

2981.

APPROVAL, BONDS OF HARDIN COUNTY IN AMOUNT OF \$69,000 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, April 13, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2982.

APPROVAL, BONDS OF HARDIN COUNTY IN AMOUNT OF \$91,350 FOR CONSTRUCTION OF BRIDGES.

COLUMBUS, OHIO, April 13, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2983.

DEPARTMENT OF EDUCATION—AUTHORITY OF DIRECTOR RELATIVE TO DIVISION OF FILM CENSORSHIP—WHO APPOINTS CHIEF FILM CENSOR—AUTHORITY OF ADVISORY FILM CENSOR BOARD.

1. *The director of the department of education, by virtue of section 154-3 G. C. and other related sections, is the executive head of such department and is clothed with full power and authority relative to the managing, supervising and directing of such department, including the division of film censorship, and, on the other hand, is charged with the full responsibility for actions taken in the name of the department.*

2. *The position of chief of the division of film censorship is filled by the director of education. Such incumbent holds office at the will of the director and exercises no power independent of the supervisory prerogatives of such director.*

3. *The advisory board created under section 154-47 exercises no executive or managerial functions, but is authorized to assist the department of education in the censoring of films by its counsel, advice and information. If the director chooses, he may accept the judgment of such board as the basis of his final action in connection with the censoring of films. However, in the final analysis, the department of education must take the necessary action, which in effect is the action of the director.*

COLUMBUS, OHIO, April 13, 1922.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction as Director of Education, Columbus, Ohio.*

DEAR SIR:—In your recent communication you request my opinion, as follows:

“Section 154-46 G. C. provides in part as follows:

'The department of education shall have all powers and perform all duties vested by law in the industrial commission of Ohio and the board of censors of motion picture films by sections 871-48 to 871-53, both inclusive, of the General Code. * * *'

According to section 154-47 G. C., which follows, an advisory board of film censorship is created in the department of education.

Section 154-47. 'An advisory board of three members is hereby created in the department of education, to be known as the advisory board of film censorship. The members of this board shall be appointed by the governor, to serve during his pleasure, and shall receive no compensation, but shall be entitled to their actual and necessary expenses incurred in the performance of their official duties. Such board shall assist and advise the department of education in the examination and censorship of motion picture films.'

The duty of the advisory board created in the above section is to assist and advise the department of education in the examination and censorship of motion picture films. In case of a difference of opinion among the chief of the division of film censorship, the director of education, and the advisory board, who has the power of final judgment as to whether or not a film should be approved for exhibition in the state of Ohio?"

In considering the question presented, it is proper to consider in connection therewith section 871-48 G. C., which is still in force. This section originally related to the powers and duties of the board of censors, which board was abolished by section 154-26 of the Administrative Code. By the provisions of section 154-46, which you quote, all the powers and duties cast upon said original board were transferred and imposed upon the department of education.

Said section 871-48, read in the light of the implied amendment as described in the foregoing, reads:

"It shall be the duty of the *department of education* to examine and censor as herein provided, all motion picture films to be publicly exhibited and displayed in the state of Ohio, and when necessary the *department of education* may designate certain of the assistants furnished to them by the *department of education*, who under the direction and supervision of the *department* may examine motion picture films. Such films shall be submitted to the *department* and passed and approved by the *department* before they shall be delivered to the exhibitor for exhibition. The *department* shall charge a fee of one dollar for each reel of film to be censored which does not exceed one thousand lineal feet, and one dollar for each additional one thousand lineal feet or fractional part thereof. All moneys so received shall be paid each week into the state treasury to the credit of the general revenue fund."

By the provisions of sections 154-6 and 154-7 of the Administrative Code the position of chief of the division of film censorship is created, to be filled by the director, and such incumbent holds the office "during the pleasure of the director."

Section 154-8 of the Administrative Code provides:

"The officers mentioned in sections 154-5 and 154-6 of the General Code shall be under the direction, supervision and control of the directors of their respective departments, and shall perform such duties as such directors shall prescribe.

With the approval of the governor, the director of each department shall establish divisions within his department, and distribute the work of the de-

partment among such divisions. Each officer created by section 154-6 of the General Code shall be the head of such a division.

With the approval of the governor, the director of each department shall have authority to consolidate any two or more of the offices created in his department by section 154-6 of the General Code, or to reduce the number of or create new divisions therein.

The director of each department may prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employes, the performance of its business and the custody, use and preservation of the records, papers, books, documents and property pertaining thereto."

