

1999

COUNTY AUDITOR MAY REFUSE TO ISSUE A WARRANT FOR PAYMENT OF SCHOOL FUNDS, IF HE DEEMS SUCH PAYMENT UNAUTHORIZED—COUNTY BOARD OF EDUCATION MAY NOT EXPEND SCHOOL FUNDS TO PAY FOR PHOTOGRAPHS OF STAFF MEMBERS—§§319.16, 3317.13, 5705.01, R.C.

SYLLABUS:

1. A county auditor may properly refuse to issue a warrant as provided in Section 319.16, Revised Code, for the payment of school funds, if he deems that such payment is unauthorized, even though the county board of education has authorized the payment.
2. A county board of education may not expend school funds to pay for photographs of staff members of the board, such photographs to be used in high school annuals within the school system.

Columbus, Ohio, February 9, 1961

Hon. G. William Brokaw, Prosecuting Attorney  
Columbiana County, Lisbon, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

"Your consideration and opinion are respectfully solicited in connection with the responsibility of a County Auditor in the payment of bills of a County Board of Education, after approval by said County Board of Education. Several months ago a bill was submitted to the Columbiana County Auditor by the Columbiana County Auditor by the Columbiana County Board of Education, which bill was authorized and approved for payment by said Board of Education. The bill in question is a bill for 'sittings' by three members of the staff of said County Board of Education and glossy prints of pictures of said staff members, for use in high school annuals within the County school system. The Columbiana County Auditor has refused to pay said bill, which amounts to a total of \$44.85, on the ground that such payment would be an illegal expenditure of public funds.

"The question here presented is as follows: Has a County Auditor any right or responsibility to refuse payment of a bill, in the absence of any fraud, which bill has been authorized and approved for payment by a County Board of Education from funds allocated to said County Board of Education by the State Board of Education under the provisions of Section 3317.13 of the Revised Code?

"Since the above question involves the proposition of whether or not a county auditor is to be a 'watch dog' of public funds, or simply a 'custodian' your answer and opinion will be eagerly looked forward to by myself and many other prosecuting attorneys and county auditors."

Your request deals with the authority of a county auditor to refuse payment of a bill which has been authorized and approved for payment by a county board of education from funds allocated to said county board of education by the state board of education under the provisions of Section 3317.13, Revised Code.

Section 3317.13, Revised Code, reads in part as follows:

"The state board of education shall certify to the auditor of state the total of such deductions of the districts of the county school

district; whereupon the auditor of state shall issue his warrant in such amount on the treasurer of state in favor of the county board of education of each county, to be deposited to the credit of a separate fund, hereby created, to be known as the 'county board of education fund.'”

Under the provisions of Section 5705.01, Revised Code, the county auditor is the fiscal officer for the county and the county school district.

Section 319.16, Revised Code, reads as follows:

“Except as to moneys due the state which shall be paid out upon the warrant of the auditor of state, the county auditor shall issue warrants on the county treasurer for all moneys payable from the county treasury, upon presentation of the proper order or voucher for the moneys, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund. The auditor shall not issue a warrant for the payment of any claim against the county, unless it is allowed by the board of county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal so authorized by law.”

Under Section 319.16, *supra*, therefore, a county auditor is directed to issue warrants on the county treasurer for county school funds payable from the county treasury when authorized by the county board of education. The question here to be decided is whether *any* authorization of the board requires the auditor to issue the warrant or whether the auditor may question the legality of a particular expenditure.

Clearly, if the expenditure is authorized by law the auditor has a duty to issue the warrant (*State ex rel., Hoel v. Goubeaux, Auditor*, 110 Ohio State 287). If, however, it appears to the auditor that the expenditure is illegal, it would appear that he would be justified in refusing to issue the warrant unless directed to do so by a court of law. In this regard, it is stated in 14 Ohio Jurisprudence (2nd) Section 116, page 285.

“\* \* \* The auditor may, however, in the exercise of reasonable prudence and judgment, determine that it is not his legal duty to issue a warrant in a given case. He may properly refuse to issue his warrant if it appears that by mistake or fraud an amount has been allowed in excess of the sum lawfully due, or if the order was wholly unauthorized or was based on an illegal contract, or if the officer making it acted without authority or exceeded the legal bounds of his discretion \* \* \*”

Next to determine in the instant case, therefore, is whether the particular expenditure here concerned should be considered as unauthorized and in this regard it must be remembered that a board of education has only such powers as the legislature has seen fit to confer upon it (*Locker v. Menning*, 95 Ohio St., 97; *State ex rel. v. Pierce*, 96 Ohio St., 44; *Schwing v. McClure*, 120 Ohio St., 335). As stated in *Board of Education v. Best*, 32 Ohio St., 138, at 152:

“The authority of boards of education like that of municipal councils, is strictly limited. They both have only such powers as is expressly granted or clearly implied, and doubtful claims as to mode of exercising the powers vested in them are resolved against them.”

Title 33, Revised Code, deals with the education laws of the state and Chapter 3313., Revised Code, applies specifically to boards of education; but neither contains any specific authorization for an expenditure such as here concerned. Moreover, I do not believe that such authority may be implied.

Publication of a high school annual, while no doubt of great interest and importance to the persons involved, is hardly a necessary part of an education program. Also, it has been my understanding that such publications have not been financed with public funds in the past but have depended on individual donations for the necessary funds. Thus, I am of the opinion that school funds may not be used for such a purpose nor to pay for the costs of photographs of members of the staff of the school board, which photographs are to appear in the annuals. In line with this conclusion is the ruling of Opinion No. 1819, Opinions of the Attorney General for 1928, Volume 1, Page 612, wherein it was held that a board of education was without authority to pay for the publication of a school paper. Also see Opinion No. 4043, Opinions of the Attorney General for 1932, Volume 1, Page 178, holding that a county board of education is without authority to pay from school funds for the publication of a directory of teachers within the school district; and see Opinion No. 3489, Opinions of the Attorney General for 1938, Volume III, Page 2413, on a related question. (The conclusions of the above opinions were all based upon the lack of specific or implied authority to do the acts in question.)

It is a general rule of law that in case of doubt as to the right of any administrative board to expend public moneys under a legislative grant,

such doubt must be resolved in favor of the public and against the grant of power (*State ex rel. Bentley vs. Pierce, Auditor*, 96 Ohio St., 44). In view of the above discussion and this general rule, therefore, it is my opinion and you are advised:

1. A county auditor may properly refuse to issue a warrant as provided in Section 319.16, Revised Code, for the payment of school funds, if he deems that such payment is unauthorized, even though the county board of education has authorized the payment.

2. A county board of education may not expend school funds to pay for photographs of staff members of the board, such photographs to be used in high school annual within the school system.

Respectfully,

MARK McELROY

Attorney General