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DUTIES OF A CLERK OF A BOARD OF EDUCATION ARE SPECIFICALLY PROVIDED IN SECS. 3313.22 TO 3313.32—A BOARD OF EDUCATION IS WITHOUT AUTHORITY TO ASSIGN ADDITIONAL NON-STATUTORY DUTIES—§§3313.22 TO 3313.32, R.C.

SYLLABUS:

The duties of a clerk of a board of education are specifically provided in Sections 3313.22 to 3313.32, inclusive, Revised Code, and a board of education of a city school district is without authority to assign additional non-statutory duties to the clerk of the board and may not compel the clerk to perform his statutory duties under the control and supervision of another agent or employee of the board.

Columbus, Ohio, February 22, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have received your request for my opinion concerning a rule adopted by a board of education of a city school district, which places the clerk-

treasurer of the board under the direction and supervision of the superintendent of the same city school district. The particular rule adopted by this city board of education reads, as follows :

“The Clerk-Treasurer shall perform the duties of his office in accordance with the provisions of Sections 3313.26 through 3313.33 of the Revised Code. Except as otherwise provided by law, the Clerk-Treasurer shall be directly responsible to and under the direction of the Superintendent of the Columbus Public Schools in the conduct of the business affairs of the Board.’”

In regard to this situation you have asked the following two specific questions :

“1. May a board of education authorize the clerk of a board of education, by administrative regulation, to serve under the immediate supervisory guidance and control of the superintendent of a city school district?

“2. If the answer to question number 1 is in the affirmative, will you please advise with regard to the line of demarcation between the statutory and the non-statutory requirements of the duties of the office of the clerk of the board of education.”

The duties of the clerk of the board of education of a city school district are fixed generally by statute. Sections 3313.22 through 3313.32, Revised Code, relate to the powers and duties of the clerk. These are specific statutory duties. Whether there are further non-statutory duties which a board of education may assign to its clerk is a question about which there appears to be some confusion. There can be no question but what the board of education does have definite authority for regulating the administration of its internal affairs. Section 3313.20, Revised Code, reads, in part, as follows :

“The board of education shall make such rules and regulations as are necessary for its government and the government of its employees and the pupils of the schools. * * *”

The question which remains is to what extent may a board of education operating pursuant to Section 3313.20, Revised Code, either assign additional non-statutory duties to the office of clerk or control the method by which the duties of this office may be exercised.

In the absence of any express statutory authority to authorize the board to confer additional duties on the clerk, reference to case law analyzing the duties of the clerk must be made. In the case of *State, ex rel.*

Board of Education of South Point v. Miller, 102 Ohio App., 85 (1956), at 88, the duties of the clerk are outlined as follows :

“* * * He is the ministerial officer of the board in carrying out the orders and directions of the board, and in order to function efficiently he must work in harmony and co-operation with the board. * * *”

In *State, ex rel. Myers v. Coon*, 4 O.C.C. (N.S.), 560 (1904), at 563, the duties of the clerk were viewed as having two aspects, as follows :

“It thus appears that outside of the more clerical duties the clerk of the board of education has to perform for it and as directed by it, he has many statutory duties to perform, for the faithful performance of which he must answer to the people. These independent duties involved to a certain extent the exercise of part of the sovereignty of the state, in virtue of his election to office, and not as a mere employe, subject to the direction and control of the school council. * * *”

In the case above, the court apparently considered the duties of the clerk to involve a dichotomy, part of the duties being the result of a statutory mandate, while the remainder being the result of the direction of the board of education. This view is supported by the statement in 36 Ohio Jurisprudence, 2nd, 160, reading as follows :

“The clerk is but the bookkeeper of the board of education, having charge of its records and accounts, and his duties are mostly of a clerical and ministerial character. It is said that he is simply made the auditing officer to keep a check on the treasurer and has, at least in the strict sense, no function of sovereignty. But, outside the mere clerical duties the clerk of the board of education has to perform for it and as directed by it, he has many statutory duties to perform, for the faithful performance of which he must answer to the people, which duties involve to a certain extent the exercise of part of the sovereignty of the state.

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While this bi-functional view of the duties of a clerk of a board of education may have much merit, I am confronted with the difficulty that I can find no authority for this theory. The board of education of a city school district, as well as the office of the clerk, is a creature of statute and must depend upon the will of the General Assembly for its powers. To date the General Assembly has not seen fit to enact a statute which makes the clerk of the board of education a general ministerial officer subject to the flexible direction of the board on the issue of what duties he is to perform.

In the absence of such a general statute, and since all official duties must necessarily find statutory authority, it must follow that only those duties are valid which are based on statute.

