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TRANSPORTATION—PUPILS FROM ONE SCHOOL DISTRICT TO ANOTHER—CONTRACT FOR ADMISSION OR TRANSPORTATION OR BOTH—MAY BE MADE FOR ANY REASONABLE PERIOD—PERIOD MAY EXTEND BEYOND TERMS OF OFFICE OF SOME OR ANY OF MEMBERS OF SUCH BOARDS OF EDUCATION—SECTION 3327.04 RC.

## SYLLABUS:

A contract made pursuant to Section 3327.04, Revised Code, for admission or transportation, or both, of pupils from one school district to another district, may be made for any reasonable period, even though such period may extend beyond the terms of office of some or all of the members of such boards of education.

Columbus, Ohio, April 10, 1956

Hon. Harold D. Roth, Prosecuting Attorney  
Wyandot County, Upper Sandusky, Ohio

Dear Sir:

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

“The County Board of Education has requested that I secure an opinion from you in connection with contracts between school boards under authority of Revised Code Section 3327.04.

“This section of the law provides that the Board of Education of any exempted village or local school district may contract with the Board of another district for the admission or transportation or both of pupils into any school in such other district on terms agreed upon by such Boards.

“There appears to be no limitation with reference to the time element of such a contract. Our local Board would therefore like to know whether or not a local board might enter into a contract with another local board or exempted village board for a term of more than one (1) year—possibly even a term of twelve (12) years.

“I find nothing in these sections of the law which limit the time of such a contract.”

Section 3327.04, Revised Code, to which you refer, in so far as pertinent, reads as follows:

“The board of education of any city, exempted village, or local school district may contract with the board of another district for the admission or transportation, or both, of pupils into any school in such other district, on terms agreed upon by such boards. \* \* \*”

I find no provision in this statute or elsewhere which places any limitation on the period for which such contract may be made. It appears to me, therefore, that the only question we have to consider is

whether a contract for such period as would extend beyond the terms of the members of the board of education would be held invalid as binding or limiting the discretion of future boards.

It is well recognized that some contracts are of such character that it is highly desirable that they be for a period far beyond the term of the officers or board members making them. The power of public officers and boards to enter into such contracts is discussed in 43 American Jurisprudence, page 101, as follows :

“The power of public officers to enter into contracts which extend beyond the terms of their offices depends primarily on the extent of their authority under the law. A distinction has been drawn between two classes of powers—governmental or legislative and proprietary or business. In the exercise of the governmental or legislative powers, a board, in the absence of statutory provision, cannot make a contract extending beyond its own terms. But in the exercise of business or proprietary powers, a board may contract as an individual, unless restrained by statutory provision to the contrary. Obviously, contracts extending beyond the terms of the officers executing them will be held invalid where the making of the contracts tends to limit or diminish the efficiency of those who will succeed the incumbents in office, or usurp power which was clearly intended to be given to the successors.

“Contracts pertaining to the ordinary business affairs of a municipality or county, such as contracts for water supply, street lighting, and the leasing of municipal property to private parties, are ordinarily upheld, although extending beyond the term of the officer making them, in the absence of fraud or other inequitable circumstances.”

This statement is substantiated by a large number of cited cases from various jurisdictions. Substantially the same language is used in 32 Ohio Jurisprudence, p. 942; but there is added the following, which I consider important :

“A contract of this kind, however, must be reasonable in length of time to which it is to extend.”

In an annotation found in 70 A. L. R., p. 794, the same proposition is stated as set forth in the above quotation from American Jurisprudence, and is supported by a long list of cases from various states. The cases cited in support of the rule as to contracts concerning proprietary or business functions, include contracts relating to purchase of water or gas, to public printing, to leases, etc.

In the case of *Vincennes v. Citizens Gaslight Co.*, 132 Ind., 114, a contract for furnishing the city a supply of gas and water for a period of twenty-five years was upheld, that being considered by the court a reasonable time.

Contracts for appointment of officers and employment of an attorney are noted as partaking of the legislative or governmental character, and accordingly not to be extended into the terms of future boards.

