

1145

CIVIL DEFENSE—ADJUTANT GENERAL—SCHOOL DISTRICT IS NOT “POLITICAL SUBDIVISION” AS USED IN § 5915.01 RC—§ 3313.37 RC AUTHORIZES BOARDS OF EDUCATION, OTHER THAN COUNTY BOARDS, TO PURCHASE WARNING SYSTEMS.

SYLLABUS:

1. A school district is not a “political subdivision” as this term is defined in Section 5915.01, Revised Code.
2. Pursuant to Section 3313.37, Revised Code, boards of education, other than county boards, may legally expend funds for the purchase, establishment and installation of warning systems in schools under their control.

Columbus, Ohio, October 11, 1957

Hon. Leo M. Kreber, Major General
Adjutant General, Director of Civil Defense
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“The School Board of Hamilton County desires to install a ‘Bell and Light’ warning system in each school in the county.

“This type of warning system and the recurring charges are eligible for Matching Funds by the Federal Civil Defense Administration and the State.

“A local representative of the State Auditor’s Office was requested to give an opinion as to whether or not school board funds could be utilized for such a purchase and installation. His response was that it ‘is not a legal expenditure and a finding would result’ if such equipment were purchased and installed with public school funds.

“As this has very important implications throughout the state, I would like to request an official opinion on the following two questions:

“1. Is a school district a ‘political subdivision’ under the intent, definition and the scope of this term as provided in Section 5915.01 et sequi, of the Revised Code?

“2. Can a school board legally expend funds for the purchase, establishment and installation of warning systems, and the institution of other Civil Defense programs, for the protection of the children entrusted to their care and for the protection of the teachers and administrative personnel associated with or subject to the control of such school board?”

In answering your first question I invite your attention to Section 5915.01 (F), Revised Code, which reads as follows:

“‘Political subdivision’ includes a county, township, city, or village.”

Although the verb ‘includes’ rather than the verb ‘means’ is used in defining the term political subdivision, I do not believe that such choice of wording may be utilized to expand the definition of the term, to include a school district. It is a well settled rule of statutory construction that an

interpretation clause should not be given any wider meaning than is absolutely necessary, Crawford, Statutory Construction, Section 208, page 362, and this rule, I believe, should here be applied.

In addition, there is to be considered the rule of statutory construction of "*expressio unius est exclusio alterius*," which in effect means that the expression of one thing by the legislature implies the exclusion of other things not mentioned. Section 5915.01 (F), Revised Code, mentions only a county, township, city or village as being included within the meaning of the term "political subdivision" and it follows, from an application of the above rule, that it is these governmental units and these alone, which the legislature had in mind. As stated in Crawford, Statutory Construction, Section 195, page 335, "* * * if the statute directs that certain acts shall be done in a specified manner, or by certain person, their performance in any other manner than that specified, or by any other person than one of those named, is impliedly prohibited." This principle is expressed with greater embellishment by the maxim "*expressum facit cessare tacitum*," which means that when a law designates the actors, none others can come upon the stage.

Aside from what has been stated above, it is my opinion that the provisions of Chapter 5915., Revised Code, themselves negate any inference that school districts were intended to be included within the term "political subdivision" as therein defined. It is recognized that a school district is a governmental unit separate and distinct from a governmental unit such as a county, township, city, or village, *Cline v. Martin* 94 Ohio St., 420. An examination of the provisions of Chapter 5915., Revised Code, clearly reveals that such provisions were intended to apply only to governmental units of the latter type, as they are listed in Section 5915.01 (F), Revised Code.

As to your second question, consideration must be given to the oft-cited principle that boards of education and other similar governmental bodies have only such powers as are clearly and distinctly granted and such implied powers as are necessary to carry into effect the powers specifically granted. See *State ex rel. Clarke v. Cook*, 103 Ohio St., 465.

Accordingly it appears from an examination of the statutes relating to boards of education that the authority for an affirmative answer to this question must be found, if at all, in Section 3313.37, Revised Code, which reads as follows:

“The board of education of any school district, except a county school district, may build, enlarge, repair, and furnish the necessary schoolhouses, 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.*” (Emphasis added.)

