

Note from the Attorney General's Office:

1938 Op. Att'y Gen. No. 38-3546 was overruled by
1962 Op. Att'y Gen. No. 62-3438.

sary provisions and arrangements to place the workbooks, along with the textbooks, within easy reach of and accessible to all pupils in the district. In a city school district having a director of schools, such director would be the custodian of the workbooks that were to be furnished free to the pupils, along with the textbooks. In the school districts not having a director of schools, the superintendent and board of education would be the custodian of the workbooks that were to be furnished free to the pupils, along with the textbooks, and they would be charged with the same duty of keeping account and maintaining records in regard to such workbooks as is imposed upon them in regard to textbooks, by virtue of the provisions of Section 7713, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3546.

BOARD OF EDUCATION—LEGALITY IN EXPENDITURE—FUNDS — CHARGES — INSTRUMENTAL MUSIC, TEACHING — FEE — BAND INSTRUMENTS — GIFT — SUPPLIES, PADLOCK AND KEY, LOCKER, MAGAZINE FUND, PAPER, PENCILS, SUPPLIES FOR INDIGENT PUPILS, BOOKS, PICTURES, FILM RENTALS, PRIZES, PLAYGROUND EQUIPMENT, ETC.

SYLLABUS:

1. *A board of education has authority to adopt the teaching of instrumental music, as a graded course of study in its schools, and to furnish to its pupils the instruments necessary for use in such instrumental course of study. If a board of education adopts instrumental music as a graded course of study in the schools, it has authority to accept as a gift, the band instruments from a band association for the use of the pupils and thereafter purchase all musical instruments and supplies for the pupils at the cost of the board of education. The board may also provide for practicing and playing in the school band as part of the work of such instrumental musical course.*

2. *A board of education does not have authority to charge a pupil a fee for a padlock that has been installed on the locker that was assigned to the pupil. However, the board of education may require a deposit from the pupil in order to insure the return of the key and padlock upon discontinuing the use of the locker by the pupil. If such deposit is required, it would have to be returned to the pupil, if, upon discontinuance of the*

use of the locker by the pupil, the padlock and key are returned to the school. Any of such deposits of money that have been forfeited by reason of the pupil's loss or destruction of the padlock or key, could then be used by the board of education for replacing the padlock.

3. *Pupils may agree among themselves voluntarily to pay to the teacher of their class a certain amount of money that is to be turned over to the teacher for the purpose of the teacher subscribing to a magazine, that is to be used in the class by the contributing pupils not as a part of the required work in a course of study, but as an aid in a required course of study.*

4. *A manual arts teacher may agree with the pupils in the manual arts department that such pupils pay to the teacher a certain amount of money to be placed in a fund of which the teacher is to be the custodian, and from which fund the teacher is authorized by the pupils to purchase a sufficient quantity of paper and pencils that will be necessary for the contributing pupils to use during the year.*

5. *A board of education is not authorized to purchase paper and pencils for the pupils in the manual arts department and appoint the manual arts teacher as an agent of the board to sell such paper and pencils to the pupils, collect therefor, and return the money to the board of education.*

6. *All disbursements of money by the board of education must be made in the manner prescribed by Section 4768, General Code. A board of education cannot set up a revolving petty cash fund to take care of the purchase of incidental material that must be furnished by the board of education in order to carry on the work in certain classes.*

7. *The pupils in an elementary school have the right to agree among themselves to contribute a certain amount of money which is to be placed in a common fund in the custody of the superintendent, and the money from such fund is to be expended by the principals of the school for the purchase of materials for the building that are not supplied by the board of education, and for class work and for supplies for indigent pupils, assembly talent, library books, pictures, film rentals, playground equipment, spelling prizes, etc.*

COLUMBUS, OHIO, January 9, 1939.

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

GENTLEMEN: This will acknowledge receipt of your communication which reads as follows:

"We are setting out below the practices followed by a certain city school board of education, over a period of years, and respectfully request your written opinion as to the legality of

the procedures and expenditure of funds, as indicated in the questions following the cases cited:

1. The high school band is an institution in the public schools which has grown into an outstanding organization because of the interest displayed by the parents and friends of the band. Several years ago, the board of education appropriated approximately \$1,000 for the purchase of band instruments. From that time until within the past year, the band has been practically self-supporting, purchasing its own music, instruments, etc. At present it has approximately \$5,000 worth of instruments, all of which have been purchased by money paid into the association in the form of rental fees, etc. In order to maintain the principle of rental of instruments, it will be necessary to continue charging a fee of \$1.00 per month to those who would like to rent instruments. It is proposed that the band association turn all of the instruments over to the board of education which will hereafter purchase all instruments and supplies for the band.

