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1. BOARD OF EDUCATION OF CITY, EXEMPTED VILLAGE OR LOCAL SCHOOL DISTRICT NOT AUTHORIZED TO CONTRACT FOR COMPREHENSIVE SCHOOL SURVEYS AND STUDIES, INCLUDING BUILDING-RELATED STUDIES—

2. COUNTY BOARD OF EDUCATION MAY CONTRACT WITH A PRIVATE OR PUBLIC AGENCY FOR SURVEY OR STUDY RELATING TO NEEDS THAT MAY BE RENDERED BY THE BOARD—§§3313.37, 3315.061, R.C.

SYLLABUS:

1. Section 3313.37, Revised Code, does not authorize the board of education of a city, exempted village, or local school district to contract for comprehensive school surveys and studies, including building-related studies.

2. Under Section 3315.061, Revised Code, a county board of education may contract with a private or public agency for a survey or study relating to school district organization and building needs, curriculum and instructional needs, and needs for improved or additional services that may be rendered by such board; and whether any particular survey is authorized under that section, depends upon whether said survey is so related.

Columbus, Ohio, August 16, 1961

Hon. Gordon B. Carson, Vice President, Business and Finance
The Ohio State University, Columbus 10, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“In the interest of the service rendered to Ohio school districts by the University’s Bureau of Educational Research and Service, I request of you clarification of your Informal Opinion No. 319, rendered by your office on May 26 of this year. This Opinion rules that city, exempted village, and local school districts are without power to expend funds for surveys which involve a joint effort between a school district and a municipal corporation to develop a comprehensive community plan, giving consideration to playgrounds, streets, utility services, area population density, and like factors.

“For over three decades, the Bureau of Educational Research and Service has been conducting surveys and studies on contracts, which are always on a non-profit basis, has never been questioned since the decision in 1923 of The Ohio Court of Appeals for the 8th District, in the case of *Fetterman v. the Board of Education of Cleveland Heights*, 3 Ohio Law Abstract 370. Authority for the school districts to enter into contracts for surveys was found by the Court in what is now Section 3313.37 of the Revised General Code. Because that Section specifically excludes county school districts, the General Assembly was importuned to provide similar authorization for them and did so in 1957 by enacting Section 3315.061.

“In view of this legal history, I have two questions to put for the guidance of the Bureau.

“1. Do not city, exempted village, and local school districts have authority to contract for comprehensive *school* surveys and studies, as contrasted with those about which inquiry was made by State Auditor Rhodes in No. 319?

“2. Does Section 3315.061 enable county school districts to contract for the type of survey involved in No. 319

as well as for the narrower, more conventional types referred to in my first question?"

Informal Opinion No. 319, to which you refer, was issued to the auditor of state in answer to his question reading :

"Do the provisions of Section 3317.17 of the Revised Code relative to the corporate powers of the board of education provide implied authority whereby a city, exempted village and/or local school district may execute contracts with private organizations or other political subdivisions and entities for the purpose of making surveys and studies relevant to the progress of the school district?"

My answer in that opinion was that said city, exempted village, and local school districts are without authority to enter into such contracts.

Section 3313.17, Revised Code, reads :

"The board of education of each school district 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."

Section 3313.60, Revised Code, gives the various boards of education the duty to prescribe courses of study. Administration of all school systems is provided for in Section 3319.01, Revised Code. Section 3315.061, Revised Code, reads :

"A county board of education may expend funds for the purpose of conducting studies or surveys pertaining to school district organization and building needs, curriculum and instructional needs, and needs for improved or additional services that may be rendered by such board. A county board of education may publish reports prepared in connection with such activities."

It is a general rule that the powers of a board of education are limited to those granted by statute or necessarily implied. In *Board of Education v. Ferguson*, 68 Ohio App., 514, the Court said :

"The authority of boards of education is derived solely from the statutes, both duties and authority being clearly defined by legislation, and is limited strictly to such powers as are expressly granted or clearly implied. * * *"

In said Informal Opinion No. 319 I noted that Section 3315.061, *supra*, grants authority only to county boards of education. I also noted that the fact that the authority to contract for surveys was specifically given to county boards implies that other boards do not have such authority.

