

upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

3489.

BOARD OF EDUCATION—CITY SCHOOL DISTRICT—NO AUTHORITY TO MAINTAIN DEPARTMENT OF PUBLICITY AT PUBLIC EXPENSE—NO AUTHORITY TO PAY FOR PUBLICATION BOOKS AND PAMPHLETS SUCH AS “SCHOOL TOPICS,” “CLEVELAND SCHOOL DIRECTORY,” “GIVE YOURSELF A FAIR START,” ETC.

*SYLLABUS:*

1. *A board of education of a city school district does not have authority to maintain a Department of Publicity at public expense, for the schools under its control.*

2. *A board of education does not have authority to pay for the publication of books and pamphlets such as the following: (a) “Illustrated Courses of Study for Junior and Senior High Schools”; (b) “School Topics”, a publication for teachers; (c) “Give Yourself a Fair Start”, an illustrated brochure on the advantages of a high school education; (d) “Cleveland School Directory”; and (e) “Cleveland Schools and Your Dollar”, a pamphlet of information relating to the schools, to be distributed to the parents of the pupils.*

COLUMBUS, OHIO, January 3, 1939.

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

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

“May we respectfully request your opinion upon the following questions:

1. Does a board of education of a city school district have authority to maintain a department of publicity for the schools under its control?

(The various duties and services performed by this department are designated in the enclosed report.)

1a In this connection, does a board of education have

authority to pay for the publication of books and pamphlets, such as the following:

- (a) "Illustrated Courses of Study for Junior and Senior High Schools."
- (b) "School Topics", a publication for teachers.
- (c) "Give Yourself a Fair Start", an illustrated brochure on the advantages of a high school education.
- (d) "Cleveland School Directory" (Sample enclosed).
- (e) "Cleveland Schools and Your Dollar", a pamphlet of information relating to the schools to be distributed to the parents of the pupils."

There was attached to your communication a "Report on Work of the Department of Publicity, Board of Education, Dayton, Ohio", to illustrate the type of work that the publicity department of a board of education performs.

This report sets forth in minute detail the duties of the Department of Publicity, and its accomplishments. It states that "the chief responsibility of such a department in any public school system, is to interpret the schools to the community." It serves as a clearing house for gathering news and information relating to the various activities carried on in the schools, and is responsible for giving out the collected news and information to the newspapers. Much stress is placed on the usefulness of this department in conducting intensive campaigns for the purpose of arousing public interest before elections in favor of the issuance of bonds and local school levies. The department takes the credit for being responsible for securing "approximately 5,000 column inches, or thirty pages the size of the average daily newspaper, of publicity in three daily newspapers." It sets forth the type of articles cleared through this department, as consisting of:

"\* \* special stories concerning the Board of Education, dedications of new buildings, stories pertaining to classroom work or new features affecting all schools, classroom work in individual schools, cooperation of the schools with the civic programs, commencement, activities of teacher organizations, conventions, professional growth of the teaching staff, outstanding information relating to teachers and pupils, biographical sketches of those who retire or die."

It sets forth the following publications which the director of publicity prepared: "School Progress", "Annual Report of the Superintendent", "Annual Report of the Board of Education", "Teachers' Directory", "What the Dayton High Schools Offer You".

The other duties of the Director of Publicity are, Executive Secretary for (1) campaign levies and bond issues, (2) publicity for arrangements for convention of Central Teachers' Association, (3) for Junior Citizens League, (4) for Junior High School Honor Board.

The report further contains a list of the activities of the department in securing radio programs; of its activities in various civic affairs and in the affairs of the activities of the various school organizations, which are mostly social.

The exclusive control and management of the public schools of Ohio is placed in the General Assembly, by virtue of Article VI, Sections 2 and 3 of the Constitution of the State of Ohio, which provide in part, as follows:

“The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; \* \* ”

Section 3:

“Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds; \* \* ”

Therefore, the authority of the board of education is derived solely from statute, both duties and authority being clearly defined by legislation.

In the case of *Perkins, et al., Board of Education vs. Bright, et al., Taxpayer*, 109 O. S., 14, it was held:

“Boards of education are creations of statute, and their duties and authority are marked by legislation.”

It is a well established rule of law that the powers of a board of education are limited strictly to such powers as are expressly granted or clearly implied, as evidenced by the following cases:

*Board of Education vs. Best*, 32 O. S., 138, at 152:

“The authority of boards of education, like that of municipal councils, is strictly limited. They both have only such powers as is expressly granted or clearly implied, and doubtful claims as to mode of exercising the powers vested in them are resolved against them.”

