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FEES — BOARD OF EDUCATION — NO AUTHORITY TO PAY FROM PUBLIC FUNDS EITHER \$10.00 INCIDENTAL FEE OR \$5.00 LABORATORY FEE CHARGED BY OHIO STATE UNIVERSITY — SERVICES OR EXPENSES — “FIELD LABORATORY WORKSHOP” SET UP BY DEPARTMENT OF EDUCATION OF UNIVERSITY.

SYLLABUS:

Boards of education do not have authority to pay from public funds either the \$10.00 incidental fee or the \$5.00 laboratory fee charged by the Ohio State University for its services or expenses in connection with the “field laboratory workshop” set up by the department of education of said university.

Columbus, Ohio, September 1, 1944

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

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

“We are enclosing herewith a pamphlet describing the work of ‘Field Laboratory Workshops’, a service being rendered to

Ohio schools and communities by the College of Education of Ohio State University.

It is to be noted that teachers and administrators may enroll for not more than three credit hours per quarter upon the payment of an incidental fee of \$10.00, and in addition, a laboratory or workshop fee of \$5.00 is charged all participants, whether enrolled for credit or not.

QUESTION:

May the boards of education, where such 'Workshop' is being conducted, pay from public funds either the fee of \$10.00 for its teachers or other employes enrolled in such study, or may they pay the \$5.00 laboratory fee for its teachers so enrolled?"

An examination of the pamphlet which you enclose with your letter, issued by the College of Education of the Ohio State University, discloses a plan designed to assist local boards of education in solving specific problems which have particular significance to the schools of a given community or district. In that pamphlet it is stated that the plan is not to be confused with university extension courses but, to quote from the document itself:

"A field workshop \* \* \* is the study of a problem in the community where it exists, by those who have to deal with it, and in its community and school context. In such study the staff members from the College of Education unite the resources of the University with those of the community in attacking the problem. The problem may be attacked on a particular grade-level, or on a school-wide and community basis."

It appears that these so-called "workshops" have been conducted during the three years since their organization in a number of schools throughout the state, each directed to a particular subject. For example, in Euclid, to the "Evaluation of Elementary School Program"; in Grove City, to "Reading"; in Lancaster, to "Guidance", with particular attention to the victory corps program which had been recently inaugurated in that locality; in Knox County, to "Teaching of Mathematics".

The plan involves the establishment under the direction of the local school board, of a group of teachers or administrators or both who, upon the payment of an incidental fee of \$10.00 per quarter per person, become enrolled students in the Ohio State University and receive three credit

hours per quarter in the University. Participants in the "workshop", however, are not compelled to enroll as credit students, but whether they are enrolled for credit or not, an additional fee of \$5.00 is required which is styled a "laboratory fee". My understanding is that the \$10.00 incidental fee goes into the instruction fund of the University, which is used to pay teachers and others giving instruction, including the persons who go out from the University to conduct these workshops, while the laboratory fee of \$5.00 is applied to the expenses of the representatives of the University, including their traveling expenses and board while engaged in the work.

Regardless of the merits of this plan and of the possible benefits that may inure to the schools of a district which participate, I am compelled to approach the question which you have submitted strictly from the standpoint of the law as laid down by the legislature and as construed by the courts.

The general doctrine which is thoroughly established by the decisions of the courts of Ohio relative to the powers of an administrative board created by statute, including a board of education, is well stated in the first syllabus of the case of *Schwing v. McClure*, 120 O. S. 335, which reads as follows:

"Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given."

The same principle has been asserted many times. Among the many cases which might be cited, we may notice that of *State, ex rel. Locher v. Menning*, 95 O. S. 97, wherein the court in the course of its opinion said:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear 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 county."

Also, *State, ex rel. A. Bentley & Sons Company v. Pierce*, 96 O. S.

44, the third syllabus of which is as follows:

“In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

See also, *State, ex rel. Clark v. Cooke*, 103 O. S. 465, where it was held:

“Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (*State, ex rel. Locher, Pros. Atty., v. Menning*, 95 Ohio St., 97, approved and followed.)”

We must look, therefore, to the statutes to discover what powers the legislature has seen fit to confer upon boards of education. The sections following are a part of the new school code enacted by the 95th General Assembly. Section 4834 General Code, which is substantially the same as former Section 4749 General Code, reads as follows:

“The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred upon it by law.”

Section 4834-10 General Code, which is a substantial reenactment of former Section 7620, reads as follows:

“The board of education of any school district, except a county school district, may build, enlarge, repair and furnish the necessary school houses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.”

Section 4836 General Code, which is substantially the same as former Section 7690 provides:

“Each city, exempted village or local board of education

shall have the management and control of all of the public schools of whatever name or character in its respective district. Provided, that if the board has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint janitors, superintendents of buildings and such other employees as may be provided for in such annual appropriation resolution.”

It will be noted that Section 4834 supra, is very general in its terms and merely gives to a board of education the right to sue and be sued, to contract and to acquire, hold and dispose of property. It contains no specific recital of powers and certainly nothing from which the power such as suggested by your inquiry would necessarily be implied. In other words, it could not be said that in order to exercise the power conferred by Section 4834 it was necessary for a board of education to contract with the Ohio State University for the services in question.

Section 4834-10 supra, it will be observed, has to do with the physical properties, including lands, buildings, equipment and apparatus, required for the conduct of the schools. And it was held in the case of Board of Education v. Ferguson, 68 O. App. 514, that the provisions of Section 7620 General Code, which was the forerunner of this section and contained practically the same wording, related only to the physical property constituting the schools and not to the persons who attend them. A motion to certify this case was overruled by the Supreme Court.

I had occasion somewhat recently to construe former Sections 7620 and 7690 in an opinion found in 1943 Opinions Attorney General, p. 108, in which it was held:

“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.”

In that opinion reference was made to the case of Board of Education v. Ferguson, supra, in which 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.”

My immediate predecessor, in an opinion found in 1938 Opinions, Attorney General, p. 2495 held:

“The trustees of a school district public library do not have authority to pay tuition to Western Reserve University, for the employes of such school district public library; \* \* \*”

In the course of the opinion it was said at page 2504:

“No direct authority exists for payment of public funds to a college or university by a public library for the tuition of one of its employes. Such an expenditure cannot be considered as necessary or incident for the purpose of carrying out any of the duties imposed upon a board of trustees of a school district public library.”

A school district public library is, like a board of education, a body created by statute and having only the powers given it by the statutes together with such other powers as are reasonably necessary in order to execute its expressly granted powers.

The same Attorney General in an opinion found in 1938 Opinions Attorney General, p. 2413 held:

“1. A board of education of a city school district does not have authority to maintain a Department of Publicity at public expense, for the schools under its control.

2. A board of education does not have authority to pay for the publication of books and pamphlets such as the following: (a) ‘Illustrated Courses of Study for Junior and Senior High Schools’; (b) ‘School Topics’, a publication for teachers; (c) ‘Give Yourself a Fair Start’, an illustrated brochure on the advantages of a high school education; (d) ‘Cleveland School Directory’; and (e) ‘Cleveland Schools and Your Dollar’, a pamphlet of information relating to the schools, to be distributed to the parents of the pupils.”

In 1925 Opinions Attorney General, p. 33, it was held:

“A board of education is without authority to use school

funds to publish a book entitled 'Industrial Mathematics First Half of Ninth Year', as submitted with your communication and described as 'A course designed for pupils who are finding difficulty with the regular course in mathematics for the ninth year', and is without authority to adopt or cause such a book to be used."

In that opinion particular attention was given to Sections 7620 and 7690 General Code, as well as other provisions of the statutes relating to the powers and duties of a board of education, and the attorney general stated that no authority could be found, either express or implied, for the expenditures involved in the publication in question.

The irresistible conclusion from the authorities and precedents above cited is that a board of education does not have authority either by express provision of the statutes, or by any reasonable implication therefrom, to expend its funds in payment of the fees required by the Ohio State University for the services and expenses of its instructors in conducting the surveys and studies contemplated by your inquiry. The lack of such authority could only be supplied by action on the part of the legislature. My conclusion in this matter might seem to be somewhat inconsistent with my holding as found in 1940 Opinions Attorney General, p. 1039, as follows:

"The governing body of a city may, by ordinance or resolution, provide for a local course of training for the police department of the city and pursuant to such purpose the salary and expenses of a police officer may be paid while in attendance at a Federal Bureau of Investigation school to enable the officer to conduct such local course of training."

That opinion was based in part on a similar ruling by a former Attorney General, found in 1930 Opinions Attorney General, p. 1091. It must be remembered, however, that a somewhat different rule is to be employed in measuring the powers of a municipality from that which must be applied relative to the powers of an administrative board created by statute. Under the present constitutional provisions embodied in Article XVIII of the Constitution, particularly Section 3, municipalities are given expressly "all powers of local self-government", subject only to certain restrictions which are reserved to the legislature, and do not need to look to the statutes as the source of their powers so long as they come within the scope of the powers thus granted by the Constitution.

Specifically answering your question, it is my opinion that boards of education do not have authority to pay from public funds either the \$10.00 incidental fee or the \$5.00 laboratory fee charged by the Ohio State University for its services or expenses in connection with the "field laboratory workshop" set up by the department of education of said university.

Respectfully,

THOMAS J. HERBERT

Attorney General