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EDUCATION, BOARD OF—MAY SEND EMPLOYEES AND OFFICIAL REPRESENTATIVES TO ATTEND PROGRAM OF INSTRUCTION AT COLLEGE OR UNIVERSITY—MATTERS PERTAINING TO CONDUCT AND MANAGEMENT OF SCHOOLS—EXPENSES MAY BE PAID, INCLUDING REGISTRATION FEE, FROM “SERVICE FUND”—SECTION 4845-8 G. C.

SYLLABUS:

A board of education may, if it deems it conducive to the welfare of the schools under its charge, send any of its employes as its official representatives to attend a program of instruction given by a college or university on matters pertaining to the conduct and management of the schools, and may pay the expense thereof, including a registration fee, from the “service fund” set aside pursuant to the provisions of Section 4845-8 of the General Code.

Columbus, Ohio, February 5, 1947

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion reading as follows:

“During the past year or so in several of the colleges of the State, ‘Workshops’ or programs for the education or instruction of the personnel of boards of education have been conducted.

In numerous school districts, superintendents, janitors, secretaries, etc. have attended these 'Workshops' and have presented bills for expenses incurred in such attendance, which bills have been allowed and paid by the boards from the service funds, established under the provisions of Section 4845-8, of the General Code.

Included in such bills of expense is a charge for registration fee for the individual attending such 'Workshop'.

May we respectfully request your opinion upon the following questions :

Would such payments be legal expenditures from the service fund if attendance had been authorized by the board by resolution spread upon its minutes ; and if so, would the registration fee so charged be a legal item for reimbursement ?

If the board of education has authority to authorize such attendance at the expense of the school district, but such authorization is not evidenced by a resolution adopted by the board and spread upon the minutes, and a superintendent or employee attends the 'Workshop', his expenses are approved and paid by the board, would the Bureau be authorized to determine such expenditure illegal, and hold same as a finding for recovery?"

Section 4845-8 of the General Code, to which you refer, provides for what is known as the "service fund". This section reads as follows :

"On the third Monday of every January or on the Monday preceding the close of school each year, the clerk of the board of education of any school district shall certify to the board of education of which he is clerk the number of pupils enrolled in the public schools of that district, whereupon the board of such school district may by resolution set aside from the general fund or, in the case of a county board of education, from the county board of education fund, a sum not to exceed five cents for each child so enrolled, or \$300.00, whichever is greater, except that in the case of a county board of education the fund shall not exceed \$300.00, such sum of money to be known as the 'service fund,' *to be used only in paying the expenses of such members actually incurred in the performance of their duties, or of their official representatives when sent out of the school district for the purpose of promoting the welfare of the schools under their charge;* such payments to be made only on statement of the several members, or their official representatives, furnished at the next succeeding regular meeting of such board of education."

(Emphasis added.)

The above section is the direct successor of and is quite similar to Section 7704, General Code, which was repealed in the enactment of the new school code in 1943. The old section which was limited in its scope to city boards of education, had been in force in substantially the same form for a considerable number of years. It had originally been limited to the payment of expenses of the members of the board only, but in 1921 was amended so as to permit also the payment of the expenses of the official representatives of the board. The later enactment in the present form merely established limits on the amount that could be set aside for these purposes.

It will be observed that the language used very clearly indicates that the purpose of the fund is primarily the payment of expenses of members of the board while engaged in the performance of their official duties, but that it has been enlarged so as to permit them, instead of going out of the district in the performance of such duties, to send their "official representatives". Clearly, the purpose and only purpose of permitting the sending of these official representatives is to enable the board to carry out more efficiently its official duties. The general intention and scope of this provision is further indicated by the words, "promoting the welfare of the schools". Just what is included within these words may be difficult to determine. The general assembly did not see fit to specify and we are therefore justified in assuming that it was intended to leave the matter to the sound discretion of the board of education. Whatever useful information the board members could acquire by a conference away from their district or by attendance at a convention, institute, or even a school, it might acquire by sending any of its employes as its "official representative."

In an opinion reported in 1922 Opinions of the Attorney General, p. 157, it was held that prior to the amendment of Section 7704, authorizing the payment of the expenses of the official representative of the board, it was not lawful to pay from the "service fund" the expenses of the chief architect of a board of education in attending the meetings of the National Educational Association, but that since the amendment of 1921, such expenses could legally be paid out of that fund. In the same opinion it was held that the board of education of the city of Cleveland could not pay out of that fund expenses incurred in entertaining the convention of the National Educational Association at its meeting in Cleveland.

