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SCHOOL SUPPLIES—NO AUTHORITY FOR BOARD OF EDUCATION TO PURCHASE AND SELL SUPPLIES TO PUPILS—EXCEPTION—TEXT BOOKS—HOW TEXT BOOKS MAY BE PURCHASED AND DISPOSED OF—WHO MAY RETAIN PROFIT—TEACHERS MAY BE FURNISHED SCHOOL TEXT BOOKS FOR DESK USE.

1. *There is no authority in the law for a board of education to purchase and sell school supplies for pupils, other than text books, and charge a commission of ten per cent., said commission being turned over to the students' council fund.*

2. *The board of education may legally purchase text books with the school funds and turn the same over to the principal of schools or a member of the students' council, to be sold on a commission not to exceed ten per cent. added to the cost of such books, and such commission can be retained for personal use.*

3. *Under the provisions of section 7715 G. C. the clerk of the rural school district may legally sell text books for the board of education at a commission of ten per cent. of the cost of the same and retain such commission for his own use.*

4. *The board of education of a rural school district may furnish to teachers copies of school text books for desk use.*

COLUMBUS, OHIO, December 4, 1922.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department on a series of four questions, the first of which reads as follows:

“Is the board of education of the City of Cleveland, or any other board of education, vested with authority to purchase and sell school supplies for pupils other than text books and charge a commission of ten per cent, said commission being turned over to the students council fund?”

In considering this question, attention is first invited to those sections of the law which bear upon the general powers of boards of education. Thus section 7620 G. C. reads in part as follows:

“The board of education of a district may *** provide the necessary apparatus and make all other necessary provisions for the schools under its control. It also shall *** make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts.”

Section 7690 G. C. reads in part as follows:

“Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. *** ”

The above provisions are not of recent enactment, but were before the supreme court of the state when the case of *Clarke vs. Cook* (103 O. S., was decided on November 22, 1922,) the second branch of the syllabus reading:

"2. 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, Prosecuting Attorney vs. Manning, 95 O. S. 97, approved and followed.)

The above decision of the supreme court is the most recent pronouncement of that body upon the general powers of boards of education, and it is noted that these powers must be *clearly and distinctly granted*. The decision holds that the grant must not only be clear, but further that it must stand out distinctly.

Your first question is whether "school supplies" *other than text books* can be purchased by a board of education and then sold to pupils at a commission of ten per cent, said commission being turned over to the students' council fund. It may be said in passing that nowhere in the law is any cognizance taken of any "students' council fund." You do not indicate what supplies are meant in the "school supplies" referred to by you in your inquiry except that such supplies are not text books. Apparently, then, these school supplies in this case might be any and everything else which any board of education might care to purchase and then sell to the pupils the same as private dealers. The "school supplies" might be paper, pens or pencils; in certain instances the words might be made to include athletic supplies, such as footballs, baseballs, clothing, etc.; in fact, the words "school supplies" might include a large list of items, too long to name here. It would appear that the board of education would be going into business, investing its funds in these supplies, and then selling the same at a profit, which profit in this instance, you indicate, is turned over to the students' council fund. Much might be said in favor of boards of education purchasing a number of things that are needed by pupils and by securing them in large quantities, reducing the ultimate cost to the pupil who otherwise is at the mercy of the private dealer as to the amount that is to be paid by the pupil for the article in question. From a legal standpoint, however, the board of education would be going into business, investing the public funds and then, instead of furnishing the supplies to the pupils at cost, charging a profit of ten per cent to such pupils, such profit being turned over to an entity named by the board of education. How the board of education arrived at a commission or profit of ten per cent is not clear, unless it assumes such authority from the provisions of section 7715, a section of the text book law, wherein it is provided that a profit not to exceed ten per cent might be added to the cost of text books in their distribution. It is entirely possible that if these "school supplies" were purchased by the board of education at wholesale prices and then only ten per cent added as a profit or commission, the pupil would ultimately pay less for the school supplies than if they were bought from a private dealer, who usually figures his sale price at a greater profit than ten per cent. The purchase of these school supplies, whatever they may be (other than text books) necessarily requires an expenditure from the school treasury, and it is a well known rule that money cannot be voted or expended from the public funds without authority of law. In various sections of the school laws provisions has been made for the expenditure of school funds for specific things, among these being text books (7714, 7715 G. C.), but no where in the law is the authority "clearly and distinctly granted" (the language of

the supreme court) for a board of education to invest its funds in "school supplies", this latter term not appearing in the General Code. From a legal standpoint the purchasing of school supplies would be an investment of the public funds, such investment being made on the basis that the cost would be returned by the sales which might be made to pupils. Thus it was held in Opinion No. 1111, issued on April 2, 1918, appearing at page 497, Vol. 1, Opinions of the Attorney General for 1918, that "a board of education is not authorized to invest funds at its disposal: ** " In Opinion 3014, issued by this department on April 21, 1922, it was held that a board of education it without authority to expend its funds or to advance money for the rent and furnishing of a house to be used for a teachers' home.

You are therefore advised, in answer to your first question, that there is no authority in law for a board of education to purchase and sell school supplies for pupils, other than text books, and charge a commission of ten per cent, said commission being turned over to the students' council fund.

Your second question reads as follows:

"2. May they legally purchase text books, and other supplies, with the school funds and turn same over to a principal of the school or members of a student council to be sold on commission, said commission being retained by them for personal use?"

