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EDUCATION, CITY SCHOOL DISTRICT, BOARD OF — NATIONAL COMMITTEE ON TEACHER EXAMINATIONS— SUCH BOARD WITHOUT AUTHORITY TO EMPLOY AT PUBLIC EXPENSE, SERVICES OF PRIVATE NON-GOVERNMENTAL AGENCY TO CONDUCT EXAMINATIONS FOR TEACHING POSITIONS — NO AUTHORITY TO CLASSIFY, GRADE AND RECOMMEND SUCH APPLICANTS BY STANDARDS OF SUCH AGENCY — PURPOSE, TO AID SUPERINTENDENT OF SCHOOLS IN DUTY TO APPOINT TEACHERS— NO AUTHORITY TO PAY ANY PART OF COST.

SYLLABUS:

A board of education of a city school district is without authority to employ, at public expense, the services of a private non-governmental agency such as the National Committee on Teacher Examinations, to conduct examinations to determine the relative fitness of applicants for teaching positions in the public schools of its district and to classify, grade and recommend such applicants in accordance with standards set up by the agency conducting the examinations, for the purpose of aiding the superintendent of schools in the performance of his duty of appointing teachers as provided by law, or to pay any part of the cost thereof.

Columbus, Ohio, February 27, 1943.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

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

“During the audit of the records of a city school district, it was disclosed that a payment of \$1,270.00 was made to the

National Committee of Teacher Examinations. This payment represented a part of the fee charged by this Committee for 254 applicants taking this examination who were also applicants for positions in the schools under the management of this board.

May we respectfully request your opinion on the following questions:

1. For the purpose of assisting the superintendent of schools in selecting desirable teachers for services in the schools, may a city board of education pay a part of the fee charged by an organization such as the National Committee of Teacher Examinations to applicants taking such examination?
2. May the board of education employ such organization to conduct an examination of applicants for positions in the schools under management of such board, if such examination is for the purpose of aiding the superintendent of schools in selecting desirable teachers?"

The question presented by your inquiry is whether or not a board of education in a city school district, for the purpose of aiding its superintendent of schools in the choice of teachers, may engage at public expense, a private non-governmental agency to conduct examinations to determine the relative fitness of applicants for teaching positions in the public schools of its district, and classify, grade and recommend such applicants in accordance with standards fixed by the agency conducting the examinations.

This question involves the principle which frequently has been announced by the courts and is now firmly established, that administrative boards such as boards of education are limited in their powers to those granted by the General Assembly. That a board of education is a mere agency of the state created by statute for the sole purpose of carrying out the constitutional mandate to the General Assembly contained in Section 2 of Article VI of the Constitution of Ohio, to make such provision as is necessary to secure a thorough and efficient system of common schools throughout the State, is so well settled that the citation of authority is unnecessary.

The principle of law relating to the powers and duties of such boards has been variously stated by the courts. In the case of *State ex rel. Clarke v. Cook*, 103 O. S., 465, it is stated:

“Boards of education and similar governmental bodies are limited in the exercise of their powers to such as are clearly and distinctly granted.”

In the comparatively recent case of Board of Education v. Ferguson, 68. O. App. 514, the court used the following expression:

“The authority of boards of education is derived solely from the statutes, both duties and authority being clearly defined by legislation and is limited strictly to such powers as are clearly expressed or clearly implied.”

See generally, O. Jur., Vol. 36, pages 188, 189, Section 155, and cases cited.

It is equally well settled that the authority of administrative boards such as boards of education, to act in financial transactions must be clearly and distinctly granted and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the political subdivision for which the board acts.

State, ex rel. v. Menning, 95 O. S. 97;
State, ex rel. v. Pierce, Auditor, 96 O. S. 44;
Peter v. Parkinson, Treasurer, 83 O. S., 36.

Speaking generally, each board of education by the terms of Section 7690, General Code, is charged with the duty of controlling and managing the public schools in its district. Other statutes contain specific provisions limiting and qualifying the blanket authority extended by Section 7690, General Code, as to the manner and extent such control and management shall be exercised. Similar blanket powers are extended to boards of education by Section 7620, General Code in terms which, standing alone, are even broader than those contained in Section 7690, General Code. Section 7620, General Code, wherein are enumerated a number of duties devolving upon a board of education with respect to the maintenance of schools contains the further provision that it shall “make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.” Said Section 7620, General Code, was the subject of comment by the court in the case of Board of Education v. Ferguson, supra. In that case the court speaking through Judge Hornbeck, after quoting the language of the statute directing the board of education to “make all other provisions for the convenience and prosperity of the schools” stated that this quoted language should not be given its widest general application but must be read in the light of the rule of ejusdem generis, and that it therefore follows that the quoted language of the statute is directed to the physical properties constituting schools. Motion to certify this case was overruled by the Supreme Court.

