

851

WAR GOODS, SURPLUS—COUNTY BOARD OF EDUCATION—
WITHOUT AUTHORITY TO PURCHASE FROM FEDERAL
AGENCIES—PURPOSE, DIVISION AND TRANSFER OF MA-
TERIALS TO LOCAL BOARDS OF EDUCATION WITHIN
COUNTY.

SYLLABUS:

A county board of education is without authority to purchase surplus war goods from federal agencies for the purpose of division and transfer of the materials to the local boards of education within the county.

Columbus, Ohio, April 4, 1946

Honorable Benson L. Owens, Prosecuting Attorney
Jackson, Ohio

Dear Sir:

I have before me your communication requesting my opinion, and reading as follows:

“I hereby respectfully submit, for your consideration and opinion, the following question:

‘Can a County Board of Education purchase surplus war goods from federal agencies, handling dispositions of the same for the purpose of division and transfer of the materials purchased to the local Boards of Education within the County?’

According to the County Superintendent there are numerous articles available as surplus war goods which are needed by the local boards, the purchase of which would be economically advantageous to the Boards of Education, but due to the fact that they are only sold in lots, the minimum amount that can be bought is more than the amount needed by any one local board, therefore, the desire is for the County Board to act as an intermediary in the purchase of materials of the type desired for disposition to the local boards in the amounts needed by said local boards, upon their payment to the County Board of their proportionate share.

I found no statutory provision empowering County Boards to make such purchases, but our County Superintendent desired an opinion of your office as to this matter, with the thought

that possibly such purchases would be approved by the examiners of the Bureau of the Inspection and Supervision of Public Offices.”

The 96th General Assembly enacted House Bill No. 102, reading, in part as follows:

Section 1. The provisions of section 8 of House Bill No. 484, ‘To make general appropriations for the biennium commencing January 1, 1945, and ending December 31, 1946,’ requiring that all commodities furnished to the state at a cost in excess of five hundred dollars must be purchased pursuant to competitive bidding, to the contrary notwithstanding, whenever the superintendent of purchases and printing or the director of highways shall find that personal property can be obtained from the federal government at prices less than would be obtained by taking bids as now provided by law for the purchase from private persons, said superintendent of purchases and printing or the director of highways may purchase, lease or obtain the use of said property directly from the federal government without the necessity of advertising to obtain bids, without notice, and upon such formalities and such terms as may be required by the federal government.

Any political subdivision of the state may likewise purchase such surplus commodities from the federal government without the necessity of advertising to obtain bids irrespective of the amount of money involved, and the provisions of any statute to the contrary notwithstanding. Such purchase may be made through the superintendent of purchases and printing or directly from the federal government.” (Emphasis added.)

It will be observed that the authority granted to make such purchase of surplus commodities is lodged primarily with the superintendent of purchases and printing and the director of highways but that the privilege of making such purchases without advertising for bids is extended to “any political subdivision of the State.” Under the provisions of Section 5625-1, General Code, relating to taxation and appropriations, “subdivision” is defined as follows:

“(a) ‘Subdivision’ shall mean any county, school district, except the county school district, municipal corporation or township in the state.”

By Section 2293-1, General Code, part of the uniform bond law, “subdivision” is defined in substantially identical words. While these

definitions do not expressly define "*political* subdivision" yet it seems clear that that was the intention of the General Assembly, and that is the sense in which the term "political subdivision" is unquestionably used in the Act to which we have first referred, as well as in many other statutes. We start, therefore, with the proposition that a county school district is not a "subdivision" within the law regulating the borrowing of money or within the law relating to the levying and expenditure of public funds, and is not a "political subdivision" within the express terms of said House Bill 102.

Section 4834, General Code, describes the board of education of each school district as a body politic and corporate, and, as such, capable of contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property. Under this general provision, a county board would, of course, be included. However, Section 4834-10, General Code, defining the powers of boards of education in the matter of providing and equipping school buildings, is narrowed in its scope. That section 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." (Emphasis added.)

Section 4836, General Code, reads as follows:

"Each city, exempted village or local board of education shall have the management and control of all of the public schools of whatever name or character in its respective district. Provided, that if the board has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint janitors, superintendents of buildings and such other employees as may be provided for in such annual appropriation resolution."

Here it will be noticed that the county board of education is omitted from the list of boards to whom the management and control of the public schools are committed. By the terms of Section 4844-1, General Code, there is a provision authorizing the county board to purchase ordinary

supplies and equipment but to a very limited degree. That section, so far as pertinent, reads as follows:

“The board of education of each county school may provide programs, examinations, school records, diplomas, and other necessary supplies and equipment for the use of the county superintendent in furthering the instructional program of the county school district.”

I find no other section of the law that would seem to give the county board of education authority to purchase supplies or other property for use of the local boards under its general supervision. The fact that it might be advantageous and economical to do so cannot supply the lack of power. The principle that all bodies created by statute, such as boards of education, are limited to the powers granted by law is too well recognized to need discussion or elaboration. *State ex rel., v. Menning*, 95 O. S., 97; *State ex rel., v. Cook*, 103 O. S. 465.

Specifically answering your question, it is my opinion that a county board of education is without authority to purchase surplus war goods from federal agencies for the purpose of division and transfer of the materials to the local boards of education within the county.

Respectfully,

HUGH S. JENKINS,
Attorney General