*Schwing vs. McClure*, 120 O. S., 335:

“Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given.”

It is an equally well established principle of law that if the authority of a board of education to act is doubtful, the doubt is resolved against the exercise of its authority. This principle of law has been enunciated by the Supreme Court in the following cases:

*State, ex rel. Locher, vs. Menning*, 95 O. S., 97, at 99:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited power, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

*State, ex rel. A. Bentley & Sons Co., vs. Pierce, Auditor*, 96 O. S., 44:

“In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

The duties and powers delegated and granted to a board of education appear in the following statutes:

Section 7690, General Code, reads in part, as follows:

“Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries.”

Sections 4749 and 7620, General Code, read as follows:

Sec. 4749.

*“The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state.”* (Italics, the writer’s.)

Sec. 7620.

“The board of education of a district may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control. *It also shall provide fuel for the schools, build and keep in good repair fences enclosing such school houses, when deemed desirable plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.*” (Italics, the writer’s).

It is evident from a reading of the foregoing statutes that express authority is not conferred on a board of education to maintain a publicity department. It is just as evident that the maintenance of a publicity department by a board of education which collects news and information concerning school activities to be given to newspapers, publishes various publications and takes part in the activities of various civic and school organizations, is not necessary for the carrying out of any of the powers and privileges conferred upon a board of education in Sections 4749 and 7690, *supra*, nor is it necessary for carrying out the duties of the board of education in building or enlarging or repairing or furnishing schoolhouses, or in purchasing or leasing sites or renting suitable schoolrooms or providing necessary apparatus and fuel for the schools, or keeping in repair fences, or planting shade and ornamental trees, as provided for in Section 7620, *supra*.

It then remains to be determined whether or not the maintaining of a publicity department by the board of education is necessary in order to “make all other necessary provisions for the schools under its control”,

or "to make all other provisions necessary for the convenience and prosperity of the schools."

The two aforesaid quoted clauses in Section 7620, supra, were construed and interpreted in an opinion appearing in Opinions of the Attorney General for 1918, Vol. I, page 742, wherein, after quoting Section 7620, General Code, at page 744 it was stated:

"The maxim expressio unius est exclusio alterius, that is, the expression of one is the exclusion of the other, must be applied to matters of this kind, and applying the same to the first provision mentioned in 7620, that the board of education make make all other necessary provisions for the schools under its control means the necessary arrangements to carry out the objects of building, enlarging, repairing and furnishing the necessary school houses or purchasing or leasing real estate to be used as playgrounds for children, or the renting of suitable school rooms and providing the necessary apparatus therefor, and the doing of all things incident to the carrying out of the above purpose, but not to add new purposes thereto, such as building a central community building. And so the making of all provisions necessary for the convenience and prosperity of the schools within the subdistrict means doing those things which are incident to the providing of fuel for schools, the building and keeping in repair of fences inclosing schoolhouses, the planting of shade and ornamental trees on school grounds, and the doing of the things incident to said purpose, but not to add new purposes such as building central community buildings. And so with the language in Section 7666, the making of all other necessary provisions relative to the high schools as the board deems proper, means that in the building, repairing, adding to and furnishing the necessary schoolhouses for high schools, or the purchasing or leasing of sites therefor, or renting suitable rooms therefor, the other provisions would be only those incidental to the carrying out of the above purposes and would not authorize the adding to of new purposes such as building central community buildings."

Also, these clauses were considered in an opinion appearing in Opinions of the Attorney General for 1935, Vol. I, page 677, wherein, at page 683, the following was stated:

"That clause of Section 7620, General Code, here under consideration, was incorporated in the statutes in almost pre-

cisely the same form that it now appears in said Section 7620, General Code, in 1873 (70 O. L., 195, Sec. 55.) If it had been intended that this was to be blanket authority for a board of education to do anything that might in the judgment of the board be conducive to the welfare of the schools or 'for the convenience and prosperity of the schools', regardless of its relation to physical requirements such as the providing of school rooms, playgrounds, fuel and school apparatus, and the planting of trees and the building of fences and similar things, it would not have been necessary to thereafter extend authority by statute to do any of the things which latter statutes authorize, such as the furnishing of free textbooks, the employment of school physicians and nurses, and dentists and dental hygienists, and a number of other grants of power that might be mentioned. In the same act of the legislature wherein this provision was first enacted (70 O. L., 195, Sec. 55), authority is granted to a board of education to contract with the board of an adjacent district for the admission of its resident pupils into the schools of the adjacent district. (70 O. L., 195, Sec. 64). This would have been entirely unnecessary if the blanket authority extended by the provision to make all other provisions necessary for the convenience and prosperity of the schools was broad enough to include everything the board in its discretion might think necessary, without regard to kind or character.

