

1075

EDUCATION, BOARD OF—MAY PAY FOR SCHOOL LUNCH-  
ROOM EQUIPMENT—RANGES, REFRIGERATORS, MIXERS,  
DISHES, ETC., OUT OF CAFETERIA FUND—SECTION  
4839-6 G. C.

SYLLABUS:

A board of education may, pursuant to Section 4839-6, General Code, pay for school lunchroom equipment, such as ranges, refrigerators, mixers, dishes, etc., out of the cafeteria fund.

Columbus, Ohio, October 6, 1949

Hon. Stanley N. Husted, Prosecuting Attorney  
Clark County, Springfield, Ohio

Dear Sir:

Your letter requesting my opinion reads as follows:

"Section 4839-6 of the General Code provides that a Board of Education may provide facilities in the schools under its control for the preparation and serving of lunches.

"Under the above section each of the eleven boards of education of the Clark County School District has operated school lunches in one or more schools. All expenses of operation have been paid from a cafeteria fund, the resources for which come from payments made for lunches, federal subsidies, and some miscellaneous receipts. While the above section provides for payment for equipment from the general fund, this has not been done because there was insufficient money in that fund for that purpose. Each board has had some surplus in the cafeteria fund above the cost of operation and has used this surplus for purchase of equipment.

"I would appreciate your interpretation of the above section as it applies to this question: Can a board of education pay for school lunch room equipment such as ranges, refrigerators, mixers, dishes, etc., out of the cafeteria fund?"

Boards of education are creatures of statute and as such have only those powers specifically granted to them by law or such as may necessarily be implied therefrom.

Section 4839-6 of the General Code provides that:

"The board of education of any city, exempted village or local school district may provide facilities in the schools under its control for the preparation and serving of lunches, and other meals or refreshments to the pupils, the teachers, and to other employees therein, and to other persons taking part in or patronizing any activity in connection with the schools, and may provide the management of such lunchrooms, which facilities shall not be operated for profit; provided that the privileges and facilities granted hereunder by any board of education shall apply to all pupils and teachers and no restrictions or limitations shall operate against any such pupil or teacher in the use of such facilities except for reasons applicable to all alike.

"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 uniform school supplies, 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 uniform school supplies, 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 articles, except when the profit derived from such sale is to be used for school purposes or for any activity in connection with the school.

“Uniform school supplies shall be those adopted by the board of education for use in the schools of the district.

“The enforcement of this law will be under the jurisdiction of the state department of education.

“A board of education shall provide rotary funds for the operation of lunch rooms and for the purchase and sale of uniform school supplies either by appropriations from the general fund or accumulation from sales or receipts. Each such fund shall be kept separate from other transactions of the board.

“The board of education may also make provision by appropriations out of the general fund of the district or otherwise for serving free lunches to such children as it may determine are in need thereof.”

In 36 O. Jur. at page 223, it is said:

“Formerly, it was held that there was no authority for a board of education to operate, either directly or indirectly, the business of buying food supplies, preparing them for food, and serving them to pupils in the public schools. Although it could provide a place to eat and utensils for the use of pupils in domestic science, its authority went no further, and it could not use such equipment for conducting a private business. However, such action by the board would not be enjoined if the results proved beneficial to the children and if no public interests were impaired. The state now expressly empowers boards of education to provide, control, and operate lunch rooms which are open to all pupils and teachers without restriction or limitation to any and which are not for profit. \* \* \*.”

It can readily be seen that the various changes in the school law, so far as the same relates to the school lunch program, tends to broaden the powers of school boards, thus evidencing a more liberal, modern and forward-looking policy.

In 36 O. Jur., at page 137, it is said:

“\* \* \* The school laws must be liberally construed in order to carry out their evident policies and conserve the interests of the school youth of the state. \* \* \*”

The question presented evolves around the meaning of the word "profit." In *Words and Phrases*, Vol. 34, at page 215, it is said:

"'Profits' may be defined as the arithmetical excess of the price received over the total of all costs to the seller, and accordingly profits cannot be computed until the total of costs is determined."

Section 4839-6, General Code, *supra*, became effective September 16, 1943. Since its adoption the federal government passed a law entitled *The National School Lunch Act* (Public Law 396, 79th Congress, approved June 4, 1946) whereby the states, acting through their department of education, would be given assistance in carrying out their school lunch program. The General Assembly of Ohio, since the enactment of the federal law, has never seen fit to adopt a specific law authorizing the state department of education to cooperate with the federal government in regard to such program, however, it has in its Appropriation Acts of 1947, 1948 and 1949 established within the department of education a fund entitled "Rotary" Public School Lunch—Federal. In Section 2 of each of said Appropriation Acts the legislature has used the following language:

"All revenues received from the federal government by the State of Ohio, or any of its departments or divisions, and any receipts or any collections made for or on behalf of the United States government, are hereby appropriated for the purpose for which allotted or collected."

By virtue of Section 4839-6, General Code, *supra*, and the Appropriation Acts, *supra*, there has been established within the department of education a division known as the School Lunch, through which the State of Ohio cooperates with the federal government, thus giving full impetus to the National School Lunch Act.

It is noted in your letter you state that the moneys in your cafeteria fund came from federal subsidies, school lunches and miscellaneous receipts, indicating, of course, that none came from the general fund.

It must be noted that Section 4839-6, *supra*, provides for the establishment of a rotary fund for the operation of lunch rooms, said fund to be replenished either from the general fund or from the accumulation from sales or receipts. It is obvious that in the original establishment of a school lunch the initial costs for operating same would, however,

come from the general fund and that, thereafter, the rotary fund would have two sources from which moneys could be obtained.

Since your schools are cooperating with the federal government through the state department of education, it becomes necessary to look to the agreements and contracts entered into by and between your schools and the state department of education. I have before me a copy of such agreement, SL-12, dated August 1, 1949, wherein the term "non-profit programs" is defined as:

"School Lunch Programs in such named schools shall be operated on a non-profit basis. All funds accruing from the operation of the program in such schools shall be used only in reducing the price of meals to paying children, in improving the quality of the meals, and for the purchase and maintenance of supplies, services and equipment used in storing, preparing, or serving meals to children."

In view of the foregoing, it is therefore my opinion that a board of education may, pursuant to Section 4839-6, General Code, pay for school lunchroom equipment, such as ranges, refrigerators, mixers, dishes, etc., out of the cafeteria fund.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.