Question: May a board of education charge a rental fee of \$1.00 per month for band instruments loaned to pupils, the money to be paid directly to the board of education?

2. Quite a few years ago, the board of education purchased several hundred dollars worth of padlocks to be used on student hall lockers. Since that time many more lockers have been added to the building, so that at the present time there are approximately twenty-eight hundred lockers to be padlocked. In order to continue the renewing of these padlocks, a fee of 25 cents has been charged to pupils for the use of two locks, one for the hall lockers and one for the gym locker. This money has been placed in a separate fund in the principal's office. Two or three hundred dollars is spent annually for the purchase of new locks. The balance of the money is used for the high school assembly talent.

Question: Can the school continue to charge this fee of 25c, the money to be placed in this separate fund and administered as indicated above?

3. A class of pupils decides to subscribe for magazines at the suggestion of the teacher for use in Social Science classes. Instead of having each pupil in the class purchase a subscription to the magazine, it is decided to assess each pupil 25c and take two subscriptions in common.

Question: May the teacher collect this 25c fee, the total amount of which is paid directly to the company for the convenience and economy to the members of the class?

4. On account of limited space in the Manual Arts Department, it is impossible to provide one hundred or more paper cabinets for the filing of personal drawing paper. The teacher buys a sufficient quantity for the use of the members of the class for the entire year. The charge made for same is only enough to cover the cost of the paper and pencils. The money is placed in a separate activities fund which becomes a revolving fund and is used for the same purchase each year.

Question: May the manual arts teacher make such assessment to every member of the class, and place the money in an activities fund?

Alternate Question: May a manual arts teacher act as agent for the board of education to collect money for such paper and pencils, the money to be returned to the board of education for the cost of the material?

5. The manual arts and science classes, on many occasions, need to purchase small incidental material for carrying on the work in their departments.

Question: May the board of education set up a revolving petty cash fund to take care of the purchase of such incidental materials, providing statements are filed with the board of education for the complete expenditure of the money set aside for that purpose, such expenditures to be made by the teacher?

6. The art teacher has a special class in the making of craft materials. The board of education purchases the raw materials and metal, etc., to be placed in the Art Department.

Question: May the teacher act as agent for the board of education to sell this material to pupils and return the money to the board?

7. Pupils in the elementary schools are asked to contribute 20c per semester to an elementary fund to be used for materials purchased for their building for their class work, which materials are not normally supplied by the board of education. This money is used to buy supplies for indigent pupils, take care of assembly talent, purchase library books, buy pictures, pay for motion picture film rentals, buy spelling prizes, buy playground equipment, etc. The money is spent by the elementary principals and the balance of it is put in a common fund in the superintendent's office to be used if and when needed.

Question: May such a contribution be received from elementary pupils who feel they can afford to pay the fee?"

In an opinion appearing in Opinions of the Attorney General for 1930, Vol. I, page 216, it was held as follows:

“Where a course of study in instrumental music is prescribed, a board of education has authority to provide the means of instruction in that course of study and may purchase necessary instruments for that purpose.”

In the body of the opinion, at page 218, it was stated as follows:

“It must be conceded that there is no express authority for a board of education to purchase instruments for the teaching of instrumental music. In my opinion, however, the power to prescribe a course of study in instrumental music carries with it the authority to provide the means to carry the power into effect.”

It is obvious from a reading of the 1930 opinions, *supra*, that a board of education has authority to adopt the teaching of instrumental music as a graded course of study in its schools; and that the board also has authority to provide the necessary instruments for such course of study.

If the board of education adopts the teaching of instrumental music as a graded course of study and furnishes the instruments to the pupils, it would not have any authority to charge a rental fee to a pupil for the use of the apparatus, that is, the band instrument. Under such circumstances a board of education would not have any more authority to charge a rental to pupils for the instruments necessary to carry on such a prescribed course of instrumental music than it would have to charge a rental to pupils for the use of stoves in the domestic science department, or tubes, tables, etc., in its chemistry or physics laboratory.

It is true that a board of education can require a reasonable deposit or fee to cover any loss in case of destruction or breakage. However, no charge can be made for the use of any apparatus owned by the board of education and used by pupils. This proposition of law was discussed in an opinion appearing in Opinions of the Attorney General for the year 1927, Vol. II, page 1157, wherein, at page 1159, it was held as follows:

“In view of the fact that such laboratory fees have been exacted by the school authorities for many years without question, I am of the opinion that a board of education may in its discretion, under the authority of Section 4750, of the General Code, prescribe rules requiring pupils in the public schools to pay reasonable incidental fees to cover the use of material and the breakage of test tubes, etc., used in laboratory work. Such

rules must be reasonable and not such as to exact tuition fees under the guise of more incidental fees. No charge, however, can be made for the use of any apparatus owned or used by the board of education."

