

In specific answer to your inquiry, I am of the opinion that under the provisions of Section 3331, paragraph 4, a justice of the peace may appoint a special constable when the duly elected and qualified constables are unable to perform the duties of their office by reason of the pressure of official business, but cannot make such appointment when the regularly elected and qualified constables are unable to perform their duties because of the pressure of their private business.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1495.

BOARD OF EDUCATION—WHEN AUTHORIZED TO PURCHASE MUSICAL INSTRUMENTS.

SYLLABUS:

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.

COLUMBUS, OHIO, February 5, 1930.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“Instrumental music has become a subject in curricula of numerous elementary and high schools. In order to carry out the work in this subject certain musical instruments are needed. The opportunity is given, in some schools, to all pupils of any ability to be tried out on instruments.

Further instrumental music is an elective study in many schools. In order to organize the instrumental music students into bands and orchestras, certain instruments are needed in the band or orchestra which no students possess and which none will purchase. These are usually instruments not used for solo music, and which therefore appeal only when there is group work, but which are necessary for the proper balance of a band or orchestra. The families will purchase the instruments which are of individual use.

Our question is, have boards of education the authority to purchase instruments for the foundational instrumental work and the instruments for bands and orchestras which are essential to a successful band or orchestra and which parents cannot see wisdom in buying? In all cases, of course, the instruments bought by the school would continue to be the property of the school.”

By the terms of Sections 7645, et seq., of the General Code of Ohio, boards of education, in co-operation with the director of education, are granted control over the courses of study to be taught in the public schools. Certain branches of study are enumerated in the statute that must be included in the school curriculums, and Section 7748 of the General Code sets out certain courses of study that are required in elementary schools, and provides further:

"Boards of education may cause instruction and training to be given in elementary schools in vocal music, drawing and other branches which they deem advisable for the best interest of the schools under their charge."

Section 7649, General Code, wherein a high school is defined as one of a higher grade than an elementary school, in which instruction and training are given in certain enumerated courses of education of what is sometimes called the higher branches of education, provides:

"Also such other branches of higher grade than those to be taught in the elementary schools, with such advanced studies and advanced reviews of the common branches as the board of education directs."

In addition to the above mentioned provisions extending to boards of education the authority to provide for the teaching of other branches of learning than those enumerated in the statute, it is provided by Section 7651, General Code, that the director of education be authorized to classify high schools upon such standards consistent with law as he may formulate. The authority here granted to the director of education would no doubt authorize him to prescribe as one of the standards for a high school that certain branches of learning be taught.

So far as statutory limitations on the prescribing of courses of study to be taught in the public schools are concerned, the question is left entirely to the discretion of the school authorities, and this discretion is limited only by its abuse.

To include within school curriculums courses of study the wisdom, necessity, and validity of which now seem so apparent that they are universally conceded to be proper, would no doubt have been considered an abuse of discretion on the part of a board of education half a century ago, and although the authority vested in boards of education to prescribe courses of study is perhaps no greater than it was years ago, the scope of the application of that authority must be held to have expanded to meet the new and different conditions which are constantly coming within the field of its operation.

Questions as to what are and what are not proper courses of study to be taught in the public schools are controlled to a great extent by public opinion. In the past few years it has become almost universal for boards of education to include in school curriculums such branches of learning as domestic science, manual arts, mechanical arts, commercial courses and even mechanical trades and the wisdom and validity of including such branches of learning in the school curriculums are not questioned by those who are in a position to judge of their value.

The practice of teaching instrumental music and the co-ordination of the work by practice in bands and orchestras has been a matter of growth in the last decade or two and is now universal especially in the larger cities of the country.

While it is conceivable that the expansion of school curriculums and the inclusion therein of courses of study in manual and industrial arts, domestic science, instrumental music and similar courses, may be abused and carried beyond reasonable demands and needs, we cannot assume that such a situation will result in any particular case, nor for that matter are we justified in ignoring the well known principle of law that public officials, in the absence of a showing to the contrary, will be presumed to have acted in good faith and within the limits of their capability for the best interests of their constituents. Although nowhere in the statute is the teaching of instrumental music made mandatory or is direct authority given to school authorities to provide such a course of study, it seems clear that the general authority to provide courses of study in addition to those

enumerated is sufficient to permit the school authorities to provide for the teaching of instrumental music.

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.

The Legislature has prescribed that in certain grades of school, courses in agriculture and domestic science may be given, and has recognized the fact that these courses of study cannot successfully be taught without some apparatus for that purpose. In Section 7655-2 of the General Code, where there are enumerated the requirements of a rural elementary school of the first grade, it is provided as one of the requirements: "Agricultural apparatus to a value of at least fifteen dollars." In Section 7655-3 of the General Code, in setting forth what constitutes a consolidated elementary school of the second grade, one of the requirements given is "Agricultural apparatus to the value of at least twenty-five dollars". In Section 7655-4, General Code, where there are enumerated certain requirements before a school is a consolidated elementary school of the first grade, it is set forth as one of the requirements: "Agricultural and domestic science apparatus to the value of at least one hundred dollars."

Similar provisions to those stated in Sections 7655-2, 7655-3 and 7655-4, as to elementary schools, are not made limiting the cost of apparatus that may be provided for high schools and trade schools. It has been, however, the practice for a number of years, and I believe has been recognized as lawful, to furnish apparatus in high schools and trade schools for the teaching of the sciences, the arts and trades, limited only by the amount of money that may be available for that purpose.

In a case decided by the Supreme Court of Iowa, *Bellmeyer vs. Independent District of Marshalltown*, 44 Iowa, 564 (1876), where the question arose respecting the right of a board of education to purchase an organ for one of the schools of the district, it was held by the court, after citing the rule which limits the powers of a board of education to those expressly granted or those necessarily implied within the express powers, that the power to teach music carried with it the power to purchase any instrument for that purpose.

A similar question was presented to the Supreme Court of the State of Michigan in 1887, *Knabe et al., vs. Board of Education of West Bay City*, 34 N. W. 568, wherein it was held that a board of education might lawfully purchase a piano for the purpose of teaching music. In the course of the opinion the court said:

"Music has long since become a branch of refined education and is recognized as one of the ordinary accomplishments of educated minds. It is taught to a greater or less extent in our high schools and the practice should be encouraged as having an elevating influence on the minds of the young. When the law gives the board of trustees power to prescribe the course of study, it gives them authority to provide means to carry the power into effect."

I am of the opinion, therefore, that 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.

Respectfully,
GILBERT BETTMAN,
Attorney General.