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COUNTY COMMISSIONERS—EDUCATION; OFFICE SPACE AND FURNITURE, COUNTY BOARD OF EDUCATION AND COUNTY SUPERINTENDENT—§3319.19 R.C.—581 OAG 1951, p. 350, Approved and followed.

SYLLABUS:

Under the provisions of Section 3319.19, Revised Code, the board of county commissioners is required to furnish offices in the county seat for the use of the county superintendent of schools, together with the necessary furniture and equipment, even though the county school district does not include the entire territorial area of the county. Opinion No. 581, Opinions of the Attorney General for 1951, p. 350, approved.

Columbus, Ohio, July 7, 1958

Hon. G. William Brokaw, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

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

“I have been requested by the board of county commissioners of Columbiana County to secure your further opinion on Section 3319.19 of the Revised Code on the proposition of the said board providing and furnishing offices in the county seat for the use of the county superintendent of schools. I am familiar with the above mentioned section of the Revised Code, and am also familiar with the then Attorney General’s opinion, 1951 OAG No. 581. This Attorney General’s opinion seems to be quite unequivocal in stating that the commissioners must provide not only the physical quarters for an office, but also that the commissioners shall furnish such office with such furniture and equipment as are appropriate to the nature of the superintendent’s statutory duties and functions.

“The above mentioned Attorney General’s opinion was written at the request of the bureau of inspection and supervision of public offices. It does not contain any mention of the point which we feel should be clarified. The tax money under the control of, and which is appropriated and spent by the board of county commissioners of this county is derived from a general property levy on all of the real estate within Columbiana County. The tax money for the support of the office of the county superintendent

of schools is derived from an apportionment, made in Columbus, among the various school districts under the supervision of the county superintendent of schools and the county board of education. In Columbiana County there are four city school districts of considerable size, which do not come under the supervision or control of the county superintendent or the county board of education. Nor do the city and exempted village school districts pay anything toward the support of the office of the county superintendent of schools.

“Your opinion is respectfully requested as to whether or not it would be proper or legal to expend moneys derived from a county-wide property levy for the benefit of the office of the county superintendent of schools. In particular can such money legally be spent to purchase desks, typewriters, mimeographs, and the like for said office by the board of county commissioners?”

The organization and control of counties and school districts are matters which are placed directly by the constitution in the hands of the general assembly.

As to counties, we find in Section 1, Article X, Ohio Constitution, the following provision:

“The General Assembly shall provide by general law for the organization and government of counties, and may provide by general law alternative forms of county government. * * *”

As to the public school system, Section 3, Article VI, Ohio Constitution, provides:

“Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: * * *”

This language of the constitution in both cases is very explicit and appears to place the control of both counties and the school organization entirely within the discretion of the legislature, which may determine the powers and responsibilities both of county officers and boards of education.

Section 3311.02, Revised Code, defines a city school district as follows:

“The territory within the corporate limits of each city, excluding the territory detached therefrom for school purposes and *including the territory attached thereto for school purposes*, constitutes a city school district. * * *” (Emphasis added)

Here it will be observed that the boundaries of a city school district are not necessarily coextensive with the city limits. Such school districts may

include an indefinite amount of territory lying outside of its corporate limits, and may exclude any amount lying within the city. Such outlying territory may be attached to the city school district by the procedure set out in the statutes or it may be that portions of a city district are by like proceedings detached from the city district and attached to local or other districts outside of the city.

A county school district is defined by Section 3311.05, Revised Code, as follows :

“The territory within the territorial limits of a county, *exclusive of the territory embraced in any city school district, exempted village school district*, and excluding the territory detached therefrom for school purposes and including the territory attached thereto for school purposes constitutes a ‘county school district.’”
(Emphasis added)

By the provisions of Section 3319.01, Revised Code, a superintendent of a county district is appointed by the county board of education. His salary is fixed by the county board. The general operating expense of a county board under the provision of Section 3317.13, Revised Code, is provided in part by state funds, the balance being apportioned to the several local districts constituting the county district; but, as stated in your letter, Section 3319.19, Revised Code, places upon the county commissioners the obligation to furnish offices in the county seat for the use of the county superintendent. That section reads as follows :

“The board of county commissioners shall provide and furnish offices in the county seat for the use of the county superintendent of schools. Such offices shall be the permanent headquarters of the superintendent and shall be used by the county board of education when it is in session.”

