

hands of such board of education to the extent of the amount so ordered to be paid, even though the order may not become effective until a later date.

Inasmuch as a school district in the purchase of equipment or property of any kind must before making a contract for such purchase procure the certificate of its fiscal officer that the money required to meet said contract has been appropriated and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, as provided by Section 5625-33, General Code, the board could not lawfully make expenditures from any funds which had been previously ordered paid to another board of education, by reason of the making of an equitable distribution of the funds of the district between said district and another district which had recently acquired a portion of its territory. If, however, its funds are not encumbered by such an order or otherwise, it may use them as it sees fit in the purchase of supplies, limited only by the provisions of law with reference to making such purchases.

Third, a newly created school district, created by authority of Section 4736, General Code, does not have title or any interest in the personal property of another school district from whose territory it was carved, except in the school funds belonging to said district, and then only to the extent that it is given an interest therein by the county board of education in making an equitable division of funds between such districts.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2474.

APPROVAL, BONDS OF GUERNSEY COUNTY, OHIO—\$46,440.00.

COLUMBUS, OHIO, August 22, 1928.

Industrial Commission of Ohio. Columbus, Ohio.

2475.

BOILER—OPERATION OF STATIONARY STEAM BOILER BY LICENSED
ENGINEER—COMPULSORY—EXCEPTIONS.

SYLLABUS:

1. *By the terms of Section 1047, General Code, it is unlawful for any person to operate a stationary steam engine of more than thirty horse power unless such person first obtain a license therefor as provided by Section 1048, General Code.*

2. *By the terms of Section 1047, General Code, it is unlawful for any owner, user or agent of an owner of any stationary steam engine of more than thirty horse power to permit such engine to be operated unless it is directly in charge of a duly licensed steam engineer.*

3. Section 1058-1, *General Code*, provides for the licensing of persons desiring to operate or having charge of stationary steam boilers of more than thirty horse power except such boilers as are in charge of a duly licensed engineer.

4. It is unlawful for any person to operate a stationary steam boiler or to permit such a boiler to be operated unless a duly licensed engineer or a duly licensed boiler operator be present and have actual custody, supervision and management of such boiler.

COLUMBUS, OHIO, August 23, 1928.

HON. HERMAN R. WITTER, *Director, Department of Industrial Relations, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter wherein you request that this office furnish you with an opinion relative to certain questions contained in a letter received by you from the Chief of the Division of Steam Engineers, which letter reads as follows:

“During my incumbency in office I have enforced the provisions of the law requiring licensed steam engineers and licensed boiler operators as I understand the statutes. Feeling quite certain that the law referred to was solely intended for the safety of life and property, I have, at times, met with conditions that caused me to feel that an opinion of the Attorney General in support of any interpretation of the law would give me confidence in my position. I am, therefore, asking that you submit this communication to the Attorney General, asking for an opinion based upon the points referred to.

The act referred to as the Steam Engineers License Law (Sections 1047-1057 G. C.) required that stationary steam engines and stationary steam boilers of more than thirty horse power should be operated by a duly licensed engineer. A number of years later another act was created (Sections 1058-1 to 1058-5), which was intended to define the qualifications of persons who would be permitted to operate only stationary steam boilers of over thirty horse power. The act last referred to being intended to provide for the safe operation of boilers of the size referred to, without the boiler operator being required to qualify in the operation of steam engines.

Inasmuch as the engineers license law already empowered licensed engineers to operate boilers as well as engines, the boiler operators license law, I believe, would have been in conflict with the engineers license law if the boiler operators law had not provided that boilers of over thirty horse power should be operated by licensed boiler operators, except when the boilers were in charge of a duly licensed engineer, otherwise, I believe the boiler operators license law would have repealed by implication the engineers authority to operate steam boilers as provided for in the original act.

In my interpretation of the acts referred to, I am unable to construe the law in any manner that is not consistent with safety to life and property, I have, therefore, always interpreted the word ‘in charge’ or ‘directly in charge’ to be synonymous with the word ‘operate.’ I have always contended that, if the steam engine or steam boiler is not operated by a licensed engineer or licensed boiler operator as the case may be, that the purposes of the law are defeated, and the safety which the law is intended to provide does not exist in fact.

To be specific I have found, in many cases, plants that had licensed engineers engaged in the operation of steam engines while the men in the same plant who were operating the boilers were unlicensed. This condition results

from the owner of the plant or the engineer contending that the letter of the law is being complied with, in the case of the boilers, so long as the licensed engineer is 'in charge'.

I would not understand the law to limit the number of engines or boilers which an engineer may operate, nor the number of boilers which a boiler operator may operate. I do, however, construe the law to mean that an engine of over thirty horse power shall be operated by a licensed engineer, and that a boiler of over thirty horse power shall be operated by either a licensed engineer or a licensed boiler operator.

Therefore, I would appreciate an opinion of the Attorney General as to whether or not I have placed the proper construction upon the law governing this Division, particularly with regard to the terms 'in charge' and 'directly in charge.'"

On March 1, 1900 (94 v. 33), the Legislature passed an act entitled :

"An Act—For the better protection of life and property against injury or damage, resulting from the operation of steam engines and boilers by incompetent engineers and others, and to repeal an act therein named."

This act became Sections 1039 to 1057, both inclusive, of the General Code. These sections have been amended from time to time and Section 1047, General Code, in so far as pertinent to your inquiry now provides :

"No person shall operate a stationary steam boiler or engine of more than thirty horse power without obtaining a license to do so as provided in this chapter. * * * No owner or user or agent of an owner of any such steam boiler or engine shall permit it to be operated unless it is directly in charge of a duly licensed engineer."

Section 1048, General Code, provides :

"Each person who desires to act as a steam engineer shall make application to the district examiner of steam engineers for a license * * * and shall pass an examination * * * ."

As provided by Section 1049, General Code,

"If, upon such examination, the applicant is found proficient in such subjects, a license shall be granted him to have charge of and operate stationary steam boilers and engines of the horse power required by law, for one year from the date on which it is issued. * * * "

By the terms of Section 1053, General Code,

"Each engineer shall exhibit his license under glass in a conspicuous place in his engine room, and for each neglect or refusal to comply with the provisions of this section shall be fined not to exceed five dollars."

Section 1057, General Code, provides :

"The provisions of this chapter shall not apply to boilers and engines under the jurisdiction of the United States, or to locomotive boilers and engines nor to the owners nor users thereof."

On May 10, 1910 (101 v. 324) the Legislature passed an act entitled:

“An Act—To provide for the licensing of persons to have charge of and operate stationary steam boilers.”

which act became Sections 1058-1 to 1058-5, both inclusive, of the General Code.

Section 1058-1, General Code, in so far as pertinent provides:

“Any person who desires to operate or have charge of a stationary steam boiler of more than thirty horse power, except boilers which are in charge of a duly licensed engineer, shall make application to the district examiner of steam engineers for a license so to do * * * and shall successfully pass an examination upon the following subjects; * * * . If, upon such examination, the applicant is found proficient in said subjects a license shall be granted him to have charge of and operate stationary steam boilers of the horse power named in this act. Such license shall continue in force for one year from the date the same is issued, and upon application to the district examiner may be renewed annually without being required to submit to another examination. * * * ”

By the terms of Section 1058-5, General Code,

“Section 1047 of the General Code, insofar as it has relation to the operation and having in charge of stationary steam boilers shall not apply to persons holding license issued under the provisions of this act.”

Your attention is also directed to Section 1056 and 1058-3, General Code, which respectively provide:

Sec. 1056. “Whoever, being an engineer or owner or user of a steam boiler or engine, violates any provision of this chapter, shall be fined not less than ten dollars nor more than one hundred dollars.”

Sec. 1058-3. “Whoever, being an owner, user or person in charge of a stationary steam boiler, or boilers, violates any provision of this act shall be fined not less than ten dollars nor more than one hundred dollars.”

Webster’s New International Dictionary defines the word “charge” as:

“A duty or task laid upon a person; custody or care of any person, thing or place; office; responsibility; oversight; obligation; trust.

Heed; care; attention; notice.

A person or thing committed or intrusted to the care, custody or management of another; a trust.”

The same authority defines the word “operate” as:

“To perform a work or labor; to exert power or influence; to act; to work; to produce an effect. * * *

To perform an operation or series of operations.

To produce as an effect; to cause to effect; to bring about; to work.

To put into, or to continue in, operation or activity; to manage; to conduct; to carry out or through; to work.”

You will note that no section of the General Code requires any license whatever of a person who has charge of or operates a boiler of thirty horse power or less. By the terms of Section 1047, supra, "no person shall operate a stationary steam boiler or engine of more than thirty horse power without obtaining a license to do so as provided in this chapter." As provided by Section 1508-1, supra, "any person who desires to operate or have charge of a stationary steam boiler of more than thirty horse power, except boilers which are in charge of a duly licensed engineer, shall make application * * * for a license so to do * * * and shall successfully pass an examination."

In other words, it is unlawful for any person to operate or have charge of a stationary steam engine of more than thirty horse power without first obtaining a license so to do, as provided by Section 1048, supra. By the terms of Section 1047, supra, it is unlawful for any owner, user or agent of an owner of any such steam engine to permit it to be operated unless it is directly in charge of a duly licensed steam engineer.

Section 1058-1, supra, provides for the licensing of qualified applicants to operate or have charge of stationary steam boilers of more than thirty horse power, except boilers which are in charge of a duly licensed engineer. With regard to such boilers, the law contemplates that at all times they shall be attended, supervised and managed by one duly licensed therefor. I do not mean that the licensed operator must perform all labor in connection with the operation and care of such boilers. Obviously, the only requirement of the law is that such boilers shall constantly be under the actual custody, supervision and management of a licensed operator. As long as a licensed operator is on actual duty, supervising and caring for such boiler or boilers, it is my opinion that no prosecution would lie. In order that I may not be misunderstood, it is my opinion that the law requires more than mere physical presence of a duly licensed operator on and about the premises. Such an operator must be present and *actually* have charge of such boilers, even though the manual labor in connection therewith be carried on by other persons not licensed to operate such boilers.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2476.

APPROVAL, BONDS OF MARION COUNTY—\$35,712.72.

COLUMBUS, OHIO, August 24, 1928.

Industrial Commission of Ohio, Columbus, Ohio.