In an opinion found in 1945 Opinions of the Attorney General, p. 36, I held:

“Expenses incurred by the teachers of a local school district in attending a meeting of teachers called by the county board of education and held in a city school district or elsewhere, may not legally be paid by the local board of education from the service fund created under the provisions of Section 4845-8, General Code.”

In the course of that opinion it was said:

“There is no authority under the statute to use the service fund in paying expenses incurred by teachers in attending teachers’ meeting at the invitation or call of the county board of education, and held at a county seat located in a city school district or elsewhere, because, in my opinion, these teachers are employes, and cannot be classed as ‘official representatives’ of their respective boards when attending meetings in *the capacity of teachers*. Even were it possible to class these teachers as ‘official representatives’ in any case, it would still be necessary that they be sent out of their districts by their own local boards of education to entitle them to have their expenses paid from the service fund. An attendance at the invitation or at the call of the county board of education would not be sufficient under the statute.” (Emphasis added.)

In an opinion found in 1944 Opinions of the Attorney General, p. 497, it was held:

“Boards of education do not have authority to pay from public funds either the \$10.00 incidental fee or the \$5.00 laboratory fee charged by the Ohio State University for its services or expenses in connection with the ‘field laboratory workshop’ set up by the department of education of said university.”

The then Attorney General found no authority in any of the statutes relating to the management of the schools for the payment of the registration fees or laboratory fees charged by the state university to teachers engaged in the study of particular school problems in its so-called “workshops.” The fact that no reference was made in that opinion to Section 4845-8 *supra*, gives me the right, I believe, to assume that the service fund in question was not even considered as a possible source from which such expenses could be paid.

The opinion last referred to related as does the present discussion, to a so-called "workshop" maintained by certain colleges, and it might appear to be decisive of the question you submit. It will be observed, however, upon reading that opinion that the "workshop" there involved was intended to lead the teachers entering, to certain collegiate credits and furthermore, the sessions were held at the home of the teachers and therefore did not involve the element of travel outside the district, which is of the essence of Section 4845-8 supra. There have been frequent opinions of this office to the effect that public monies can not be spent merely to educate public officers or employes. See 1938 Opinions of the Attorney General, p. 1783; 1946 Opinions of the Attorney General No. 1016, and other opinions therein cited. Those holdings, however, were based on the construction of statutes conferring only general powers of management and operation of the several departments of government.

The fact, however, that an expenditure of public funds incurred in sending an employe away for a course of instruction might result in his personal benefit, did not necessarily render such expenditure, illegal, if the main purpose was the accomplishment of some legitimate public purpose. In this line, I note the opinion of my immediate predecessor found in 1940 Opinions of the Attorney General, p. 1039, where it was held:

"The governing body of a city may, by ordinance or resolution, provide for a local course of training or the police department of the city and pursuant to such purpose the salary and expenses of a police officer may be paid while in attendance at a Federal Bureau of Investigation school to enable the officer to conduct such local course of training."

I am not unmindful of the well recognized principle which has been established by many decisions, to the effect that the authority of boards of education, being derived solely from the statutes is limited strictly to such powers as are expressly granted or clearly implied.

Your letter contains no information as to the character of the instruction or technical knowledge which a board member or employe of the board might obtain in attending the proposed "workshop" or program of instruction. It certainly would not be within my province to pass judgment on its value even if the facts were presented. That is a matter that is left solely to the discretion of the board. I do not consider that I am

doing violence to the general principle above referred to or to the opinions above cited, in holding that if the members of a board of education consider that it will be conducive to the "promotion of the welfare of the schools under their charge" either to go in person or to send their superintendent, janitor, clerk or any other employe as their official representatives out of the district to a "workshop" or program of instruction in a college or university, looking to better management of the schools, the board has the right to do so and to pay the expenses incurred, including the incidental registration fee, out of the "service fund" provided by Section 4845-8 of the General Code.

As to your second question, it is my opinion that where the board of education has not by previous action formally authorized such attendance but has subsequently approved and paid the expense of attendance by one of its employes, such action would amount to a ratification and no recovery could be had by the board, and hence no finding for recovery should be made by your bureau. It appears to me that the principle underlying the case of *State v. Fronizer*, 77 O. S., 7, applies to such a situation.

Respectfully,

HUGH S. JENKINS,  
Attorney General.