

1904

EDUCATION, BOARDS OF—NOT LEGISLATIVE AUTHORITIES WITHIN MEANING OF TERM USED IN SECTION 3298-54 G. C.

SYLLABUS:

Boards of education are not legislative authorities within the meaning of the term as used in Section 3298-54 of the General Code of Ohio.

Columbus, Ohio, June 19, 1950

Hon. Joel S. Rhinefort, Prosecuting Attorney  
Lucas County, Toledo, Ohio

Dear Sir:

This will acknowledge receipt of your communication requesting my opinion, as follows:

“This office is presenting to you for opinion the following subject matter referred to the prosecutor’s office by the Board of Education of Oregon Local School District, to wit: ‘Under the statutes of the State of Ohio, is it permissible for the Board of Trustees or the Board of Education to lease or be granted an easement from one political subdivision to another. The Board of Trustees desires to construct a building to house fire apparatus on the Coy and Wynn school properties and if it is lawful, will you please furnish us with the proper legislation and form whereby such transaction may be legally performed.’

“From a perusal of Attorney General’s Opinion already given respecting the corporate powers of Boards of Education, it appears that the law is well established that as regards school properties, buildings and lands, that where such properties are conveyed to the Board of Education or held by the Board of Education with the strict proviso that they shall be used for school purposes *only*, no authority rests in the Board of Education to lease or permit the use of such school properties for any other purpose than school purposes.

“In this particular case as regards these properties mentioned, the Coy and Wynn Road School properties, the deed of conveyance to the Board of Education of said Oregon Local School District was simply to the Board of Education and its successors and no mention was made in the deed of conveyance to the Board of Education that the above mentioned properties were to be used for school purposes *only*.

“In this particular case, the lease if made for the construction of this building to house fire apparatus, would be a ‘ninety-nine year lease’ or in other words, what would amount to a sale of the school property to the Trustees of Oregon Township, and Opinions of your office have already been rendered to the effect that where a lease of school properties amounts to a sale the same is prohibited—1939 A. G. Opinions, No. 571.

“Thus it appears that construing the statutes strictly, the Board of Education in this case would not have the power to lease its properties to the Board of Trustees for the erecting of a building to house fire apparatus.

“I was wondering, however, that under a liberal construction of Section 3298-54, Laws of Ohio, Vol. 121, and particularly the following paragraph—

“‘The trustees of any two or more townships or the councils or other legislative authorities of any two or more political subdivisions or any combination thereof, are authorized through joint action to unite in the joint purchase, maintenance, use and operation of fire fighting equipment, or for any other purpose designated in this act, and to pro-rate the expense on such terms as may be mutually agreed upon.’

would not permit Boards of Education to enter into such a lease with the Board of Township Trustees. You will note that in this paragraph it speaks of the Trustees of two or more townships and the councils or other legislative authorities, and would this imply that since the Board of Education is a legislative authority whether or not under this section it could make such a lease with the Board of Trustees of Oregon Township for the construction of such a building to house fire apparatus.

"It is understood that the properties that are in question are not now really needed for school purposes and hardly will be needed in the future."

In order to properly answer your question, it will be necessary to restate it as follows: Do boards of education have the power to enact legislation and thus come within the meaning of "legislative authorities" as the term is used in Section 3298-54 of the General Code of Ohio?

Section 3298-54 of the General Code provides for regulations to guard against fires and for the purchase, operation of fire fighting equipment and joint purchases. That part of Section 3298-54, to which you refer, reads as follows:

"The trustees of any two or more townships, or the councils or other legislative authorities of any two or more political subdivisions or any combination thereof, are authorized through joint action to unite in the joint purchase, maintenance, use and operation of fire fighting equipment, or for any other purpose designated in this act, and to pro-rate the expense on such terms as may be mutually agreed upon."

In 36 O. Jur., at page 85, school districts are defined as:

"\* \* \* a political organization unknown to the Constitution, the mere creature of legislative enactment, organized as a mere agency of the state in maintaining its public schools, all of its functions being of a public nature. \* \* \* It is so constituted as to partake of the character of counties and townships—mere subdivisions of the state for political purposes and agencies in the administration of public laws. \* \* \* They are involuntary corporations created by the state without solicitation or consent of their inhabitants and are made depositories of limited political and government functions or public agencies invested with the sovereign will of the state in respect to the powers given them, without power to decline the functions devolved upon them or withhold performance in the mode prescribed, but bound to exercise them, not for themselves, but for the public good and in behalf of the state in the execution of its general policy."

Section 4834, General Code of Ohio, provides that :

“The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred upon it by law.”

Section 4834-5, General Code of Ohio, provides that :

“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.”

In the case of *State of Ohio for the Use of The Board of Education of the School District of Cincinnati v. Griffith, et al.*, 74 O.S. 80, at page 94 the court said :

“\* \* \* It could not for a moment be assumed that section 3985 (now Section 4834-5) 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 power of the board to make rules is just as broad for itself as for its appointees.”

In the case of *Verberg, Appellee, v. Board of Education of the City School District of Cleveland, Appellant, et al.*, 135 O. S. 246, the first branch of the syllabus reads :

“Boards of education are creatures of statute and have only such jurisdiction as thus conferred. They may not, under their rule-making power granted by statute, confer upon themselves further jurisdiction or authority.”

In view of the foregoing, it is my opinion that boards of education are not legislative authorities within the meaning of the term as used in Section 3298-54 of the General Code of Ohio.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.