

2168.

BOARD OF EDUCATION—AUTHORITY OF BOARD TO PUBLISH CERTAIN PAMPHLETS, DISCUSSED.

SYLLABUS:

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.

COLUMBUS, OHIO, January 22, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your communication in which you request the opinion of this department as follows:

"We are enclosing herewith a pamphlet entitled 'Industrial Mathematics First Half of Ninth Year.' The board of education of the Cleveland City School District proposes to publish this pamphlet and pay for the same out of the school funds and sell it to the pupils in the 10th grade at cost. Please render this department your opinion as to the legality of the use of the school funds for this purpose."

This question requires investigation along two distinct lines:

(1) Is there statutory authority direct or implied, sufficient to justify *the use of school funds to pay the cost of publishing the book or pamphlet submitted?*

(2) Does the publication, adoption and purchase of the book submitted come within the purview of the "Text Book Law" as found in section 7709 G. C., *et seq.*?

The book submitted with your inquiry is entitled "Industrial Mathematics First Half of Ninth Year", and is described therein as

"A course designed for pupils who are finding difficulty with the regular course in mathematics for the ninth year."

In the preface of the book submitted, the author himself practically recognizes the same to be a text book when he uses in the preface the following language:

"This *book* has been especially planned to help such pupils (pupils who seem to have more or less trouble in coping with the difficulties of mathematics as laid down for them in the regular course of study) and to make them happier in their work."

It is the general rule of law that money cannot be expended from the public treasury without proper authorization of statute. That is to say, a board of education in expending any of the public funds in its treasury should make such expenditures in compliance with some specific statute covering the same, or wherein such expenditure is clearly implied.

Section 4749 General Code, reads as follows:

"The board of education of each school district, organized under the

provisions of this title, 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 by this title and the laws relating to the public schools of this state."

This section, among other things, grants authority to a board of education to exercise such other powers and privileges as are conferred by this title, and the laws relating to the public schools of this state, but does not in any wise afford authority to do the things set forth in your inquiry.

Reference must therefore be made to other sections of the General Code in order to ascertain whether a board of education has authority to expend public money in the manner set forth in your inquiry. In this connection, attention is directed to section 7620 of the General Code of Ohio, which reads as follows:

"The board of education of a 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 school rooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control. It also shall provide fuel for schools, build and keep in good repair fences enclosing such school houses, when deemed desirable, plant shade and ornamental trees on the school grounds, and make all other provisions necessary for the convenience and prosperity of the schools within the subdistricts."

It will be noted in the above section that after specifically setting forth the powers of the board of education and what it may do, the section further says:

"and 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 of the subdistricts."

It has been argued in numerous cases that the above provisions of Section 7620, General Code, are sufficient to justify various and sundry expenditures by a board of education, but it is not believed that this section is sufficient justification for a board of education to expend the public moneys in the publication of a book such as you submit.

Section 7690, General Code, reads in part as follows:

"Each board of education shall have the management and control of all the public schools of whatever name or character in the district."

The above section, along with section 7620, *supra*, may be said to be the two principal sections of the Ohio school laws which give boards of education very wide latitude in school affairs, but in considering Section 7690, it can hardly be said that the "management and control" of the public schools of the district would go so far as to cover the preparation and publishing of a text book such as submitted. Neither is it believed that any such authority would obtain from the provisions of Section 7666, General Code, which reads as follows:

"Such board of education shall build, repair, add to and furnish the necessary school-houses, purchase or lease sites therefor, or rent suitable rooms, and make all other necessary provisions relative to such schools as may be deemed proper."

In none of the above sections does there appear authority, either specific or implied, for an expenditure such as you indicate.

Section 4752 of the General Code provides for the payment of all claims or debts by the board of education upon proper roll-call of the members of the boards, but these claims or debts must be those which have been authorized by law.