The case of *State v. Griffith*, 74 Ohio St., 80 (1906), is directly in point. It involved an action against the sureties of the official board of a clerk for dereliction of his duty when such duty was imposed by a rule of the board and not by statute. Concerning the power of a board to argument the duties of a clerk, the Court stated at pages 93-94, as follows :

“There is nothing in the statutes which define the duties of the clerk of the board of education, which makes it his duty to receive and disburse tuition fees. Indeed we fail to find any authority in the statutes for the clerk of the board of education to receive or disburse any money whatever, except fines for truancy, as provided in section 4027, which has been repealed since the commencement of this action. With that exception the duty of receiving, keeping and disbursing funds seems to be exclusively imposed upon the treasurer of the district. Section 4042, Revised Statutes. Yet it is contended in behalf of the plaintiff that the board could, and did, enlarge the duty of the clerk in that respect by virtue of section 3985, Revised Statutes, a part of which reads as follows: ‘The board of each district shall make such rules and regulations as it may deem expedient and necessary for its government and the government of its appointees and pupils.’ A number of years before this bond was executed the board adopted a rule the material portion of which, so far as it affects this controversy, is as follows: ‘Children, wards and apprentices of non-residents may be admitted by the trustees (school committee) of any district upon payment, in advance, to the clerk of the board of the following tuition fees,’ etc.; and under cover of that rule the clerk received and handled the money for which he is in default. The statute gives to the board the power to make rules and regulations for the government of itself, its appointees and pupils: that is, rules for their management, control and direction, merely disciplinary regulations. It could not for a moment be assumed that section 3985 confers upon the board the power to legislate, so as to confer upon itself and its appointees powers and duties which are not found in the acts of the general assembly; for the powers of the board to make rules is just as broad for itself as for its appointees. If it can enlarge the powers and duties of its appointees beyond the statutory limits, it can enlarge its own powers and duties. Such power could not be, and in our opinion was not intended to be, conferred upon the board of education by the general assembly. The permission to receive tuition fees which was given to the clerk by the rule, was therefore outside of and beyond the official duties of the clerk.”

Subsequently, the Supreme Court again affirmed this view in *Verberg v. Board of Education of the City School District of Cleveland*, 135 Ohio St., 246 (1939), at 248-249, as follows :

“The single question presented is whether a board of education has authority to adopt and enforce a rule requiring the retirement of its employees who are within the classified service upon attaining the age of sixty-five years. The board of education claims such authority by virtue of Sections 4749 and 4750, General Code. The former section confers very broad general powers upon boards of education, while the latter section provides as follows: ‘The board of education shall make such rules and regulations as it deems necessary for its government and the government of its employees and the pupils of the schools. * * *’

“Boards of education are created by statute, and their jurisdiction is conferred only by statutory provision. Just as any other administrative board or body, they have such powers only as are clearly and expressly granted. *State, ex rel. Locher, Pros. Atty., v. Menning*, 95 Ohio St., 97, 115 N. E., 571; *State, ex rel. Clarke, v. Cook, Aud.*, 103 Ohio St., 465, 134 N. E., 655; *Perkins et al., Bd. of Edn., v. Bright*, 109 Ohio St., 14, 141 N. E., 689.

“Such boards cannot increase their powers or confer upon themselves additional jurisdiction under authority conferred to adopt rules and regulations for their government and the government of their employees. *State, ex rel. Bd. of Edn. of Cincinnati, v. Griffith*, 74 Ohio St., 80, 77 N. E., 686; *Davis et al., Civil Service Comm., v. State, ex rel. Kennedy, Dir. of Public Service*, 127 Ohio St., 261, 187 N. E., 867.”

From an analysis of these cases it may be seen that the high Court has established the principle that the powers and duties of a board of education and of the clerk of that board are circumscribed by statute and cannot be enlarged by the sole action of the board. This view that a board of education is not a legislative body was followed by the Attorney General in Opinion No. 1904, Opinions of the Attorney General for 1950, page 373. If it be concluded, therefore, that a board of education cannot add additional duties to the office of clerk other than those duties which are already established by statute, can it be argued that such statutory duties may be controlled in their direction and supervision by the board through an agent of the board? I believe this question also must be answered in the negative. Sections 3313.22 to 3313.32, inclusive, Revised Code, delegate numerous specific duties to the clerk of a board of education. Before entering into the execution of these duties the clerk must execute a bond pursuant to Section 3313.25, Revised Code, for the “faithful performance of all the

official duties required of him.” Inasmuch as the statute makes the clerk solely responsible to the board for the performance of these duties, and requires the furnishing of a bond to insure the faithful performance of such obligations, it would be clearly violative of the spirit of these statutes to compel the clerk to relinquish his personal responsibility for their observance to the supervision and direction of another agent of the board of education. As this scheme is in no way countenanced by any statutory provision, it would appear to fall outside the bounds of the board’s powers.

It is, therefore, my opinion and you are advised that the duties of a clerk of a board of education are specifically provided in Sections 3313.22 to 3313.32, inclusive, Revised Code, and a board of education of a city school district is without authority to assign additional non-statutory duties to the clerk of the board and may not compel the clerk to perform his statutory duties under the control and supervision of another agent or employee of the board.

Respectfully,

MARK McELROY

Attorney General