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EDUCATION—FAILURE OF SCHOOL TO MEET STATE MINIMUM STANDARDS—LOCAL BOARD MAY LAWFULLY EXPEND LOCAL TAXES—ATTENDANCE OF PUPILS AT SUCH SCHOOL IS NOT COMPLIANCE WITH CHAPTER 3321. R.C.

SYLLABUS:

1. A local board of education has authority to levy local taxes and spend public money for the purpose of maintaining and operating a school, even though such school fails to meet the minimum standards set by the state board of education.

2. Pupil attendance at an elementary school which fails to meet the minimum standards for elementary schools set by the state board of education is not such school attendance as is required by Chapter 3321., Revised Code.

Columbus, Ohio, April 1, 1959

Hon. James I. Shaw, Prosecuting Attorney
Auglaize County, Wapakoneta, Ohio

Dear Sir :

I have before me your request for my opinion which reads as follows :

“1. Does a local Board of Education have authority to legally levy local taxes and spend public money to maintain and operate a one or two room school with more than two grades in a room, which is not approved by the State Board of Education?

“2. If a local Board of Education has authority to legally spend local tax money to maintain and operate a school not approved by the State Board of Education, may pupil attendance at such a school be considered as legal attendance?

“Pursuant to the authority vested in it by Section 3301.07 of the Ohio Revised Code, the State Board of Education in 1957 adopted minimum standards for elementary schools. In Paragraph 2 of the minimum standards the following two sentences appear :

“ ‘It is the intention of the Board to hereby adopt standards below which no elementary school may fall. An institution which does not meet these standards shall not be considered to be a school within the meaning of Chapter 3321 of the Revised Code, the Compulsory Attendance Law.’

“The first sentence of Paragraph A. under Standard II. Organization is as follows :

“ ‘Commencing with the school year 1959-60, each elementary school shall have at least three full time teachers and not more than two grades shall be housed in the same class room.’

“Auglaize County has a school which does not meet the minimum standards as adopted by the State Board of Education.”

The questions which you have raised can be answered most effectively in inverse order. Thus, the second question relates to whether pupil attendance at an elementary school, which fails to meet the minimum standards for elementary schools adopted by the state board of education, may be considered legal attendance under the school attendance laws of Ohio. In answering this question, I direct your attention to provisions of Section 3321.03, Revised Code, which reads as follows :

“Every child of compulsory school age who is not employed under an age and schooling certificate and has not been determined to be incapable of profiting substantially by further instruction shall attend a school which conforms to the minimum standards prescribed by the state board of education, under the conditions prescribed by law.”

This section is found in 126 Ohio Laws, p. 655, and it became effective January 3, 1956, the same time at which the Act establishing a state board of education became effective.

Section 3301.07, Revised Code, sets up the powers of the state board of education and reads in pertinent part as follows:

“The state board of education shall exercise under the acts of the legislature general supervision of the system of public education in the state of Ohio. In addition to the powers otherwise imposed on the state board under the provisions of law, such board shall have the following powers:

“A. It shall exercise policy forming, planning and evaluative functions for the public schools of the state, and for the public schools of the state, and for adult education, except as otherwise provided by law.

“* * *

“D. It shall formulate and prescribe minimum standards to be applied to all elementary and high schools in this state for the purpose of requiring a general education of high quality. * * *”

It will be noted that it places very broad responsibility on the state board of education and gives it the power of general supervision of the system of public education in this state. Pursuant to this power the state board of education adopted, in 1957, standards for elementary schools.

As the particular school mentioned in your request does not meet these minimum standards adopted by the state board of education, it may be seen that pupil attendance at such school would not meet the requirements of the compulsory school attendance law, as embodied in Section 3321.03, Revised Code. For this reason, children who attend this school would not be considered to be attending school, and the parents, guardians or other persons having care of such children would be in violation of this law and subject to the penalties provided in Sections 3321.38 and 3321.99, Revised Code.

I proceed, in turn, to your first question as to whether a local board of education has authority to levy local taxes and spend public money to

maintain and operate a school which does not meet the minimum standards set by the state board of education. The primary requirement for the levying of taxes and spending public money is that the tax be for a public purpose. Neither Chapter 5705., Revised Code, which establishes the taxing authority of a local subdivision, nor Chapter 3321., Revised Code, which provides for compulsory school attendance, contain any specific prohibition against the levying of taxes for the support of a school which fails to meet the minimum standards set by the state board of education. The employment of teachers and the education of children is the primary object of a school system, and is universally recognized as a public purpose. See 38 Ohio Jurisprudence, 759, *et seq.*

Assuming that the school in question is open to all children in the taxing school district and meets all the criteria of a public school, except those minimum standards set by the state board of education for purposes of the compulsory education law, it is my opinion that the levying of taxes for the support of such school is a public purpose. It is my opinion, therefore, that although parents and guardians of children who attend this school and no other, may be violating the compulsory attendance law, it is, nevertheless, a school which dispenses general educational benefits to all children within the taxing district and is, therefore, a public purpose for which a tax may be legally levied.

It should be noted, however, in answering your question, that although local money may be expended upon such school, that school may be ineligible to participate in the school foundation program provided in Chapter 3317., Revised Code. Section 3317.14, Revised Code, contains this provision which should be considered by the board of education in deciding to continue the maintenance of a substandard school :

“A school district, the board of education of which has not conformed with the law and the rules and regulations pursuant thereto shall not participate in the distribution of funds authorized by section 3317.02 of the Revised Code, *except for good and sufficient reason established to the satisfaction of the state board of education and the state controlling board.*” (Emphasis added)

It is my opinion, therefore, and you are accordingly advised :

(1) A local board of education has authority to levy local taxes and spend public money for the purpose of maintaining and operating a school, even though such school fails to meet the minimum standards set by the state board of education.

(2) Pupil attendance at an elementary school which fails to meet the minimum standards for elementary schools set by the state board of education is not such school attendance as is required by Chapter 3321., Revised Code.

Respectfully,

MARK McELROY

Attorney General