Even though municipalities are granted broad home rule powers under the Constitution, the Supreme Court of Ohio, in the case of *State ex rel. Thomas vs. Scemple*, 112 O. S., 559, held that the city of Cleveland did not have the power to expend public funds for membership in the 'Conference of Ohio Municipalities' especially in view of the fact that the charter of the city of Cleveland, broad as it is, did not either directly or indirectly sanction such an expenditure. The incidental benefits of such membership to the city of Cleveland would no doubt be as great, at least, as membership of a school district in 'The Ohio State Association of Boards of Education.'

In my opinion the proper construction of the clauses of Section 7620, General Code, empowering a board of education to 'make all necessary provisions for the schools under its control' and to 'make all other provisions necessary for the convenience and prosperity of the schools in the sub-districts' is that authority is extended thereby to boards of education to provide physical needs for the schools only, similar to schoolrooms and school apparatus, and fencing school lots, and planting shade

and ornamental trees thereon. Authority is not extended to a board of education by force of these provisions to expend public school funds for the payment of annual dues incident to membership in an association or organization such as 'The Ohio State Association of Boards of Education'."

From the conclusions reached in the 1918 and 1935 opinions, *supra*, it must be said that the clauses to "make all necessary provisions for the schools under its control" and to "make all other provisions necessary for the convenience and prosperity of the schools in the subdistricts", are limited to the doing of things incident to the purpose of building, or enlarging, or repairing, or furnishing schoolhouses, purchasing or leasing sites therefor, purchasing or leasing real estate to be used as playgrounds for children, or renting suitable rooms, or providing necessary apparatus or fuel for the schools, or building or keeping in repair fences, or planting shade or ornamental trees on the school grounds; that the authority to provide "purposes incident", is restricted to providing for physical needs for the school; and that therefore, it must be held that a department of publicity cannot be classified as a physical need for the schools.

I am herewith setting forth a group of rulings by former attorneys general, wherein there was in question the legality of expenditures by the board of education similar to the expenditure of the maintaining of a publicity department.

In an opinion appearing in Opinions of the Attorney General for 1920, Vol. II, page 915, it was held:

"Boards of education are without authority to expend public funds in printing and mailing to each taxpayer literature and advertising matter in favor of any proposition to be voted upon by the electors at an election called by such board of education."

It is only logical to say that if it is illegal for a board of education to expend public funds in printing literature to distribute among all the electors in favor of a certain proposition for the reason that such funds which had been collected from all taxpayers would be helping to put across a proposition to which some taxpayers were opposed, it is equally as illegal for a publicity department to be maintained by the board of education, which has as one of its main purposes, the doing of exactly the same thing—arousing public opinion in favor of a bond issue or levy.

In Opinions of the Attorney General for 1927, Vol. I, page 218, it was held:



"1. There is no legal authority for boards of education to employ and pay persons to act in the capacity of business manager or financial agents for such boards of education.

4. An assistant superintendent of schools cannot be employed for the purpose of acting as financial adviser or business manager for the several local boards of education."

It must be observed that a board of education would have no greater authority in employing a Director of Publicity to take charge of the Publicity Department than it has to employ a business manager.

In Annual Reports of the Attorney General for 1911-1912, page 272, it was held:

"A city school district is not authorized to pay for publication in a newspaper of a statement of receipts and expenditures for the year."

In order to facilitate the answer to question 1-a, in the communication, you submitted one copy of "School Topics" published in each of the years 1920, 1929, 1930 and 1932; also copy of "Cleveland School Directory" and "Cleveland Schools and Your Dollar." Upon examination of "School Topics", I find that it is as stated at the top of page 2, in the editorial column, "An Official publication of the Cleveland Public Schools, issued fortnightly during the school year by the Board of Education." It contains articles relating to subjects of interest to those connected with schools, as well as items of notice of meetings and lectures to be held in the schools, etc.

The question of the authority of a board of education to pay for the publication of a school paper was presented in an opinion appearing in Opinions of the Attorney General for the year 1928, Volume I, page 612, wherein it was held:

"There is no authority for a board of education to pay for the publication of a school paper. Such paper may, however, be published as a part of the activities of a trade school maintained by a board of education."

Upon consideration of that opinion, I concur in the conclusion reached therein.