Section 154-3 of the Administrative Code provides :

"The following administrative departments are created :

* * * *

The department of education, which shall be administered by the superintendent of public instruction, as director thereof ;

* * * *

The director of each department shall, subject to the provisions of this chapter, exercise the powers and perform the duties vested by law in such department."

In view of the foregoing it is believed to be clear that all of the powers and duties imposed upon the former board of censors under the provisions of sections 871-48 et seq. are now imposed upon the department of education, which in the final analysis, by reason of the requirements of section 154-3, supra, is the equivalent of saying that such powers and duties are in the director. While it is true such director may delegate such power to those having a legal connection with his department at his will, he cannot escape the responsibility for the departmental activities, including the divisions thereof. Of course, it is not contemplated by the law that the director should give his individual attention to each functional action by the department. The casting of the numerous duties upon the director of education by the same act which creates such office, in itself negatives the idea that such director is required literally and physically to perform the individual duties of every functional character. Power is given such director to delegate his power and to supervise and direct the activities of the department. However, as above indicated, the director must assume the sole responsibility for the actions taken in the name of the department of which he is executive and managing head.

The principal duties in so far as the censoring of pictures is concerned, under the law (section 871-49), involve the approval of films which in the "judgment and discretion" of the department of education are of "a moral, educational, or amusing and harmless character," or the rejection of those, or parts thereof, which, measured by the same "judgment and discretion," do not fall within the class which the law authorizes approved. Theoretically speaking, the judgment referred to, in legal contemplation, must be reposed somewhere. It is obvious the department of education, in the literal and technical sense, as an inanimate entity cannot exercise judgment and discretion, but rather the department as such is the instrumentality through which the mind of the director functions. Stripped of all unnecessary verbiage, logic compels the conclusion that the director must exercise such judgment and discretion. However, it is apparent from the statutes heretofore quoted that the director may base his conclusions upon such premises and advice as to him seem proper.

As heretofore pointed out, the chief of the division holds office at the will of

the director, and is required to perform the duties under the direction and supervision of the director. Nowhere in the law is there any powers conferred upon the chief, as such, independent of the supervisory prerogatives of the director. The director may prescribe regulations for the government of the department (section 154-8). It therefore is clear that the director may give unlimited credence to the judgment or opinion of the chief of the division, or he may limit the same to the extent that he believes is essential for the best interests of the department.

It is believed the functions of the advisory board are all summed up in the last sentence of section 154-47, which reads :

“Such board shall assist and advise the department of education in the examination and censorship of motion picture films.”

It is assumed that the legislature in the use of the words “assist and advise” in the above enactment intended the common and ordinary meaning of such words to be applied in the interpretation of the statute. It is clear that the powers of this board are limited to assisting and counseling the department of education. Such board exercises no executive or managing functions. It is evident that in this provision it was the intent of the legislature to create a board which would attract those of philanthropic inclinations, whose very acceptance of such an unremunerative position would be indicative of a sincere desire to be of unselfish service to the public, in the belief that the counsel of such a board would be a distinct benefit to the department. This board has power to advise, aid, counsel and inform. However, the final powers and responsibility rest with the director, notwithstanding the advisory board. The director may give such weight to the advice of such board as in his opinion the facts warrant. He may regard the judgment of the chief of the division as being superior to that of the advisory board, or he may regard the judgment of the advisory board as being supreme. Undoubtedly the director, under section 154-8, could make a rule relative to his policy in this regard—that is to say, the director could adopt a regulation in which he could refer films under consideration to the advisory board and take its opinion as the basis of his final action. Such regulation, however, would be subject to change at will, and as heretofore pointed out, regardless of what action is taken, the director assumes the legal responsibility.

In view of the foregoing, it is the opinion of this department that :

(1) The director of the department of education, by virtue of section 154-3 G. C. and other related sections, is the executive head of such department and is clothed with full power and authority relative to the managing, supervising and directing of such department, including the division of film censorship, and, on the other hand, is charged with the full responsibility for actions taken in the name of the department.

(2) The position of chief of the division of film censorship is filled by the director of education. Such incumbent holds office at the will of the director and exercises no power independent of the supervisory prerogatives of such director.

(3) The advisory board created under section 154-47 exercises no executive or managerial functions, but is authorized to assist the department of education in the censoring of films by its counsel, advice and information. If the director chooses, he may accept the judgment of such board as the basis of his final action in connection with the censoring of films. However, in the final analysis, the department of education must take the necessary action, which in effect is the action of the director.

Respectfully,
 JOHN G. PRICE,
Attorney-General.