the public, articles not made by boys and girls in the school, but confections, magazines, light refreshments, etc., purchased for the purpose of, and sold at a profit.

Section 4762-1, General Code, provides in part, as follows:

"No board of education, the principal or teacher of any school room, or class organization of any school district will be permitted to sell or offer for sale, or supervise the sale of merchandise, foods, candies, or like supplies for profit on the school premises except when the profit derived from such sale is to be used for school purposes or for any activity in connection with the school on whose premises such merchandise, food, candies or supplies are sold or offered for sale. No individual student or class of students, acting as an agent for any person or group of persons directly connected with the school will be permitted to sell or offer for sale for profit outside the school building, any of the above mentioned and described merchandise, except when the profit derived from such sale is to be used for school purposes or for any activity in connection with the school."

The foregoing part of Section 4762-1, supra, was discussed in an opinion rendered by my predecessor in Opinions of the Attorney General for the year 1935, Volume I, at page 58, wherein it was stated:

"It is provided by inference in said statute that a board of education may engage in the sale of merchandise, candy and like supplies on the school premises for profit, so long as the profit is used for school purposes or for some activity in connection with the school."

It is my judgment that from the language employed in the statute no

other conclusion can be reached, since from the language it is clear that there was an evident intent on the part of the legislature to permit a board of education to sell merchandise, foods, candies, or like supplies for profit, so long as the profit is used for school purposes or for some activity in connection with the school.

There is no doubt but that the courses of study offered and the methods of instruction used at the State School for the Blind would be somewhat different than are found in the public schools of the state, made necessary by the handicap of blindness.

Sections 154-46 and 154-57 of the General Code, vest the Department of Education with control of the State School for the Blind.

Section 1878 of the General Code, reads as follows :

“The superintendent of the state school for the deaf and the superintendent of the state school for the blind shall organize systematically the literary and vocational education of the pupils, giving due consideration to both needs, and properly proportioning the time allotted to the pupils for their various duties.”

Section 1851-2, General Code, provides that “the courses of study for the instruction and training of all persons in the benevolent, correctional or penal institutions shall be subject to the approval” of the Director of Education. This section is applicable to the school for the blind.

It is to be observed that by the provisions of Sections 154-46, 154-57, 1878 and 1851-2, General Code, that a vast discretion is given to the director of education and the Superintendent of the State School for the Blind, in offering courses of study for the instruction and vocational education and training of the pupils at the State School for the Blind and that the provisions of said foregoing sections are broad enough to vest the director of education and Superintendent of the State School for the Blind with authority to include in the course of study at the school, instruction in stand operation, taught and supervised by teachers employed therein.

It can further be said that from the intent expressed by the legislature in Section 4762-1, supra, that the State School for the Blind would have authority to erect and maintain a model stand on its campus for the selling therefrom to the public, merchandise, foods, candies, or like supplies, for profit, if the profit derived from such sale is used for the purpose of the State School for the Blind or for any activity in connection with the school.

Therefore, in specific answer to your question it is my opinion that, it is within the discretion of the director of education and the Superintendent of the State School for the Blind to offer as a course of study

to the pupils of the State School for the Blind instruction in stand operation; and that, in order to effectively train such pupils in operating such stand the director of education and the Superintendent of the State School for the Blind, would have authority to erect and equip upon the campus of such school a model stand, erected and equipped in exact conformity with the type of stand adopted for use in federal buildings, wherein there would be sold or offered for sale merchandise, foods, candies, or like supplies, to the public, for profit, and all profit derived from such sales would be used for the purposes of the State School for the Blind or for any activity in connection with such school.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

2441.

SECTION 3698 G. C.—MUNICIPALITY—MAY LEASE MUNICIPAL BUILDINGS OWNED BY CITY AND NOT NEEDED FOR MUNICIPAL PURPOSES—BUILDING SHALL BE IN ACTUAL EXISTENCE—LEASING MUST BE IN CONFORMITY WITH SECTION 3699 G. C.

*SYLLABUS:*

*Section 3698, General Code, authorizes a municipality to lease municipal buildings provided the building is in actual existence, owned by the city and not needed for municipal purposes. The leasing of the same must be in strict conformity and in full compliance with Section 3699, General Code.*

COLUMBUS, OHIO, May 13, 1938.

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

GENTLEMEN:

In am in receipt of your letter of recent date, requesting my opinion, which reads as follows:

“We are inclosing herewith copies of Ordinances Nos. 1074 and 1076, adopted by the council of the City of Wellston on the respective dates of December 3rd and December 7th, 1936, together with copy of an agreement made and entered into on the 17th day of December, 1936, by and between the City of