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BOARD OF EDUCATION—POWER UNDER SECTION 4750 G. C. TO PROMULGATE AND ENFORCE RULES TO GOVERN AND ACCOUNT FOR EXPENDITURE OF FUNDS—PUPIL GROUPS—“OUTSIDE AND EXTRA-CURRICULAR ACTIVITIES”—“PUBLIC MONEY”—AUTHORITY, AUDITOR OF STATE AND BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES AS TO ACCOUNTING—SECTION 286 G. C.—EXPENSE.

*SYLLABUS:*

1. *A board of education has the power under and by virtue of the provisions of Section 4750, General Code, to promulgate and enforce rules and regulations governing the accounting for and expenditure of, funds which are acquired by pupil groups within a public school in the fostering and maintenance of so-called “outside and extra-curricular activities.”*

2. *Funds accumulated by pupil groups within a public school for use in the maintenance of extra-curricular activities such as dramatic, literary and musical organizations, class groups and athletic organizations, which funds are derived from donations, proceeds of entertainments, concerts and athletic exhibitions or contests and self-imposed assessments or fees within the groups themselves, are not properly classed as “public money”, as the term is defined in Section 286, General Code, and no authority exists for the Auditor of State or the Bureau of Inspection and Supervision of Public Offices to prescribe forms for the accounting of such funds.*

3. *Except in cases where reasonable, substantial and clear grounds exist for suspecting that public moneys, as the term is defined in Section 286, General Code, have been diverted to the private accounts of pupil groups in a public school in their fostering and maintaining so-called “outside and extracurricular school activities”, no authority exists for the Auditor of State through the Bureau of Inspection and Supervision of Public Offices and its examiner to examine the said accounts at the expense of the school district wherein such pupil groups exist.*

COLUMBUS, OHIO, March 25, 1939.

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

GENTLEMEN: This will acknowledge receipt of your request for my opinion, which reads as follows:

“In school districts throughout the state, there have been established so-called ‘Outside Activity and Extra-curricular Fund’ accounts.

As a general rule, these funds are handled by the superintendent or teachers, and no accounting of same is rendered to the board of education, or to any other person or group.

Receipts to these funds are derived from interscholastic football and basketball games, band entertainments, class plays, sale of school paper, class fees, etc., and in many instances, public funds such as auditorium rentals, proceeds from sale of text books, work books, and school supplies, purchased by the board of education, have been diverted into these accounts.

Your opinion is respectfully requested upon the following questions:

1. Does the board of education have authority, under the provisions of Section 4750, General Code, or any other section, to establish rules and regulations governing the accounting and expenditure of this money?

2. Can such money be classed as public money, as public money is defined in Section 286, General Code; or, if not, does the auditor of state have authority to make an examination of such accounts and to prescribe forms for the accounting of such funds?"

Although it has been universally conceded that boards of education, being clothed by statute with corporate powers and vested with authority to control and manage the public schools in their respective districts, have the inherent power to make rules and regulations with respect to the functioning of the schools under their immediate control (24 R. C. L., p. 574), the Legislature of Ohio has seen fit to expressly extend that power by statute. Section 4750, General Code, reads as follows:

"The board of education shall make such rules and regulations as it deems necessary for its government and the government of its employes and the pupils of the schools. No meeting of a board of education, not provided for by its rules or by law, shall be legal, unless all the members thereof have been notified, as provided in the next section."

In an early case in Ohio it is stated that it is the policy of the law to vest boards of education with broad and extensive powers in adopting rules and regulations for the government of the schools under their control. Such rules must of course be suitably adapted to the purposes of the existence of the board and must not be inconsistent with the law or be unreasonable or oppressive, and must relate to a subject reasonably within the field of public school activity. The power to make rules and regulations extends however to the making of regulations

affecting the conduct of pupils outside of school hours if the regulation relates to conduct that may be reflected in school work or the relation of the pupil to the school and is not unreasonable, arbitrary or contrary to law.

In Ohio Jurisprudence, Vol. 36 at page 353, it is said:

“The authority of school officials extends into the twilight zone between the school and the home and includes the enforcement of reasonable rules and requirements while the pupils are on their way home. The misconduct of pupils on the way to school or while going home from school is properly within the scope of the power of school officers, and the conduct of pupils outside school hours and school property which directly relates to and affects the management of the school and its efficiency is within their proper regulation.”

Speaking generally, it is now universally recognized and has been for years, that any conduct of the pupils which either directly or indirectly affects or may affect the interest of the pupils in their relation to the teachers, principals or superintendents or their fellow pupils with respect to their school work and which may be reflected in the school-room during school hours is a proper subject of regulation by rules promulgated by the board of education or the school officials and if such acts are detrimental to good order and the best interests of the pupils, they may in some instances be entirely forbidden, such as membership in fraternities, hazing, etc. Such rules, of course, are subject to the limitation that they must not be unreasonable, arbitrary or contrary to law. Ruling Case Law, Vol. 24, p. 627; *Burdick vs. Babcock*, 31 Iowa, 562.

Within the past several years there has developed an ever widening field of so-called extra-curricular activities among the pupils in the public schools. This is especially true of city districts. It is not confined, however, to city districts but has become very prevalent in rural and village districts where schools are centralized or consolidated and large groups of pupils attend school in the same building. These activities consist of dramatic, literary and musical clubs which give entertainments, concerts, etc., graduating class groups and oftentimes junior, sophomore and even freshman groups, athletic organizations which sponsor and conduct interscholastic athletic meets, etc.