The only Ohio case which I found that appears to touch the subject under consideration is *Board v. Ranck*, 9 C. C., 301, in which the appointment of a janitor for the court house was involved. The court did not mention the distinction pointed out in the foregoing citations, but rendered the following decision as stated in the headnote:

“A contract for the employment of janitors made by a board of county commissioners, for a period of time extending beyond the time when a change is certain to occur in the persons composing the board, *unless made in good faith, in the interest of the public and for a time reasonable under the circumstances*, is against public policy, and void.” (Emphasis added.)

It seems difficult to apply the rule above discussed to contracts which a board of education must make in the course of the conduct of the schools. It certainly cannot be said that a determination by a board of education to build or not build a school house is in the exercise of its proprietary or business functions, as contrasted with its legislative or governmental functions. The board may be confronted with an important choice between providing a new school building and financing the same, or sending its pupils to another district. If there is such a thing as a legislative or governmental function for a board of education, certainly this is one. In like manner the employment of teachers, and the determination of their salaries, and the length of their term are important legislative acts.

If, therefore, we conclude that a contract such as you mention is made in the exercise of the board's legislative function, is the board to be bound by the general rule which I have above discussed? If so, what could a board of education do in the spring of a given year, in planning for the schools for the coming school years, when confronted by the fact that the term of some or all of the members will expire in January of the next following year? If the local school facilities are

inadequate to take care of the pupils, the board must contract for their attendance in another district, and doubtless for at least the full school year.

If on the contrary, we should concede their right to contract for a long period, say five years, or twelve, as you suggest, then it is obvious that they would tie the hands of future boards in case the public demand and the interests of the pupils made it highly desirable to build one or more school buildings, and keep the children in their own district.

My inclination is to get away from the above mentioned rule if possible and leave the board free to exercise a sound discretion, keeping within reasonable limits. In 47 American Jurisprudence, page 378, I note the following:

“In contrast with the general rule applicable to contracts by public officers extending beyond their terms of office, in the absence of an express or implied statutory limitation, it is generally held that a school board may contract with a teacher for a term extending beyond that of the board itself, although the statutory provisions of a few states are such that a contract for a period beyond the term of the board cannot be upheld. Such a contract, if made in good faith and without fraud or collusion, binds the succeeding board.”

In 70 A. L. R., 802, I find the proposition stated thus:

“In the absence of statutory provision, it is generally held that a school board may contract with a superintendent or teacher for a period extending beyond the term of the board.”

This statement is supported by a large number of citations. Among others, is the case of *Tate v. School District* reported in full in 70 A. L. R., page 771, decided by the Supreme Court of Missouri, the headnote reading as follows:

“1. In the absence of an express or implied statutory limitation on its powers, or of fraud and collusion, a school board may enter into a contract to employ a teacher for a reasonable term extending beyond that of the board itself.”

The court quoted from *Wait v. Ray*, 67 N. Y. 36, where the New York Court of Appeals said:

“School districts are quasi corporations, and trustees are officers of them, and when they act officially and within their jurisdiction they bind the corporation which they represent, and

their legal contracts can be enforced against their successors in office. \* \* \* This power is general and unlimited. If it had been intended that the contracts which they are authorized to make should not extend beyond their term of office, this general language would have been limited." \* \* \*

While I have not found any cases where the question presented by your letter was involved, I cannot see why the same principle should not apply. It is nearly, if not quite as important in carrying out the duties placed upon a board of education, to provide school rooms in which the pupils may be instructed, and facilities for getting them to their schools as it is to provide them with teachers, and requires at least as much freedom of action on the part of the board.

Accordingly, it is my conclusion that in providing for the education of the pupils for whom it is responsible, a board of education, if it finds it necessary, may contract for the admission or transportation of its pupils to another district even though the term of such contract would extend beyond the term of part or all of the members of the board; but such period must be reasonable in its duration and not such as would embarrass or handicap a succeeding board in making other provisions for the education of its pupils.

In specific answer to the question submitted, it is my opinion that a contract made pursuant to Section 3327.04, Revised Code, for admission or transportation or both, of pupils from one school district to another district, may be made for any reasonable period even though such period may extend beyond the terms of office of some or all of the members of such boards of education.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General