In the case of *Board of Education vs. Best*, 52 O. S. 152, we find the following:

"The authority of boards of education, like that of municipal councils, is strictly limited. They both have only such power as is expressly granted or clearly implied, and doubtful claims as to the mode of exercising powers vested in them are resolved against them."

Attention is also directed to an opinion of the Attorney General for 1920, volume 1, page 915, the syllabus of which is as follows:

"Boards of education are without authority to expend public funds in printing and mailing to each taxpayer literature and advertising matter in favor of any proposition to be voted upon by the electors at an election called by such board of education."

In the unreported case of *Hauschild vs. Board of Education of the City of Lakewood*, in which the Supreme Court denied a motion to certify the record, the Court of Appeals in the opinion by Middleton, presiding judge, considering the right of the city board of education of Lakewood to operate a cafeteria in the Lakewood High School, say:

"It is further urged that Section 7620 G. C., which relates to the powers and duties of a board of education and, in addition to other provisions, contains the following:

'and make all other provisions necessary for the convenience and prosperity of the schools within the subdistrict,'

"is also authority for the things done by the defendant board which are complained of here. It is sufficient answer to this argument to say that the provisions referred to have been before the courts of this state in many cases, in none of which has the construction contended for been recognized. In a recent opinion of the Attorney General of this state (Opinion No. 3780, Vol. 2, Attorney General Reports, 1922,) it is expressly stated:

"That there is no authority of law for a board of education to purchase and sell school supplies other than text books."

"Moreover, in the case of *Clark vs. Cook*, 103 O. S. 465, our Supreme Court held:

'That boards of education * * * are limited in the exercise of their powers to such as are clearly and distinctly granted.'

"It is further held in that case:

'If such authority is of doubtful import the doubt is resolved against its exercise in all cases where financial obligation is sought to be imposed upon the county.'

"We must regard the doctrine of this case as determining adversely to the claims of the defendant board the right and authority of such board to operate this restaurant."

And in the closing paragraph of the opinion appears the following statement:

"We reiterate, however, that while the plaintiff has made no case justifying action by a court of equity, *nevertheless a board of education has no right to engage, directly or indirectly in any business unless so empowered by the statutes, and the situation in this state in respect to the matters involved here is one demanding the attention of the legislature and one which should be protected by special legislation or eventually the courts will be compelled to interfere.*"

In view of the above referred to authorities, and especially the case last cited, it is believed that a board of education is without authority to expend school funds in the publication of the text book or pamphlet suggested.

Now coming to a consideration of the Ohio text book law, attention is directed to the following sections, or parts of same:

Section 7709, General Code, provides in part as follows:

"Any publisher or publishers of school-books in the United States desiring to offer school-books for use by pupils in the common schools of Ohio as hereinafter provided, before such books may be lawfully adopted and purchased by any school board, must file in the office of the superintendent of public instruction, a copy of each book proposed to be so offered, together with the published list wholesale price thereof. No revised edition of any such book shall be used in common schools until a copy of such edition has been filed in the office of the superintendent together with the published list wholesale price thereof. The superintendent must carefully preserve in his office all such copies of books and the price thereof."

Section 7711, General Code, provides as follows:

"Such superintendent, during the first half of the month of June, in each year, must furnish to each board of education the names and addresses of all publishers who during the year ending on the first day of the month of June in each year, agreed in writing to furnish their publications upon the terms above provided. *A board of education shall not adopt or cause to be used in the common schools any book whose publisher has not complied, as to such book, with the provisions of law relating thereto.*"

A board of education not being a publisher, and without authority to expend public funds to publish the book submitted, it would therefore clearly appear that in view of the provisions of Section 7711, supra, such board could not adopt or cause to be used the book submitted.

Therefore, it is the opinion of this department that a board of education is without authority to use school funds to publish the book as submitted by you entitled "Industrial Mathematics First Half of Ninth Year" 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 book to be used.

Respectfully,

C. C. CRABBE,

Attorney-General.