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AUTOMOBILES OR OTHER TRANSPORTATION EQUIPMENT — COUNTY BOARD OF EDUCATION MAY NOT LAWFULLY PURCHASE — USE, COUNTY SUPERINTENDENT OF SCHOOLS OR COUNTY ATTENDANCE OFFICER IN PERFORMANCE OF OFFICIAL DUTIES.

SYLLABUS:

A county board of education may not lawfully purchase automobiles or other transportation equipment for the use of the county superintendent of schools or county attendance officer in the performance of their official duties.

Columbus, Ohio, August 7, 1942.

Hon. A. Ross Siverling, Prosecuting Attorney,
Ashland, Ohio.

Dear Sir:

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

“Due to the tire rationing situation, neither the county superintendent of schools nor the attendance officer are eligible for tires. The County Board of Education is willing to purchase an automobile for the use of these officers and the board, providing such a purchase is legal by virtue of G.C. 4744-3a. Sections 7703 and 7769 compel these respective officers to travel to the various schools under their jurisdiction in the county for visitations and otherwise, and unless means of transportation are provided, these officers, it will be impossible for them to perform their duties. I have been informed that the purchase of an automobile will not violate any restriction on the amount the County Board may spend for the travel of their employees during a fiscal year.

QUESTION: May the County Board of Education purchase an automobile for the use of their employees whose duties compel travel to the various schools in their jurisdiction?”

In the consideration of questions of this character it is important to bear in mind the fundamental rule of law that administrative officers and boards derive their authority and power solely and exclusively from the

acts of the General Assembly, and that they have such powers only as are expressly granted to them by statute or those which may be said to be included therein as being necessary to carry out the express powers so granted .

These principles have oftentimes been stated and applied by the courts of Ohio and by this office. See:

State, ex rel. v. Menning, 95 O. S., 97;

State, ex rel. Bentley and Sons v. Pierce, 96 O. S., 44;

State, ex rel. Clarke v. Cook, 103 O. S., 465;

Schwing v. McClure, 120 O. S., 340;

Cleveland Board of Education v. Ferguson, 68 O. App., 514.

The only statutory authority for the expenditure of public funds for compensation and expenses of county superintendents of schools and county attendance officers is contained in Sections 4744-1 and 7769-1, of the General Code of Ohio. The pertinent provisions of these sections read as follows:

Section 4744-1.

The salary of the county superintendent shall be fixed by the county board of education to be not less than twelve hundred dollars per year, and shall be paid out of the county board of education fund on vouchers signed by the president of the county board. The county board may also allow the county superintendent a sum not exceeding three hundred dollars per annum for traveling expenses and may employ an efficient stenographer or clerk for such superintendent. * * * ”

Section 7769-1.

Every county board of education shall employ a county attendance officer, and may employ or appoint such assistants as the board may deem advisable. The compensation and necessary traveling expenses of such attendance officer and assistants shall be paid out of the county board of education fund. * * * ”

The questions involved in your inquiry resolve themselves into a determination of whether or not the power to purchase automobiles for the use of the county superintendent of schools and the county attendance officer is included within the provisions extended to the county board of

education to pay the expenses of the county superintendent and the attendance officer as provided in Sections 4744-1 and 7769-1, supra.

In the case of *State, ex rel. v. Commissioners of Mahoning County*, 10 O.C.C., (N.S.) 398, there was involved a question concerning the duty of the county commissioners to approve and order paid from county funds a bill of expense of the sheriff of Mahoning County in purchasing two buggies and a set of harness alleged to be necessary in the performance of his official duties. The applicable statute was Section 1296-29, Revised Statutes, now Section 2997, General Code, which provided that in addition to the compensation or salary paid to a sheriff, allowance should be made to him quarterly for keeping and feeding prisoners and for his actual and necessary expenses incurred or expended in pursuing and transporting prisoners and "all expenses of maintaining horses and vehicles necessary for the proper administration of his office." The court held that the expense of maintaining horses and vehicles did not include the original purchase, and said:

"If the legislature intended to have county commissioners supply sheriffs with horses, vehicles and harness, or to allow them the expense necessarily incurred in their purchase, it certainly would have so provided in unambiguous terms. Simple words only were necessary to make such a provision."

In an opinion rendered by the then Attorney General in 1913 (*Annual Report of the Attorney General for 1913*, page 1360), it was said:

"The county commissioners may not purchase an automobile for the county surveyor. The right of the county surveyor as a public officer to compensation, fees, allowances, etc., must depend on express legislative enactment or on necessary implication from the terms used. Since there is no statutory provision broad enough to authorize the commissioners to make this purchase, they are without authority to do it."

The statute under consideration in said opinion was Section 1181 of the Revised Statutes (now Section 2786, General Code), which dealt with office furnishings and equipment to be furnished the county surveyor. Said section read in part:

" * * * Such office shall also be furnished with all tools,, instruments and books, blanks and stationery necessary for the proper discharge of the official duties of the county surveyor. The cost and expense of such equipment shall be allowed and

paid from the general fund of the county upon the approval of the county commissioners. The county surveyor and each assistant and deputy shall be allowed his reasonable and necessary expenses incurred in the performance of his official duties."

Since the rendition of the above opinion, express statutory authority was extended for the purchase of automobiles for the use of county officers and employes. See Section 2412-1 and Section 2412-2, General Code. County superintendents of schools and county attendance officers are not county officers and employes but officers and employes of the county school district, which is a separate subdivision from the county.

Provisions of law authorizing the payment of expenses for county superintendents of schools and county attendance officers are no broader and in fact not so broad as those pertaining to the expenses and allowances for sheriffs and county surveyors that were under consideration by the Circuit Court and the Attorney General in the decision and opinion above referred to, and the fact that an emergency may exist at this time does not authorize the reading into the statutes of something that is not there.

The provisions of Section 4744-3a, General Code, are not broad enough in my opinion, to authorize the county board of education to purchase automobiles or other transportation equipment for the use of the county superintendent of schools. This statute reads as follows:

"The county board of education is authorized to provide programs, examinations, school records, diplomas, and other necessary supplies and equipment for the use of the county superintendent in furthering the instructional program of the county school unit. * * *"

It will be observed from the provisions of the above statute that after the enumeration of programs, examinations, school records and diplomas, the words "other necessary supplies and equipment" are used. Such things as automobiles and transportation equipment are not expressly named in the statute and by the application of the rule of ejusdem generis, it would appear that "other necessary supplies and equipment," refers to supplies similar to those which are expressly named. This rule is stated in Lewis' Sutherland Statutory Construction, 2nd Ed., Sec. 422, as follows:

"When there are general words following particular and

specific words, the former must be confined to things of the same kind.”

The rule is founded upon the idea that if the legislature intended the general words to be used in an unrestricted sense, the particular classes would not have been mentioned. See Crawford on Statutory Construction, Sec. 191. In 37 Ohio Jurisprudence, page 779, it is said with reference to this rule:

“where, in a statute, general words follow a designation of particular subjects or classes of persons, the meaning of the general words will ordinarily be construed as restricted by the particular designation and as including only things or persons of the same kind, class, or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose.”

Manifestly, automobiles and transportation equipment are not of the same kind, class or nature as programs, examinations, school records and diplomas and therefore, in my opinion, the authority extended to county boards of education by the statute above mentioned does not include the authority to purchase automobiles or transportation equipment, and inasmuch as the legislature has provided means for the reimbursement of county superintendents of schools and county attendance officers, by providing that their expenses shall be allowed and paid, and has not made any other provision with reference thereto, it clearly follows, in my opinion that the method provided by the legislature is exclusive.

I am therefore of the opinion that the law does not authorize a county board of education to purchase automobiles or transportation equipment for the use of the county superintendent of schools or the county attendance officer for use in the performance of their official duties.

Respectfully,

THOMAS J. HERBERT
Attorney General.