

2479

BOARD OF EDUCATION MAY REMIT TO ELECTORS OF A SUBDIVISION THE QUESTION OF ISSUING BONDS AND LEVYING TAXES TO IMPROVE ITS ATHLETIC FIELD— §§3313.39, 3313.37, 135.18, 5705.19, R.C.

SYLLABUS:

A board of education of a city, exempted village, or local school district may, under Sections 3313.37 and 3313.39, Revised Code, expend money to improve its athletic field; and such a subdivision may, pursuant to Sections 135.18 and 5705.19, Revised Code, submit to the electors of the subdivision the question of issuing any bonds and levying of any tax for the purpose of providing the necessary funds therefor.

Columbus, Ohio, August 24, 1961

Hon. Rex Larson, Prosecuting Attorney
Richland County, Mansfield, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Springfield Local Board of Education in Richland County, Ohio, has presented the following question which is forwarded for your formal opinion inasmuch as the same has direct bearing and great interest to all boards of education throughout the state.

‘Can the board of education place on the ballot a bond issue or a levy to do the following?’

To grade, tile and seed a football field.

Place a fence around that field.

Erect seating on that field.

Place locker rooms and toilet facilities on this project.

Build a concession stand.

These facilities would be used for other activities other than football, for example outside action such as commencement, band concerts, and various other presentations for school and community groups.’ ”

Section 3313.37, Revised Code, reads as follows:

“The board of education of any school district, except a county school 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 schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.”

Section 3313.37, *supra*, gives the board of education of any school district, except a county school district, the power “to provide the necessary apparatus and make all other necessary provisions for the schools under its control.” Section 3313.39, Revised Code, gives a board of education the authority to appropriate land to be used for, or to enlarge “agricultural purposes, athletic field, or playground for children.”

Thus, such a board would appear to have the authority to build an athletic field for school use. Having the power to procure and enlarge grounds for an athletic field, it would follow that the board would have the power to equip this field and make it a useful asset to the school system. And in this regard, I believe that the track, fence, seating facilities, locker and toilet facilities, and the concession stand, may be considered as proper parts of the field.

Opinion Number 1145, Opinions of the Attorney General for 1957, page 522, considered the establishment and installation by school boards of warning systems for schools. That opinion quoted Opinion No. 1698, Opinions of the Attorney General for 1940, page 39, wherein the then Attorney General in interpreting the language of Section 7620, General Code, (now Section 3313.37, *supra*) stated in paragraph 3 of the syllabus as follows :

“If a board of education determines that a bell is essential to the proper conduct of the schools under its control it is empowered to expend school funds to acquire one * * *.”

The Attorney General in 1957 was of the opinion that this same ruling applied to his question regarding a warning system.

It is also my opinion that the last phrase in Section 3313.37, *supra*, granting power to particular boards of education to “make all other necessary provisions for the schools under its control” would apply in the situation here at hand. In this connection, may I cite Opinion No. 582,

Opinions of the Attorney General for 1939, page 733, the syllabus of which reads as follows :

“A board of education may in its discretion, provide flood lights so as to make the playgrounds and athletic field under its control available to the pupils and the community for night use.” The then Attorney General further stated, at page 736, as follows :

“From the few decided cases by the courts, it seems clear that where power is extended by statute to a board of education to provide playgrounds, and the board is expressly authorized and directed to include within its school activities the teaching of physical education, that the right and power to equip the playgrounds and to provide necessary apparatus for use of the pupils in the use of such playgrounds is implied.

“Moreover, by force of Section 7722 et seq., General Code, the use of school premises, including playgrounds maintained in connection with schools, as community centers is becoming more and more general, and such use of the school property is universally considered to be a useful and we might say necessary adjunct to the present day organization of society.

“While the use of flood lights to make available athletic fields and playgrounds for night use is of recent development, their use has become quite general, and it is generally considered that the use of playgrounds and athletic fields properly lighted at night is as much a proper use of the premises as is their use in the daytime.

“If a board of education should feel that there is a demand for the use of the school playgrounds and athletic field at night, it may lawfully in its discretion provide flood lights so as to make the field available for such night use.”

The added fact that such field and facilities will be used in some cases by various community groups would not appear to change the situation, as Section 3313.77, Revised Code, expressly allows use of school facilities for purposes of community welfare.

I conclude, therefore, that a local board of education may properly expend school monies to grade, tile, and seed a football field; place a track around a football field; place a fence around a football field; erect seating on its football field; place locker rooms and toilet facilities on or in the area of its football field; and build a concession stand as an adjunct to the football field.

As to a bond issue, a board of education acting for its school district may submit to the electors of its subdivision the question of issuing any bonds which it has the power to issue.

Section 133.09, Revised Code reads in part as follows :

“The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which said subdivision has power to issue, * * *”

The definition of “subdivision” as stated in Section 133.01 (A), Revised Code, includes any school district except the county school district. Section 133.18, Revised Code, reads in part as follows :

“At any time the board of education of any school district may submit to the electors of the subdivision the question of issuing any bonds for the purpose of acquiring or constructing any permanent improvement which such subdivision is authorized to acquire or construct.

“* * * * * * * * *”

It would follow, therefore, that the Springfield Local Board of Education in Richland County, Ohio may submit to the electors of its district the question of issuing bonds regarding the permanent improvements referred to above.

Section 133.18, *supra*, also authorizes the levy of a tax, reading in pertinent part as follows :

“Such board, by a vote of two thirds of all its members, may declare by resolution the necessity of such bond issue and fix the amount, purpose, approximate date, interest rate, and maturity, and also the necessity of the levy of a tax outside the limitation imposed by section 2 of Article XII, Ohio Constitution, to pay the interest on and to retire said bonds, and that the question of issuing such bonds, and levying such tax shall be submitted to the electors of the subdivision at a general, primary, or a special election to be held at a time specified in such resolution.

“* * * * * * * * *”

Further authority for the levy of a tax is expressed in Section 5705.19 (F), Revised Code, which provides for resolution by the taxing authority of any subdivision that it is necessary to levy a tax for the purpose of “the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue.” Under Section 5705.01 (A), Revised

Code, a school district (other than a county district) is a subdivision which may levy such a tax.

Section 133.10, Revised Code, should be considered before closing this discussion. It requires that the resolution provided for in Section 133.09, Revised Code, pertaining to the bond issue, shall relate only to one purpose. However, I would consider the improvement of the football field to be for one purpose; and am of the opinion that the board of education may place on the ballot a bond issue or a levy to make the various improvements to its athletic field.

It is my opinion, therefore, and you are advised that a board of education of a city, exempted village, or local school district may, under Sections 3313.37 and 3313.39, Revised Code, expend money to improve its athletic field; and such a subdivision may, pursuant to Sections 135.18 and 5705.19, Revised Code, submit to the electors of the subdivision the question of issuing any bonds and levying of any tax for the purpose of providing the necessary funds therefor.

Respectfully,

MARK McELROY

Attorney General