In the light of this pronouncement which at least was not questioned

by the Supreme Court, and of other provisions of law relating to the examination, certification, appointment and employment of teachers, it is my opinion that neither the blanket authority contained in Section 7690, General Code, to control and manage the schools nor that contained in Section 7620, General Code, afford any basis for a board of education to expend public funds for the purpose of the examinations mentioned in your inquiry. Nor will there be found in any statute express authority for a board of education to make such an expenditure. It remains to inquire whether or not such authority may exist as being necessary to carry out the express powers extended to a board of education by other provisions of law.

By the terms of Section 7690-1, General Code, boards of education are charged with the duty of entering into contracts for the employment of all teachers and of fixing their salaries. Section 7702, General Code as it has been in force since 1904, directs that each board of education in a city school district shall appoint a superintendent of schools for its district. Section 7703, General Code, which prior to the codification of 1910, was included together with the provisions of what is now Section 7702, General Code as to the appointment of a superintendent of schools in city school districts in what was formerly Section 4017a of the Revised Statutes, applies specifically to the duties of a city superintendent of schools. The pertinent part of Section 7703, General Code, provides as follows:

“Upon his acceptance of the appointment, such superintendent, subject to the approval and confirmation of the board may appoint all the teachers. * * * But any city or exempted village board of education, upon a three-fourths vote of its full membership may reemploy any teacher whom the superintendent refuses to appoint.”

Section 7702, General Code, which provides for the appointment of superintendents of schools and prescribes the qualifications for such office reads in part:

“Provided further, however, that after August 1, 1939, no person shall be appointed to the office of superintendent who is not possessed of a certificate of the superintendent type, as defined in section 7805-1 of the General Code, unless such person had been employed as a county, city, or exempted village superintendent prior to August 1, 1939.”

It seems apparent that the legislature contemplated that a person with the qualifications fixed by the statute would upon appointment and acceptance of an appointment as superintendent of schools be qualified to perform

the duties imposed upon him by law, including the ability to select from a group of applicants for teaching positions those best qualified for appointment.

For many years prior to 1935, examining boards for teachers in city school districts existed. When these boards were first created, in 1873 (70 O. L. 195, Section 97), the law applied to city school districts of the first grade only. Later, in 1904 (97 O. L. 374), the law was amended making it apply to all city school districts. During the period this law was in effect no teacher could lawfully be employed in the districts to which the law applied unless he had successfully passed an examination and was properly certificated by the city district board of examiners or by the state board of school examiners. In 1935, the law relating to city boards of school examiners (former Sections 7838, G. C. et seq.) was repealed and the law providing for the examination and certification of teachers by a state board of examiners considerably modified. Sections 7805 to 7805-11, inclusive, of the General Code of Ohio.

Since the enactment of 1935, referred to above, the only method provided by law for the examination and certification of teachers is that therein provided. The legislature apparently felt that the method there provided for determining a teacher's qualifications, together with the knowledge and ability that a person must have to qualify him for the position of superintendent would be sufficient to enable him to perform his duties as prescribed by law, and made no other provisions either express or implied for examining and grading applicants for teaching positions in the schools. In case the number of applicants for new teaching positions in a district is so great that the work involved becomes burdensome for the superintendent, ample provision is made for the employment of assistants, secretaries and clerks so that he personally may be relieved of some of the routine work incident to the position.

It is well settled that when the legislature has prescribed the mode of exercise of the power conferred upon public officers and public boards to accomplish a given purpose, the mode so specified is likewise the measure of the power granted, and a contract made in disregard of the express requirements of such prescribed method is not binding or obligatory on the political subdivision involved. *Frisbie Company v. E. Cleveland*, 98 O. S., 266.

Inasmuch as the Legislature has prescribed the method of determining the fitness of applicants for teaching positions in the public schools and the manner of their appointment and employment and has as well provided for assistance for a superintendent of schools in the performance of his duties, I am of the opinion that the method so provided is exclusive and that a board of education may not at public expense engage by con-

tract the services of a private, non-governmental agency such as the National Committee on Teacher Examinations, to conduct examinations to determine the relative fitness of applicants for teaching positions in the public schools of its district and to classify, grade and recommend such applicants in accordance with standards set up by the agency conducting the examinations, for the purpose of aiding the superintendent of schools in the performance of his duty of appointing teachers as provided by law, or to pay any part of the same.

Respectfully,

THOMAS J. HERBERT,
Attorney General.