The Cleveland School Directory sets forth the various departments in the schools of Cleveland, location of all schools in the city with the telephone numbers of each school, how each school can be reached on the street car, the address and telephone numbers of the principal and custodian of each school, rules of the board of education, etc.

In an opinion appearing in Opinions of the Attorney General of the year 1932, Volume I, page 178, it was held :

“A county board of education is without authority to pay from school funds for the publication of a directory of teachers within the school district.”

The 1932 opinion wholly negatives any authority of a board of education to print a school directory.

“Cleveland Schools and Your Dollar” is a booklet containing twenty-three pages, and contains a discussion as to how the schools are financed, the source of revenue in 1937, school tax rates, school’s share of taxes, school enrollment, total expenditures for 1936-1937, local tax levies, property valuation, bonded debt, number of pupils per teacher, building program, projects under the W. P. A., and a picture of the new school building which was the result of a W. P. A. project, the number of persons attending night school, total current expenditures, a chart of enrollment, comparison for 1927-1933-1937, and various other facts concerning the schools.

In an opinion appearing in Opinions of the Attorney General for the year 1927, Vol. II, page 969, there was presented the question of the authority of the board of health of the city of Hamilton to publish a four page bulletin which contained a tabulation of infectious and contagious diseases reported, the nurse’s report, sanitary report, report of food and milk inspection department, report of food condemned and destroyed, report of milk inspection, district physicians’ report, and various recommendations of the department. It was held in the syllabus of that opinion, as follows :

“A city board of health may not legally expend its funds to pay the cost of printing and distributing to the public a quarterly or other periodical report showing the activities of the board of health.”

In an opinion appearing in Opinions of the Attorney General for the year 1932, Volume I, page 91, it was held as follows, in the third branch of the syllabus :

“A board of education is without authority to publish, at public expense, superintendents’ bulletin or other reports with reference to the activities of the schools under their jurisdiction.”

The 1927 and 1932 opinions show that this office has consistently held that without any statutory authority, an administrative board is not authorized to publish bulletins of the reports of the activities of the board or reports of any of the officers or employes of the board.

Although you did not submit a copy of "Give Yourself a Fair Start", I assume that this is a booklet published for the pupils attending the school, which contains information concerning the school and the advantages of the school and the courses offered therein.

In an opinion appearing in Opinions of the Attorney General for the year 1925, Vol. I, page 34, we find that the question involved therein, was the authority of the board of education to publish a book for the benefit of the pupils of the ninth grade who were finding mathematics hard. It was held therein :

"A board of education is without authority to use school funds to publish a book entitled 'Industrial Mathematics First Half of Ninth Year', as submitted with your communication and described as 'A course designed for pupils who are finding difficulty with the regular course in mathematics for the ninth year', and is without authority to adopt or cause such a book to be used."

An examination of "School Topics", "Cleveland School Directory" and "Cleveland Schools and Your Dollar", shows that the real purpose of the bulletins is the giving of information to the pupils and public and really conducting a campaign of advertising the schools to the public. It is evident that the same proposition of law, that there must be statutory authority either express or implied, in order to justify the expenditure by the board of education for advertising, and the same Attorneys Generals' rulings and court decisions that have been cited hereinabove in regard to the authority of a board of education to maintain a publicity department, are applicable in the cases of publishing the bulletins here in question; and that, therefore, if no statutory authority exists for such expenditures, they can not be justified, regardless of how commendable the giving of such information to the public, as set forth in the bulletins, may be,

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

1. A board of education of a city school district does not have authority to maintain a Department of Publicity at public expense, for the schools under its control.

2. A board of education does not have authority to pay for the publication of books and pamphlets such as the following: (a) "Illustrated Courses of Study for Junior and Senior High Schools"; (b) "School Topics", a publication for teachers; (c) "Give Yourself a Fair

Start", an illustrated brochure on the advantages of a high school education; (d) "Cleveland School Directory"; and (e) "Cleveland Schools and Your Dollar", a pamphlet of information relating to the schools, to be distributed to the parents of the pupils.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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3490.

A P P R O V A L — B O N D S, C H A M P I O N T O W N S H I P R U R A L  
S C H O O L D I S T R I C T, T R U M B U L L C O U N T Y, O H I O, D A T E D  
D E C E M B E R 1, 1 9 3 8.

COLUMBUS, OHIO, January 4, 1939.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of Champion Twp. Rural School Dist.,  
Trumbull County, Ohio, \$12,500.00 (Limited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school building bonds authorized under House Bill 850, dated December 1, 1938, bearing interest at the rate of  $3\frac{1}{2}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*