It therefore must be said:—that, the board of education has authority to accept as a gift, the band instruments from the band association for the use of the pupils, and thereafter purchase all musical instruments and supplies for the pupils at the cost of the board of education only in the event that the board of education adopts instrumental music as a graded course of study; that the board of education cannot charge a rental fee for musical instruments loaned or used by the pupils; and that the board can provide for practice and playing in a school band as part of the work of such instrumental musical course.

From your second question, I assume that the lockers referred to, have been installed as necessary equipment for the use of the pupils. It is within the authority of the board of education to furnish lockers. It is evident that a lock on a locker is a very necessary part of the locker, and therefore, it would also be within the authority of the board of education to furnish padlocks for the lockers.

The communication states that the twenty-five cents that is collected from the pupils is for the purpose of renewing the padlocks. The board of education does not have any authority to charge the pupils for the padlock on the locker that is assigned to the pupil. Neither does it have any authority to charge the pupil for a padlock, if, through no fault of the pupils, it is necessary to replace it with a new one. However, the board of education as a matter of discipline would have authority to require a deposit for the safety of the key and the padlock. Such a deposit would have to be restored to the pupil if, upon discontinuance of the use of the locker by the pupil, the padlock and key had not been destroyed or lost. Any of the twenty-five cents deposits that had been forfeited by reason of the pupil's loss or destruction of the padlock or key could then be used for replacing padlocks.

I assume from reading your third question that the reading of the magazine referred to, is not part of the work prescribed for the course in social science; that at the teacher's suggestion it is used in conjunction with the study of social science and the contributions and subscriptions for the same are a matter of agreement between pupils in the class and the teacher. There would be no objection for the pupils to agree among themselves for each to pay a certain amount to one of their number who would subscribe for the magazine and the magazine be used for their common benefit. There is no prohibition against the teacher acting in the

capacity of agent or collecting a voluntary 25c fee from each pupil in the class and subscribing for the magazine to be used by the pupils in the class.

The fourth question does not state the source from which the money came that was used to purchase the paper and pencils in the first instance.

In the first branch of the syllabus of the case of *Parker vs. Board of Education*, 9 Decisions Reprint, page 335, it was held as follows:

“A board of education has no authority to purchase material, such as copy books, ink, etc., for free distribution among pupils without regard to the ability of parents to provide them.”

It must be assumed that since the board of education is not authorized to purchase paper and pencils for the pupils, that the money with which the teacher purchased the pencils and paper in the first instance came from either the teacher, personally, or the pupils collectively. Although the teacher has no authority to require each pupil in the manual arts department to pay a certain amount to cover the cost of paper and pencils that will be used by the pupil during the entire year, there is nothing in the law to prevent each pupil in the manual arts department paying a certain amount to the manual arts teacher, and the money paid the teacher placed in an activities fund of which fund the teacher is custodian and authorized by the pupils to buy a sufficient quantity of paper and pencils for the use of the contributing pupils in the manual arts department.

Since each pupil has the privilege of buying his or her own pencils and paper, a teacher would not have any authority to make an assessment of every member of the class and place the money in the activities fund to be expended for paper and pencils to be distributed to, and paid by the pupils. Payment by the pupil to the teacher is entirely discretionary on the part of the pupil.

I assume that the alternate question in your fourth question has reference to a situation where the board of education purchases the paper and pencils and appoints the manual arts teacher to act as an agent for the board in selling such paper and pencils to the pupils, collecting therefor, and returning the money to the board.

In such case the board of education would be purchasing the paper and pencils and expending money from the school treasurer on the assumption that said money would be returned by the sales which might be made to pupils.

It was said in an opinion appearing in *Opinions of the Attorney General for 1918*, Vol. 1, at page 497: “A board of education is not authorized to invest funds at its disposal.”

Payment by the board of education for paper and pencils would require an expenditure from the school treasury. It is a well known rule

of law that money cannot be expended from public funds without authority of law, even if the money expended is to be returned at a later date. It therefore must be said that a board of education is not authorized to purchase paper and pencils for the pupils in the manual arts department and to appoint a manual arts teacher to act as agent for the board in selling such paper and pencils to the pupils and collecting therefor and returning the money to the board.