It appears at the outset that the general assembly was acting within the broad scope of its constitutional powers in placing this burden of furnishing an office for the superintendent upon the county commissioners. The only argument that can be adduced against that conclusion is that it appears to be unfair. I may call attention to the fact that in many other instances we may find provisions in the statutes which appear to those affected to be unfair, but if they are within the powers given by the constitution to the general assembly, we must accept them. Even the courts will not allow themselves to be swayed in construing or applying a statute

by substituting their judgment for that of the legislature. *Slingluff v. Weaver*, 66 Ohio St., 621.

In this connection I might direct your attention to Section 3313.35, Revised Code, which provides:

“Except in city school districts, the prosecuting attorney of the county shall be the legal adviser of all boards of education of the county in which he is serving. * * * In city school districts the city solicitor shall be the legal adviser and attorney for the board thereof, and shall perform the same services for such board as required of the prosecuting attorney for other boards of the county. * * * No compensation in addition to such officer's regular salary shall be allowed for such services.”

That statute was the subject of an opinion of my immediate predecessor, to-wit, Opinion No. 3644, Opinions of the Attorney General for 1954, p. 135. The facts involved, as shown by the request, were as follows:

“The ‘B’ city school district is composed of the city of ‘B’, the villages of ‘BP’ and ‘MH’ and a portion of the ‘WV’ village. In the case of the ‘B’ city school district, approximately $\frac{1}{2}$ the population and $\frac{4}{5}$ ths of the tax duplicates lie outside the boundaries of the city of ‘B’. The city of ‘B’ feels that since a substantial part of the population served by the district and 80% of the tax duplicate, which supports the school district, is outside the city corporation limits, that the city of ‘B’ should not be required to furnish, through its City Solicitor, the legal services required by the school district.”

Notwithstanding the seeming unfairness that resulted from the application of the law in that situation, it was held, that in the absence of a charter provision limiting the duties of the city solicitor, the statute in question must be followed.

In *State ex rel Ramey v. Davis*, 119 Ohio St., 596 the constitutionality of Section 1579-279, General Code, was challenged. That was part of the act establishing the municipal court of Toledo. The claim made was made that the provision therein requiring the city to provide court rooms, furniture and supplies for such court invaded the sovereign rights of the municipality guaranteed to it by Article XVIII, Section 3, Ohio Constitution, granting to municipalities all powers of local home rule; that the court was a part of the state judicial system, and was endowed with jurisdiction extending beyond the territory of the city. The court held, as shown by the 5th and 6th branches of the syllabus:

"5. The imposing of the burden of housing the courts created for the jurisdiction of a designated political subdivision upon such subdivision, is in accordance with the practice of the state from its inception, is an equitable distribution of the burdens of state government among the political subdivisions of the state and violates no provision of the Constitution of the state.

"6. Where the legislature confers upon a court certain minor extraterritorial jurisdiction and the state contributes substantially toward the maintenance of such court, the requirement that the political subdivisions, of the jurisdiction of the court, house such court does not amount to an imposition upon such political subdivision of a burden that ought to be borne by the state at large, where the expense of such extraterritorial jurisdiction is not out of proportion to such contribution."

That case is not a clear parallel to the situation which you present; but the following extract from the opinion by Judge Robinson, shows, as I believe, that the court had in mind the proposition that I have asserted, *viz.*, that the legislature, acting within its constitutional authority, may impose upon one of its created political subdivisions a certain burden which could more fairly be imposed upon another. The opinion at page 601 contains the following language:

"* * * It has been the practice of the state from the date of the organization of the state, to require counties to provide court-houses, with courtrooms and other suitable facilities for the housing of the respective courts of the respective county political subdivisions; and such has been the practice, in so far as we know, in all other jurisdictions. Whether it amounts to an imposition of a burden upon a political subdivision of the state which ought to be borne by the state alone is a question of policy rather than of power, and violates no provision of the state Constitution."

It is accordingly my opinion that under the provisions of Section 3319.19, Revised Code, the board of county commissioners is required to furnish offices in the county seat for the use of the county superintendent of schools, together with the necessary furniture and equipment, even though the county school district does not include the entire territorial area of the county. Opinion No. 581, Opinions of the Attorney General for 1951, p. 350, approved.

Respectfully,
WILLIAM SAXBE
Attorney General