

2703

BOARD OF EDUCATION MAY REQUIRE PROSPECTIVE EMPLOYEES TO BE FINGERPRINTED AND CITY MAY PROVIDE THE SERVICE AT EXPENSE OF THE BOARD. § 3313.20, R.C.

SYLLABUS:

Pursuant to Section 3313.20, Revised Code, a board of education of a city school district may require that prospective employees be fingerprinted, and may expend funds therefor; and the municipal corporation in which the school board is located may provide the fingerprinting service, the expense to be paid by the school board.

Columbus, Ohio, December 22, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“An inquiry has been received in this office from the Assistant Superintendent of Business Affairs of the Columbus Public Schools, in which it was stated that until recently prospective employees of the Columbus City Board of Education had been fingerprinted by the Police Department of the City of Columbus without charge. The city is at present charging \$2.00 for this service.

“It is the desire of the Columbus Board of Education to continue to have prospective employees fingerprinted. Accordingly, will you please give consideration to the foregoing and issue your opinion on the following question:

“May a municipal corporation under its home rule powers, require a board of education of a school district to pay a fee for fingerprinting service provided to such school district?”

The first question to consider in answering your request is whether a city board of education is authorized to pay a fee for the fingerprinting of its employees; remembering that, as public officers, members of a board of education have only such powers as are expressly delegated them by statute or are reasonably implied from those delegated (37 Ohio Jurisprudence, Section 74, pp. 933, 934).

Under Section 3319.07, Revised Code, the board of education of each city, exempted village, and local school district shall employ the teachers of the public schools of their respective districts. Such board are also authorized to hire other employees (Sections 3319.081 and 3313.18, Revised Code).

I have been unable to find any specific authority for a board to require the fingerprinting of prospective employees; however, Section 3313.20, Revised Code, reads in part:

“The board of education shall make such rules and regulations as are necessary for its government and the government of its employees and the pupils of the schools. * * *”

In the case of *Quigg v. Board of Education*, 69 Ohio App., 165, (1941) the above provision, then Section 4750, General Code, was held to authorize a board of education to require periodic physical examinations for its non-teaching employees.

As to the adoption of rules in general, it is stated in 36 Ohio Jurisprudence, Section 333, starting at page 345:

“* * * The policy of the law is to vest boards of education with large powers in adopting rules and regulations for the government of schools under their control. However, all rules and regulations must be suitably adapted to the purposes of the existence of the board and cannot be either inconsistent with the law, unreasonable, or oppressive. * * *

“Courts will not attempt to interfere with rules established by the board, to revise them, or to intervene to prevent their being put into appropriate operation, unless such rules are unreasonable, a clear abuse of discretion, or a violation of law. So disinclined to interfere with regulations adopted by schools are the courts usually that they will not consider whether the regulations are wise or expedient, but merely whether they are a reasonable exercise of the power and discretion of the board.”

I note that under Section 3319.30, Revised Code, a teacher's certificate must certify to the good moral character of the holder thereof. Also, under Section 3319.31, Revised Code, where the holder of a certificate is found intemperate, immoral, incompetent, negligent or guilty of conduct unbecoming to his position, his certificate should be revoked. And, under Section 143.272, Revised Code, any employee, including a teacher, may be removed if he advocates or wilfully retains membership in an organization which advocates overthrow of the government by force, violence, or other unlawful means.

Obviously, the above-noted restrictions have been inserted in the law for the protection of the students and of the public in general, as the moral caliber of the school teachers of the state is of utmost importance to the public welfare. And in ascertaining the fitness of job applicants, the use of fingerprints would appear to be of considerable value to the school board.

Accordingly, I conclude that the authority of a board of education to require the fingerprinting of prospective employees may be reasonably considered as necessary for the government of the school board, its employees, and its pupils under Section 3313.20, *supra*. And having such authority, it follows that the board may expend funds to have the task performed.

Next to consider is whether a municipal corporation may furnish such service at a charge. There does not appear to be any statutory authority for the rendering of such service; however, pursuant to Section 3 of Article XVIII, Ohio Constitution, a municipal corporation has all powers of local self-government and may adopt and enforce within its limits such local police, sanitary and other similar regulations as are not in conflict with general law.

The furnishing of the fingerprinting service to the city school board would not conflict with general law. Also, since the fingerprinting operation would, no doubt, be a part of the city's police department, the service to the school board would be only incidental to the main operation.

The city would, of course, have no duty to furnish the service to the school board. The school district is not a part of the city government—it is a separate political subdivision. And since the service to the school board would cause an expense to the city, it would be only proper that the city set a fee for said service.

Answering your specific question, therefore, it is my opinion and you are advised that pursuant to Section 3313.20, Revised Code, a board of education of a city school district may require that prospective employees be fingerprinted, and may expend funds therefor; and the municipal corporation in which the school board is located may provide the fingerprinting service, the expense to be paid by the school board.

Respectfully,
MARK McELROY
Attorney General