In considering this question it will be noted that while your first question referred to "school supplies other than text books," this question deals with "text books and other supplies." That portion of your second question which bears upon "supplies" is covered in the answer to your first question; however, on text books there is authority directly by the statutes for a board of education to purchase text books and then arrange for their sale and distribution by some one at a profit of ten per cent. Thus section 7715 G. C. reads

"Each board of education shall make all necessary provisions and arrangements to place the books so purchased within easy reach of and accessible to all the pupils in their district. For that purpose it may make such contracts, and take such security as it deems necessary, for the custody, care and sale of such books and accounting for the proceeds; but not to exceed ten per cent. of the cost price shall be paid therefor. Such books must be sold to the pupils of school age in the district, at the price paid the publisher, and not to exceed ten per cent. therefor added. The proceeds of sale shall be paid into the contingent fund of such district. Boards also may contract with local retail dealers to furnish such books at prices above specified, the board being still responsible to the publishers for all books purchased by it."

Here is direct authority given to the board to make contracts relative to text books which will bring such text books within easy reach and accessible to all the pupils of the district. The section does not limit such contracts to any certain persons, but apparently the board may make such contracts for the sale and distribution of text books with any person it sees fit, taking such security as it deems necessary. The authority to add ten per cent. of the cost price in the creation of the sale price is clearly and distinctly granted, and the language of the closing sentence

of 7715 is significant, wherein it says that boards may "also contract with local retail dealers to furnish such books at prices above specified," thus indicating that the persons referred to in the first part of section 7715 meant any person other than local retail dealers. The person with whom the contract is made is responsible for the custody, care and sale of the books and section 7715 gives to that person, whoever he might be, a commission of ten per cent. for his own use. This contract can be made with members of the students' council or any responsible person; it can be made with the principal or teacher of the school, for section 7718 G. C. is not applicable in a case of this kind, wherein it provides that:

"A superintendent, supervisor, principal or teacher employed by any board of education in the state shall not act as sales agent, either directly or indirectly, for any person, firm or corporation whose school text books are filed with the superintendent of public instruction as provided by law, or for school apparatus or equipment of any kind for use in the public schools of the state."

In order to violate section 7718 G. C. the principal or teacher must be a sales agent for the producer of the school text books, while in the case which you describe the teacher or principal is merely the agent of the board of education after the purchase of the text books from the producer by the board of education.

You are therefore advised, in answer to your second question, that the board of education may legally purchase text books with the school funds and turn the same over to the principal of schools or a member of the students' council, to be sold on a commission not to exceed ten per cent added to the cost of such books, and such commission can be retained for personal use.

Your third question reads:

"May a clerk of a rural school district legally sell text books at a commission of ten per cent. and retain same for his own use?"

Attention is invited to section 7714 G. C., which reads in part:

" *** Such clerk at once shall order the books so agreed upon by the board, of the publisher, who on the receipt of such order must *ship them to the clerk* without delay. He forthwith shall examine the books, and, if found right and in accordance with the order, remit the amount to the publisher. *** "

It is thus noted that the books on orders from the publisher come into the custody of the clerk of the board of education. Nowhere in the law is there any provision that he must seek out persons or dealers to handle these books in their sales and distribution or any proviso that the clerk cannot perform this service himself. Coming again to section 7715, which has been discussed heretofore, the board of education has the right to contract with any person it sees fit for the sale of text books to pupils, and under the provisions of section 7715 the clerk of the rural school district may legally sell text books for the board of education at a commission ten per cent of the cost of the same and retain such commission for his own use.

Your fourth question reads:

"May the board of education of a rural school district furnish to teachers free of charge copies of text books for desk use, such copies being purchased with school funds?"

As indicated in the answer to your third question, the text books are shipped by the publisher to the clerk of the board of education, who is the agent of the board. Until such books are sold by the clerk or other person designated by the board of education, the text books are the property of the board of education and the furnishing of text books to teachers for their use, while still owned by the board of education, is not an unusual practice because this is a matter which could be said to fall within the provisions of sections 7620 and 7690 G. C., coming within the management and control of the board of education. These text books, for desk use, as you indicate, would not be an outright gift to a teacher, but appearing upon the teacher's desk they would be accessible for use to all the pupils in the room. Thus it was held in opinion 1033, appearing at page 229, Vol. 1, Opinions of the Attorney General for 1920, as follows:

"Under the incidental or implied powers of a board of education it may purchase or subscribe for a journal relating to school board work and pay for the same out of school funds. However, such powers do not permit it to subscribe for such publications for the individual members of the board and such publications should relate to school board work."

The view taken in opinion 1033, also appears in a subsequent opinion, No. 3016, issued by this department on April 21, 1922, to which your attention is invited.

You are therefore advised, in answer to your fourth question, that the board of education of a rural school district may furnish to teachers copies of school text books for desk use.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3781.

APPROVAL, FOURTEEN LEASES, DEFIANCE, AKRON, ST. MARYS, EXCELLO MILLS, TROY, NEWCOMERSTOWN, BUTLER, LUCAS, LICKING, FAIRFIELD, TUSCARAWAS AND HOCKING COUNTIES—SEVEN LEASES, RESERVOIR LANDS, LAKE ST. MARYS, BUCKEYE LAKE, LAKE LORAMIE, SUMMIT COUNTY, WEST RESERVOIR AND WEST CARROLLTON.

COLUMBUS, OHIO, December 5, 1922.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—I have your letter of November 23, 1922, in which you enclose the following leases, in triplicate, for my approval: