

326

1. MUNICIPALITY—WHERE IT IS PROPOSED TO EXTEND WATER SERVICE TO PROPERTIES SITUATE OUTSIDE CORPORATE LIMITS, A BOARD OF EDUCATION OF RURAL SCHOOL DISTRICT, FOR PURPOSE OF OBTAINING WATER SUPPLY FOR SCHOOL BUILDING AND PROPERTY MAY CONTRACT FOR AND PAY REASONABLE COST TO PROCURE SUCH SERVICE—SECTION 4834-10 G. C.
2. BOARD OF EDUCATION—WITHOUT POWER TO JOIN WITH OTHER BENEFITED PROPERTY OWNERS IN UNDERWRITING ENTIRE ESTIMATED COST TO EXTEND WATER MAIN INTO OUTLYING TERRITORY.

SYLLABUS:

1. Where it is proposed by a municipality to extend its water service to properties situate outside its corporate limits, a board of education of a rural school district, for the purpose of obtaining a water supply for its school building and property may, pursuant to the authority of Section 4834-10 General Code, contract for and pay the reasonable cost of procuring such service.

2. Such board of education is without power to join with other benefited property owners in underwriting the entire estimated cost of extending a water main into such outlying territory.

Columbus, Ohio, June 29, 1945

Hon. Seabury H. Ford, Prosecuting Attorney
Ravenna, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The Ravenna City Water Works and Pumping Station are in Rootstown Township just south of Ravenna, so that their water mains are within approximately two miles of the center of Rootstown Township. There is no incorporated village in the Township of Rootstown. Accordingly, the citizens and officials of that township are interested in having these water mains extended to the built-up section of the township which surrounds the center, and if this project is undertaken the water main would pass in front of the school property owned by the Board of Education of Rootstown Township.

I desire an opinion, therefore, on the following question :

1. If the entire estimated cost of the improvement, namely, the extension of the water main is underwritten and divided among the beneficial property owners, can the Board of Education of Rootstown Township participate the same as a private property owner by assuming to pay their proportionate share of the cost?

2. If question #1 is illegal, can the Board of Education pay the cost of extending the water main past its own property on the basis of so much cost per foot, including at least one hydrant, plus the cost of a regular water connection to the school house?”

Section 4834-10, General Code, relates to the powers of a board of education in providing the necessary facilities for the operation of schools. It 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 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 will be observed that the provisions of the section above quoted are very general, but they are also quite comprehensive. The last clause in the section authorizes the board to "make all other necessary provisions for the schools under its control." This gives the board of education very wide latitude, and in determining whether a board is acting within its powers in making "necessary provisions," it is only necessary to ascertain whether the particular action of the board is appropriate to the proper conduct and management of the schools under its control. This section, however, clearly relates and is confined to the physical equipment in the way of buildings, grounds, apparatus, etc., which are incident to the proper operation of the schools.

It is quite obvious that one of the very essential provisions for the conduct of a school is a proper and adequate water supply. It needs no specific mention of water supply in the statutes defining the powers of a board of education to lead to the conclusion that it has the power to provide the same. It is not only a power but manifestly a duty. The method of procuring such water supply would seem to me to be wholly within the discretion of the board of education so long as it does not violate any recognized limitations on its general power.

The first proposition, however, suggested in your letter whereby the board of education should join with other property owners along the line of a proposed water main, agreeing with them to participate in the joint construction of such water main and to pay the board's proportionate share of the cost, appears to me to involve the board of education in a procedure which would not be warranted. In an opinion of my immediate predecessor, found in 1939 Opinions Attorney General, page 835, it was held that a board of education was not empowered by Section 7620 of the General Code to join with another board of education in the establishment or maintenance of a vocational or trade school. Said Section 7620 was the predecessor of Section 4834-10 which I have quoted, and was couched in substantially the same language. The then Attorney General pointed out that there were many instances wherein the legislature had expressly authorized cooperation of governmental agencies or the joint action of administrative boards to accomplish a desired purpose, including many in which school boards were expressly authorized to enter into joint arrangements with other boards or with other taxing subdivisions, but that in the absence of express authority so to do, the general

rule of law must apply that a board of education being a creature of statute, had only such powers as the legislature had seen fit to confer upon it. See *Locher v. Menning*, 95 O. S., 97; *State, ex rel. v. Pierce*, 96 O. S., 44, and *Schwing v. McClure*, 120 O. S., 335.

The plan in question would involve the elements of partnership, in that the various property owners would agree among themselves to be responsible for the entire cost of the improvement but would divide the cost proportionately among them. There would, however, manifestly be in such arrangement the element of individual liability for the collective debt which, in my opinion it would be wholly beyond the power of a board of education to assume.

So long as a board of education is acting within the scope of its granted powers, a wide discretion is accorded it as to the manner of exercising such powers. In the case of *Gosline v. Board of Education*, 11 O. C. C. (N.S.) 195, it was held:

“A broad discretion is reposed in boards of education regarding the purchase of necessary supplies for schools.”

To like effect see 36 Oh. Juris., p. 188; *State, ex rel. v. Board*, 11 O. L. A., p. 254; *State, ex rel. v. Board*, 2 C. C. p. 557; *Brannon v. Board*, 99 O. S., p. 367.

Accordingly, it would be quite within the authority of the board of education to ascertain the cost to it of procuring a water supply for the school building and premises, and to contract for such service, if in the exercise of a sound discretion it considers that the school would be benefited by such expenditure. The method by which such cost is computed is not important so long as it is fixed and reasonable.

I find no restrictions on the powers of a board of education to contract for those things which are properly within its powers and duties, excepting in connection with the construction or repair of a schoolhouse or other improvement or repair the cost of which would exceed \$3,000 in city districts and \$1,000 in other districts, in which case advertising for bids is required by Section 4834-18, General Code. This restriction could hardly

apply to the situation you present, since there would obviously be no opportunity for competition in securing the proposed extension of water service.

Respectfully,

HUGH S. JENKINS

Attorney General