Given a broad interpretation, it would appear that the underscored language provides sufficient authority by which the school boards specified may make the expenditures contemplated in your second question. However, in the case of *Board of Education v. Ferguson*, 68 Ohio App., 514, the court of appeals in interpreting the underscored language, then Section 7620, General Code, applied the rule of *ejusdem generis* and concluded that since the specific authority granted by this section related only to the physical properties constituting schools the general authority following could, therefore, be directed only to the physical properties constituting schools and not to the persons who attend them.

Applying this interpretation, it appears that with respect to that part of your question relating to the establishment and installation of warning systems, authority does exist whereby boards of education may make expenditures for such a purpose inasmuch as the establishment and installation of a warning system relates to physical properties constituting schools. The only conceivable objection that might be raised is that such a warning system is not necessary. However, being aware of the recent developments in modern warfare, and recognizing the fact that the threat of air attack by hostile forces is no longer a matter of remote possibility and inasmuch as school boards are authorized under Section 3313.37, Revised Code, to construct, repair and furnish schoolhouses, keeping constantly in mind the safety features of such schoolhouses, I am of the opinion that the establishment and installation of a warning system can be included within the scope of the phrase “all other necessary provisions.” The conclusion here reached appears to be in harmony with an opinion rendered by my predecessor in Opinion No. 1698, Opinions of the Attorney General for 1940, page 39, where the then Attorney General in interpreting the same language in Section 7620 of the General Code, stated in paragraph 3 of the syllabus as follows:

“If a board of education determines that a bell is essential to the proper conduct of the schools under its control it is empowered to expend school funds to acquire one * * *.”

Recognizing that a warning system as here contemplated differs from the school bell there under consideration, I am, none the less, of the opinion that the same ruling applies.

As to that part of your question relating to the expenditure of funds for the institution of other civil defense programs, in view of the restrictive interpretation placed upon the general language of Section 3313.37, Revised Code, I do not believe it can generally be said that authority does exist whereby such expenditures may be made, even if it be conceded that the programs contemplated would be of material benefit to all concerned. I can only state, applying the rule laid down in the Ferguson case, that expenditures may be legally made only when the programs contemplated concern the physical properties constituting the schools themselves. However, in the absence of more specific knowledge as to what is meant by other civil defense programs I am unable to render an opinion as to whether such programs may be undertaken.

Finally, I would like to point out that the authority granted in Section 3313.37, Revised Code, does not extend to county school districts. I note that in the first paragraph of your request you state that the school board of Hamilton County desires to install a "Bell and Light" warning system in each school in the county. For this purpose there exists no authority whereby the county school board may legally expend funds. It is a matter of individual determination by the school board of each district whether a warning system is necessary and should be installed in the schools under their respective control and the county school board has no voice in this matter. In this respect your attention is directed to Section 3313.85, Revised Code, which reads as follows:

"If the board of education of any city, exempted village, or county school district fails to perform the duties imposed upon it or fails to fill a vacancy in such board within a period of thirty days after such vacancy occurs, the probate court of the county in which such district is located, upon being advised and satisfied of such failure, shall act as such board and perform all duties imposed upon such board.

"If the board of any local school district fails to perform the duties imposed upon it or fails to fill a vacancy in such board within a period of thirty days after such vacancy occurs, the county board of education in which such district is located, upon being advised and satisfied of such failure, shall act as such board and perform all duties imposed upon such board."

As there stated the county board of education may act only where the board of education of a local school district fails to perform the duties imposed upon it by law and although I have stated that a school board may purchase and install warning systems in schools under its control, I do not state that such is the duty of a school board for which failure of performance constitutes a basis whereby a county board may act for such local school board pursuant to Section 3313.85, Revised Code. Furthermore, as to failure by a city or exempted village to perform the duties imposed upon them by law, it is the probate court of the county in which such district is located and not the county school board which shall act for such school board.

Returning to the questions which you specifically raise, it is my opinion and you are advised that :

1. A school district is not a "political subdivision" as this term is defined in Section 5915.01, Revised Code.

2. Pursuant to Section 3313.37, Revised Code, boards of education, other than county boards, may legally expend funds for the purchase, establishment and installation of warning systems in schools under their control.

Respectfully,

WILLIAM SANBE

Attorney General