Section 4768, General Code, provides that disbursements of the board of education shall be made in the following manner :

“No treasurer of a school district shall pay out any school money except on an order signed by the president, vice president, or director of schools in school districts having a director of schools and countersigned by the clerk of the board of education, and when such school moneys have been deposited as provided by 7604 to 7609, inclusive, no money shall be withdrawn from any such depository, except upon an order signed by the treasurer and by the president, vice president, or director of schools in school districts having a director of schools and countersigned by the clerk of the board of education ; and no money shall be paid to the treasurer of the district other than that received from the county treasurer, except upon the order of the clerk of the board, who shall report the amount of such miscellaneous receipts to the county auditor each year immediately preceding such treasurer’s settlement with the auditor.”

It is mandatory that all disbursements of money must be made in the manner prescribed by Section 4768, General Code.

In an opinion appearing in Opinions of the Attorney General for the year 1922, Volume 1, page 157, the facts were that, the director of schools in the City of Cleveland, maintained a so-called “petty cash fund.” All kinds of bills were paid from this fund, then the amount paid in a lump sum was presented to the board of education and a warrant issued for the amount presented, the warrant cashed and deposited in the petty cash fund. It was held in the third branch of the syllabus of that opinion, as follows :

“Placing cash in the hands of an officer or employe of a city board of education other than the treasurer, out of which to pay claims against the board before or after such claims are properly approved, is unauthorized and illegal.”

It is evident that the 1922 Opinion is responsive to your fifth question, and that a board of education cannot set up a revolving petty cash

fund to take care of the purchase of incidental matters, and have the teacher purchase the incidental material for his or her department.

The Alternate Question in No. 4, is identical to the question in No. 6. Therefore, the answer will not be reiterated.

One must assume from the seventh question that, if the materials purchased for the building and for class work are such as are not normally supplied by the board of education, they are materials which must be furnished by the pupils, or, which the pupils have the right to supply if they so desire. The contribution is wholly voluntary so far as the pupils are concerned. It is placed in a fund which is in the custody of the superintendent and the money is expended by the principals for the purposes for which the pupils intended that their contributions be spent. In other words, by the pupils contribution to the fund they designate the purposes for which the money is to be expended. In regard to the fund, the superintendent acts merely as an agent for the pupils in the capacity of a custodian; the principals act as the agents of the pupils in expending the money for the purposes designated by the pupils. In doing this, the principals and superintendent are violating no law.

The pupils of an elementary school have an unrestricted right to agree among themselves to contribute a certain amount to be placed in a common fund and expended by anyone they may select for the purpose for which the contributions were made. In effect, this is exactly what the pupils have done herein, except that they have designated the superintendent and principals as their agents. It is my opinion that such contributions may be received from the pupils who desire to contribute in the manner set forth in your request.

Therefore, in specific answer to your questions it is my opinion that:

1. A board of education can not charge a rental fee of \$1.00 per month for band instruments loaned to pupils, the money to be paid directly to the board of education.

2. A board of education does not have any authority to charge a fee of twenty-five cents to pupils for the use of two padlocks, and place the money in a separate fund to be expended for the purchase of new locks and high school assembly talent.

3. A teacher may collect a contribution from the pupils in the social science class who desire to voluntarily contribute to a fund that is placed in the hands of the teacher of the class for the purpose of the teacher subscribing to a magazine that is to be used in the class by the contributing pupils.

4. A teacher may collect a certain amount from such pupils in the manual arts department that desire that this money be turned over to

the teacher and placed in an activities fund from which fund the teacher is to purchase paper and materials for the use of the contributing pupils in the manual arts department.

5. A board of education is not authorized to purchase paper and pencils for the pupils in the manual arts department and appoint the manual arts teacher as an agent of the board, to sell such paper and pencils to the pupils, collect therefor, and return the money to the board of education.

6. A board of education is not authorized to set up a revolving petty cash fund, to take care of the purchase of incidental material that may be needed in carrying on the work in the manual arts and science classes.

7. The pupils in an elementary school have a right to agree among themselves to contribute a certain amount of money which is to be placed in a common fund in the custody of the superintendent, and the money from such fund is to be expended by the principals of the school for the purchase of materials for the building that are not supplied by the board of education and for class work and for supplies for indigent pupils, assembly talent, library books, pictures, film rentals, playground equipment, spelling prizes, etc.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3547.

APPROVAL, NOTES, CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$50,000.00, DATED SEPTEMBER 1, 1938.

COLUMBUS, OHIO, January 9, 1939.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Notes of City of Akron, Summit County, Ohio,
\$50,000.00.

I have examined the transcript of proceedings relative to the above notes purchased by you. These notes comprise part of an issue of poor relief notes in the aggregate amount of \$135,000.00, dated September 1, 1938, bearing interest at the rate of 3½% per annum.