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BOARD OF EDUCATION—WITHOUT AUTHORITY TO EXPEND PUBLIC FUNDS FOR ADVERTISING MATTER TO BE MAILED TO EACH TAXPAYER IN REGARD TO PROPOSITION TO BE VOTED UPON BY ELECTORS.

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.

COLUMBUS, OHIO, August 30, 1920.

HON. CLAUDE J. MINOR, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of August 13, 1920, in which you request the opinion of this department upon the following statement of facts:

“A majority of the electors of Perkins township, Erie county, Ohio, at the Primary election held April 27, 1920, voted to issue bonds to build a centralized school, and the board of education prior to said election gave the proper legal notice as provided by law, and in addition to that mailed each taxpayer of said township certain literature which contained a picture of the building together with a great deal of advertising, and all of which was in favor of the centralization of schools.

“The question now arises, has the board of education of Perkins township any legal right under the law to pay for said advertising out of the general funds of said school district?”

In answer to your question, it is a general rule of law that moneys 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 expenditures in compliance with some specific statute covering the same, or wherein such expenditure was clearly implied.

Section 4749 G. C. 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.”

Reference must therefore be made to other sections of the law in order to ascertain whether a board of education has authority to expend public money in mailing to each taxpayer in the township school district certain literature containing a picture of a proposed school building, together with advertising matter, all in favor of the centralization of schools in such township.

Section 7620, as amended in 108 O. L., Part I, page 187, 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 a board of education and what it may do, the section also 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 within the subdistricts."

Can it be said that the mailing of propaganda on the part of the board of education, in order to carry a school election, is a "necessary provision for the schools under its control?" Or, on the other hand, is it "necessary for the convenience and prosperity of the schools within the subdistricts?" It is not believed that the section means that the board of education can mail propaganda matter to the taxpayers in order that they shall have one certain view of a question which was to be submitted at an election. The board of education in submitting a question to the electors of a school district is presumed, as a board of education, to submit such question to the electors without bias in the matter, because the board of education of the district is the board for all the electors in the district on whatever side of a particular question such electors might be. One side of the question might say that centralization in a particular district was "for the convenience and prosperity of the schools" and with equal propriety the other side would say that such centralization might not be in that particular instance "for the convenience and prosperity of the schools in that district." This is a question that the board of education cannot decide wholly by itself, since an election in which all the electors can participate has been called for the purpose of passing upon what may be in that particular instance "the convenience and prosperity of the schools in that district."

Section 7690 G. C. 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 sections of the Ohio school laws which give boards of education very wide latitude in school affairs, but in construing section 7690, it can hardly be said that the "management and control" of the public schools in a district would go so far as to cover the mailing of printed matter by the board of education to the electors prior to an election in order to carry such an election a certain way. Neither would it appear that such authority would obtain under the provisions of section 7666, G. C., which reads as follows:

"Such board of education shall build, repair, add to, and furnish the necessary school houses, purchase or lease sites therefor, erect suitable

school rooms and make all other necessary provisions relative to such schools as may be deemed proper."

In none of the above three sections (7620, 7690 and 7666) does there appear authority, either specific or implied, for an expenditure such as you indicate. Section 4752 G. C. provides for the payment of claims or debts by the board of education upon proper roll call of the members of the board, but these claims or debts must be those which have been authorized by law.

"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 the powers vested in them are resolved against them." Board of Education vs. Best, 52 O. S., 152.

Attention is invited to an opinion of the Attorney General upon a somewhat analogous question, viz., where a board of education published a statement of receipts and expenditures for the year, that is, an unbiased statement of facts and figures and not a statement by the board of education taking the particular side of any question before the electorate. This opinion occurs at page 272, Report of the Attorney General for 1911-12, and the holding was as follows:

"A city school district is not authorized to pay for publication in a newspaper of a statement of receipts and expenditures for the year.

When such action is performed.

1. The newspaper cannot be held, as the payment was voluntary.
2. The members of the board of education who voted for the move are guilty of a misfeasance and are subject under the terms of 286 G. C. to civil action by the proper legal officer for a recovery.
3. The president, clerk and treasurer, acting in good faith in their respective capacities performed merely ministerial acts and are therefore not liable."

It would appear, therefore, that if the publishing in a newspaper of a statement of receipts and expenditures by a board of education was not authorized, clearly a board of education has no authority to issue propaganda matter favorable to some particular side of a question to all the electors and then have the school funds, which belong to all the electors, used for the payment of such advertising and propaganda. In other words, it would be using the funds in which one portion of the electors had equal rights with another group for the benefit of one group; that is, using one's funds against himself. If a board could send out matter at public expense in favor of a proposition submitted, then it might, within the same rule, send out matter for the re-election of a member.

Should members of a board of education, in their capacity as citizens, desire that a certain proposition should be favorably approved at an election called by them, such persons, under section 5175-1, can consider themselves a committee, which can issue propaganda and mail the same to the electors, but nowhere in the statutes is there found either direct or implied authority for a board of education to expend public funds in mailing to each taxpayer literature and advertising matter in favor of any proposition to be voted upon by the electors.

Respectfully,

JOHN G. PRICE,
Attorney-General.