Your letter refers to Section 3313.37, Revised Code, as possibly conferring the necessary authority on the city, exempted village, and local school districts. Said Section 3313.37 reads as follows :

“The board of education of any school district, except a county school 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 or 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.*”
(Emphasis added)

Under this statute it has been held that a board of education (except county boards), could pay appraisers fees and real estate commissions on property purchases, Opinion No. 7225, Opinions of the Attorney General for 1956, page 738; could legally expend funds for the purchase, establishment and installation of warning systems (civil defense) in schools under its control, Opinion No. 1145, Opinions of the Attorney General for 1957, page 522; and could contract for and pay the reasonable cost of procuring water service for the schools, Opinion No. 922, Opinions of the Attorney General for 1959, page 619.

However, under this same statute it was held that a board of education could not purchase land on an installment basis; Opinion No. 1879, Opinions of the Attorney General for 1958, page 181, Opinion No. 398, Opinions of the Attorney General for 1957, page 118; nor purchase a heating system on a “lease purchase contract,” Opinion No. 2820, Opinions of the Attorney General for 1958, page 597; nor purchase from funds raised by taxation, band uniforms for the use of pupils playing in the school band, Opinion No. 3920, Opinions of the Attorney General for 1954, page 302.

In tracing the history of Section 3313.37, *supra*, we find that one of its forerunners, Section 3987, Revised Statutes, 89 Ohio Laws, 95 (1892), read :

“The board of education of *any district* is empowered to build, enlarge, repair and furnish the necessary school-houses,

purchase or lease sites therefor, or rights of way thereto, or rent suitable school-rooms, *provide all the necessary apparatus* and make all other necessary provisions for the schools under its control; also, the board shall provide fuel for schools, build and keep in repair all fences inclosing such school-houses, plant when deemed desirable 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.*"
(Emphasis added)

In *State, ex rel. Dunn et al., v. Freed, Treas, et al.*, 10 C.C. 294 (1895), both the powers of a board of education and the meaning of the word "apparatus" were discussed as follows:

"Boards of Education are possessed only of such limited powers as are expressly provided by statute, and persons who deal with such boards are held, and presumed to know, the limits within which they can lawfully transact business, and can secure no rights which are enforceable, by a contract, unless the contract is clearly authorized by law.

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"The apparatus mentioned in section 3987 is the general furnishings necessary to properly equip a school room so as to make it convenient and fit for general use for school purposes."

The section number of the statute was changed to Section 7620, General Code, in 1911 (102 Ohio Laws, 149). Said Section 7620 was amended in 1919, 108 Ohio Laws, Pt. I, page 187, to provide for the purchase or lease of playgrounds. Otherwise, the wording of the statute remained the same.

It was under that statute, Section 7620, General Code, that the decision mentioned in your letter, *Fetterman v. Board of Education of Cleveland Heights*, 3 Ohio Law Abs., 370, 2 Ohio Law Abs., 88, was rendered. The facts in that case, as reported, concerned the *publication* of a survey and circulation of said survey among the electorate and others concerned. The court said that "Under 7620 G.C. the board of education may 'make provisions for schools under its control' and 'make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.' By a fair and reasonable interpretation of the above statute, the authority exercised by the board in the case at bar is logically implied from the language of the statute." Such language did appear to give a rather broad interpretation of the powers of a board of education; however, this wording and the facts as reported in 3 Ohio Law

Abs., 370, did not specifically hold that boards of education could contract for surveys. The question presented to the court was whether a survey already completed could be published; and said survey could have been made by the board itself, by employees of the school system, or made gratuitously by some group and the completed survey presented to the board of education. I do not feel, therefore, that the *Fetterman* case, *supra*, should be controlling in the instant question.

Section 7620, General Code, was again considered in *Board of Education v. Ferguson*, 68 Ohio App., 514, in which the first and second head-notes read:

“1. The authority of boards of education is derived solely from the statutes and is limited strictly to such powers as are expressly granted or clearly implied.

“2. The provisions of Section 7620, General Code, *relate to the physical properties constituting schools* and not to those persons who attend them, and do not authorize a board of education to provide special care, attention and treatment for those pupils who are diseased or are susceptible to disease. The term ‘apparatus’ as used in this section is not broad enough to include the purchase of special sleeping garments.”

(Emphasis added)

It seems obvious that this statute does indeed limit “apparatus” and “all other necessary provisions” to the actual physical properties of the schools themselves.

In 1943, the public school laws were recodified and revised (120 Ohio Laws, 475). Section 7620, General Code, became Section 4834-10, General Code, and county boards of education were expressly excluded from the provisions of the statute (as in present Section 3313.37, Revised Code). Obviously, this amendment as to county boards was adopted because county boards have no schools under their control (See Sections 3319.07 and 3317.15, Revised Code).

Further strengthening my conclusion in this matter is the application of the rule of *ejusdem generis*, that words of a general nature are to be construed the same as the specific words preceding them. In other words, as the Court said in *Dunn v. Freed* and *Board of Education v. Ferguson*, *supra*, “apparatus and all other necessary provisions” refers back to the physical properties of the schools. It would be unreasonable to presume that these words referred to the authority of a board of education of a

city, local or exempted village school district to contract for a comprehensive school survey including building-related studies; and to adopt such an interpretation of Section 3313.37, Revised Code, would be to go against the commonly accepted rule in this state as set out in the second paragraph of the syllabus in *State, ex rel. Clarke v. Cook, Auditor*, 103 Ohio St., 465:

“Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted.” (*State, ex rel. Locher, Pros. Atty. v. Menning*, 95 Ohio St., 97, approved and followed.)

Also see *Perkins v. Bright*, 109 Ohio St., 14, at page 21; *Verberg v. Board of Education*, 135 Ohio St., 246; *Schwing v. McClure*, 120 Ohio St., 335.

Further on this question, the provisions of Section 3315.061, *supra*, specifically authorize a county board of education to expend funds for the purpose of conducting studies or surveys. While your letter of request implies that this section was enacted to give county boards the authority supposedly already enjoyed by other boards, under the rules of statutory construction the specific grant of authority to the county boards implies that the other boards are not granted such authority. As stated in 37 Ohio Jurisprudence, Section 295, page 555:

“It is a general principle of interpretation that the mention of one thing implies the exclusion of another thing; *expressio unius est exclusio alterius*.”

In view of the foregoing, therefore, I answer your first question in the negative.

Coming to your second question, it will be noted that Section 3315.061, *supra*, does not give specific authority to a county board of education to *contract* for surveys, but such may be reasonably implied from the specific authority to expend funds for surveys and from the specific authority to contract as set out in Section 3313.17, Revised Code. I would presume that this reasoning, although not set forth, was followed in Opinion No. 1928, Opinions of the Attorney General for 1958, page 206, the syllabus reading:

“A county board of education has authority under the provisions of Section 3315.061, Revised Code, to contract with state universities or other agencies to conduct studies or surveys relating to school district organization and building needs, cur-

riculum and instructional needs, and needs for improved or additional services. Opinion No. 1086, Opinions of the Attorney General for 1957, p. 494 modified.”

Under Opinion No. 1928, *supra*, a county board has authority to contract with either a private or governmental agency to make a survey. Such survey must be related to school district organization and building needs, curriculum and additional services that may be rendered by the board.

When you refer to the type of survey involved in Informal Opinion No. 319, *supra*, I assume that you mean a “joint effort with a municipal corporation in developing a comprehensive community plan giving consideration to playgrounds, streets, utility services, expected area population density, etc.,” as such was considered in that opinion. As to this, whether any survey is authorized under Section 3315.061, *supra*, would depend upon whether such survey is within the prescribed purposes, and that would depend on the actual facts involved. Accordingly, while a survey such as you mention might be within the authority of Section 3315.061, *supra*, the actual contract in each case would have to be examined before a final answer could be given in that regard.

Answering your specific questions, it is my opinion and you are advised:

1. Section 3313.37, Revised Code, does not authorize the board of education of a city, exempted village, or local school district to contract for comprehensive school surveys and studies, including building-related studies.

2. Under Section 3315.061, Revised Code, a county board of education may contract with a private or public agency for a survey or study relating to school district organization and building needs, curriculum and instructional needs, and needs for improved or additional services that may be rendered by such board; and whether any particular survey is authorized under that section, depends upon whether said survey is so related.

Respectfully,

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