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EDUCATION, BOARDS OF—WITHOUT POWER TO RULE  
THERE SHALL BE A CERTAIN PERIOD OF RESIDENCE AS  
A CONDITION TO ISSUE A HIGH SCHOOL DIPLOMA TO A  
PUPIL.

SYLLABUS:

Boards of education are without power to make a rule establishing a certain period of residence as a condition to the receipt by a pupil of a high school diploma.

Columbus, Ohio, April 12, 1948

Dr. Clyde Hisson, Superintendent of Public Instruction  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In order to properly interpret Section 4837-1, General Code, we would like your opinion with respect to the legality of a board of education to establish a 'residential requirement' as a prerequisite to issuing a diploma.

"QUESTION: Does a Board of Education have the legal right to establish a stipulated length of attendance in its high school as a requirement for the issuance of a high school diploma according to Section 4837-1 of the General Code of Ohio?"

"The following case which was called to our attention this week will serve to explain this request.

"The parents of a pupil moved from the district served by 'A' high school to one served by 'B' high school. The pupil concerned, had finished approximately  $3\frac{1}{2}$  yearh of work at 'A' high school and needed approximately  $\frac{1}{2}$  year of work at 'B' high school to complete the requirements for a diploma. The principal of 'B' high school informed the pupil that he could enter and would be able by the end of the school year to complete all the requirements for a diploma; however, 'B' high school would not grant him a diploma due to the fact that he could not meet the 'residential requirements' established by the school."

Section 4837-1, General Code, reads as follows:

"A diploma *must be granted* by the board of education to any one *completing the curriculum in any high school*, which diploma shall state the grade of the high school issuing it as certified by the superintendent of public instruction, be signed by the president and clerk of the board of education, the superintendent of schools, and the principal of the high school and shall bear the date of its issue. Such diploma shall be in such form as the board of education may prescribe and shall be paid for out of the general fund." (Emphasis added.)

It will be noted that the above language makes it quite mandatory that a diploma must be granted to anyone completing the curriculum *in any high school*. I cannot construe this language as requiring the entire high

school course to have been carried on in the particular school which is to grant the diploma. Manifestly, a pupil might carry on his high school training in a number of different schools throughout the state and perhaps a part of it in the schools of other states. The word "completing" would seem to imply a reference to the school where he is in attendance at the time he finishes his high school studies.

Bearing in mind that every public and high school in the state is a part of a statewide system and that the entire system is financed and governed by the state, it appears to me very clear that there must be harmony of operation between the various districts to the end that every pupil may receive his school training and attain to the right of high school graduation and to the receipt of his diploma without being blocked or delayed by circumstances beyond his control such as the removal of his family from place to place. The entire school system both as to standards and the distribution of the state's subsidy is under the control of the state superintendent of education. It will be observed from a reading of Section 4837, General Code, that the courses of study for all schools are subject to the approval of the superintendent of public instruction. That section reads in part as follows:

"Boards of education of county, exempted village and city school districts shall prescribe a graded course of study for all schools under their control subject to the approval of the superintendent of public instruction. \* \* \*"

The above provision is followed by a recital of the subjects which may be included in the course of study. The board of education is, by the provisions of Section 4834-5, General Code, given certain rule making powers. This section provides as follows:

"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."

It will be noted that these rules are to be "for *its government* and *the government of its employees and all the pupils* of the schools. The word "government", it appears to me relates to the conduct of the pupils and would properly include all matters which would tend to the orderly conduct of the school, including reasonable regulations as to examinations, promotions, discipline, etc. In the case of *Board of Education v. State*, 80 O. S., 133, it was held that a rule providing for the proper examination

at the end of the school year and for promotion to the next higher grade upon the recommendation of the teacher and superintendent was a reasonable rule.

A rule requiring periodical physical examination of its non-teaching employes was sustained in the case of *Quigg v. Board of Education*, 69 O. App., 165. A rule prohibiting contracts for the employment of teachers who had attained the age of sixty-five years was sustained in the case of *Harrison v. Board of Education*, 60 O. App., 45.

A rule undertaking to confer upon the clerk of a board of education authority to receive and disburse moneys of the board in the face of a statute putting that responsibility on the treasurer of the district, was held to be invalid. *State v. Griffiths*, 74 O. S., 80. The court cited the statute as to the rule making powers of the board, which was similar to the present statute, and said:

“The statute gives to the board the power to make rules and regulations for the government of itself, its appointees and pupils: that is, rules for their management, control and direction, merely disciplinary regulations.”

It appears to me that the rule suggested by your letter would go beyond the intended scope of the powers of the board of education and would infringe upon the statute regarding the right to receive a diploma. If one board of education may be conceded this right, then we must concede it to each and every board. Manifestly, there could be no uniformity and a rule of the sort suggested might subject a pupil to a very serious loss and annoyance. If a board could require one year's actual attendance from a pupil in its own school as a condition to granting a diploma, it might as well require two years or more. Under such a rule a pupil might have completed all but a few months or a few weeks of his course in a high school in one part of the state and upon removal of his family to another part of the state he would find himself compelled to cover again one or more years of work for which he already has credit in the school of his original attendance. If he should go back in the middle of the school year to the district where he had originally attended, and demand his diploma, he might there find a similar rule requiring his entire final year of school to have been in that district, and he would therefore be unable to comply with the rule in either district and would be denied the diploma which he had earned.

Since the board of education is a creature of limited powers, having only such as are granted by the statutes, and since I do not find in the statutes any authority which appears to grant to any board of education the power to make a rule such as you suggest, it is my opinion and you are advised that boards of education are without power to make a rule establishing a certain period of residence as a condition to the receipt by a pupil of a high school diploma.

Respectfully,

HUGH S. JENKINS,  
Attorney General.