There is no doubt but that such clubs and organizations take considerable of the pupils' time and thought and that their activities reach into the classroom and affect the pupils' school work in one way or another. They are not for that reason to be discouraged or forbidden. On the other hand, they should be fostered and encouraged under proper regulations. If they are not regulated in some manner it will readily be

seen that the tendency would be for the pupils' interest in them to displace to some extent their interest in their regular school work.

In the proper functioning of such groups and organizations within the pupil population of a school there is involved the collection and disbursement and proper accounting for of necessary funds. In some instances considerable amounts of money are involved. These funds do not come from the public treasury. No authority whatever exists for a board of education to use or permit the use of funds derived from taxation or from the distribution of the public school fund for the use of these extra-curricular activities. Moneys become available for the use of different groups of pupils in the maintenance of their particular extra-curricular activities by private donations, proceeds of admission fees to concerts, entertainments, football and basketball games and the like. In some instances the different groups of pupils raise money by self-imposed assessments or fees. None of it for these uses may lawfully be appropriated and allotted to the different groups by the board of education from the funds under their direct control as public officials.

The collection and disbursement of these funds should not and can not be safely left to haphazard and hit-or-miss methods but should be handled by someone in authority, and someone whose authority the pupils will respect. This does not necessarily mean a principal or teacher as, in many instances, someone may be selected from among the pupils themselves. It should be done, however, by some recognized acceptable method and by some uniform rule.

It is manifest that the collection and disbursement of such funds and the orderly accounting therefor is a proper subject of regulation by some authority that will be recognized and respected by the pupils and that that authority is logically the board of education which is charged by law with the management and control of the schools, or the superintendent or principal of the school within which the particular activity functions, unless the law has provided otherwise.

Section 274, General Code, provides that there shall be a Bureau of Inspection and Supervision of Public Offices in the Department of Auditor of State "to inspect and supervise the accounts and reports of all State offices, etc., and the offices of each taxing district or public institution in the State of Ohio \* \* \*."

Another section of the statutes (Sec. 277, G. C.) authorizes the Auditor of State to prescribe and require the installation of a system of accounting and reporting for the public offices, which shall be uniform.

Section 284, General Code, provides the time of the examination of all offices and further provides:

"On examination, inquiry shall be made into the methods, accuracy and legality of the accounts, records, files and reports of the office, whether the laws, ordinances and orders pertaining

to the office have been observed, and whether the requirements of the bureau have been complied with.”

Section 286, General Code, provides in part for the submission and filing of such report and further provides :

“If the report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated \* \* \*”

action shall be brought.

The term “public money” as used in said Section 286, General Code, is defined in said section as follows :

“The term ‘public money’ as used herein shall include all money received or collected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise, and all public officials shall be liable therefor. All money received under color of office and not otherwise paid out according to law, shall be due to the political subdivision or taxing district with which the officer is connected and shall be by him paid into the treasury thereof to the credit of a trust fund, there to be retained until claimed by the lawful owner \* \* \*”

The funds received and used by pupil groups in the maintenance of their particular activity coming as they do from private donations or self-imposed fees or assessments among the pupils themselves, or as proceeds of entertainments, concerts or athletic contests fostered and maintained by the particular groups, can not by any stretch of the imagination be said to be “public money”, as the same is defined in the statutes. The funds are purely private funds and, as such, their collection and disbursement, and the accounting for them are entirely outside the jurisdiction of the State Auditor or the Bureau of Inspection and Supervision of Public Offices, as the same is fixed by the Statutes in relation thereto.

The State Auditor, through the Bureau of Inspection and Supervision of Public Offices does, in the examination of the accounts of public offices, have the power to follow any public money belonging to an office wherever it may be found and no doubt has the power to search for such public money any place, and may for that purpose invade the privacy of any public official against whom reasonable and substantial suspicion may exist that public money has by some means or other been

diverted into his private accounts. The same would be true with respect to the private accounts of the several pupil groups mentioned.

You state in your letter that, "In many instances public funds, such as auditorium rentals, proceeds from the sale of textbooks, work books and school supplies, purchased by the board of education, have been diverted into these accounts" (meaning the so-called "outside activity" and "extra-curricular accounts"). If in any case substantial reason exists for believing that these so-called "outside activity" and "extra-curricular" accounts may for some reason or other have had public funds diverted to them, it is no doubt within the power and authority of the examiner to follow those public funds and to examine the accounts for the purpose of determining whether or not there are public funds in these accounts. However, substantial reason must exist for believing that public money may be found in these accounts before the examiner is justified in examining the accounts.

In specific answer to your questions, therefore, I am of the opinion:

1. A board of education has the power under and by virtue of the provisions of Section 4750, General Code, to promulgate and enforce rules and regulations governing the accounting for and expenditure of, funds which are acquired by pupil groups within a public school in the fostering and maintenance of so-called "outside and extra-curricular activities."

2. Funds accumulated by pupil groups within a public school for use in the maintenance of extra-curricular activities such as dramatic, literary and musical organizations, class groups and athletic organizations, which funds are derived from donations, proceeds of entertainments, concerts and athletic exhibitions or contests and self-imposed assessments or fees within the groups themselves, are not properly classed as "public money", as the term is defined in Section 286, General Code, and no authority exists for the Auditor of State or the Bureau of Inspection and Supervision of Public Offices to prescribe forms for the accounting of such funds.

3. Except in cases where reasonable, substantial and clear grounds exist for suspecting that public moneys, as the term is defined in Section 286, General Code, have been diverted to the private accounts of pupil groups in a public school in their fostering and maintaining so-called "outside and extra-curricular school activities," no authority exists for the Auditor of State through the Bureau of Inspection and Supervision of Public Offices and its examiner to examine the said accounts at the expense of the school district wherein such pupil groups exist.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*