

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1148.

BOARD OF EDUCATION—PAYING PART OF PREMIUM ON GROUP LIFE INSURANCE FOR TEACHERS ILLEGAL.

SYLLABUS:

Boards of education are not authorized to pay from school funds part of the premium on a group life insurance policy for the protection of the teachers in its employ.

COLUMBUS, OHIO, November 5, 1929.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion in answer to the following question:

“May a board of education legally pay from school funds part of the premium on a group policy of life insurance for the teachers in its employ?”

As bearing upon this question my attention has been directed to two opinions of my predecessor reported in Opinions of the Attorney General for 1927 at page 48, and in Opinions of the Attorney General for 1928 at page 1099. In the former of these opinions it is held:

“Unless forbidden by its charter the legislative authority of a municipal corporation may as a part of the compensation to its employes, legally authorize group insurance on behalf of any or all of the employes of such municipality.”

In the second opinion above referred to, it is held:

“The legislative authority of a village may, as a part of the compensation to its employes, legally authorize group indemnity insurance, and pay the premium therefor from public funds.”

The two opinions above referred to are based upon the home rule powers of municipalities.

In the consideration of any question involving the powers of boards of education and their authority to perform or authorize certain acts, it must at all times be borne in mind that they are in an entirely different position so far as the limit of their powers is concerned than are the legislative authorities of municipal corporations. A board of education is an administrative board created by statute and its powers are limited to those granted to it, whereas municipal corporations, although created in the first instance under general laws, possess, after their creation, certain powers of local self-government, granted to them direct from the people by the constitution,

which may be exercised independent of general laws. A municipal corporation possesses not only such powers as are granted to it by its creator, the State Legislature, but also, within the limits of local self-government, all powers granted to it by the constitution.

The powers possessed by administrative boards and public officers created by statute are strictly limited to the powers expressly granted to them, together with such other powers as may be said to be implied as being within the express powers. The implied power, however, is limited to such only as may be reasonably necessary to make the express power effective, and such powers have been consistently kept by the courts within strict boundaries. The strictness with which the powers of public officers and administrative boards created by statute are to be exercised is evidenced by a great variety of cases. One of these cases which is frequently cited, is the case of *State ex rel. The A. Bentley and Sons Company vs. Pierce, Auditor*, 96 O. S. 44, wherein it is held as stated in the third branch of the syllabus:

“In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

In the course of the opinion it is stated, with reference to a grant of power by the Legislature:

“In construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it. It is one of the reserved powers that the legislative body no doubt had, but failed to delegate to the administrative board or body in question.”

In the two opinions above referred to, the Attorney General was not dealing with the powers of an administrative board created by legislative enactment, but was dealing with a legislative body, with powers, so far as local self-government is concerned, which are no less extensive within that field than are the powers of the State Legislature in matters of state concern.

The limitations on the powers of administrative officers and boards have been considered in a great many cases by the courts not only of this state but of all others with the same result. A few cases directly in point which have been decided by the court of last resort of this state are: *Jones, Auditor, vs. Commissioners of Lucas County*, 57 O. S. 189; *Ireton vs. State*, 12 O. C. C. (N. S.) 202, affirmed without opinion, 81 O. S. 562; *Peter vs. Parkinson, Treasurer*, 83 O. S. 36; *State ex rel. Locher, Prosecuting Attorney, vs. Menning*, 95 O. S. 97.

This proposition has been applied in this state directly to boards of education and other similar governmental agencies. In the case of *State ex rel. Clarke vs. Cook, Auditor*, 103 O. S. 465, the court holds that boards of education and other similar governmental bodies are limited in the exercise of their powers to such as are clearly and distinctly granted. See also *Schwing vs. McClure*, 120 O. S. 335, 166 N. E. 230.

It will readily be seen from the foregoing that whatever may be the rule with reference to the rights of the legislative authority of a municipal corporation to provide, as a part of the compensation of its employes, protection in the form of life insurance, it does not necessarily follow that the same right is possessed by a board of education. Boards of education have no legislative powers as has the council or other legislative authority of a municipal corporation. Your question, therefore, resolves

itself into a determination of whether or not the Legislature has empowered boards of education to pay from public funds the premiums on life insurance policies for teachers employed by it.

It is provided by Section 7690, General Code, that each city or rural board of education shall have the management and control of all the public schools in the district. Section 7705, General Code, provides that the board of education of each village and rural school district shall employ the teachers of the public schools of the district. Section 7690-1 General Code, provides in part as follows:

“Each board of education shall fix the salaries of all teachers which may be increased but not diminished during the term for which the appointment is made. * * * ”

There is nowhere to be found in the statutes, any authority for a board of education to pay to a teacher any compensation other than a salary to be fixed by the board by authority of said Section 7690-1, supra.

It is a familiar rule of construction that words in a statute will be presumed to be used in their general meaning unless the context or surrounding circumstances indicate a different meaning. *Kiefer vs. State*, 106 O. S. 285.

The fixing of a salary is generally understood to mean providing for the payment of a fixed sum of money at stated intervals. It has been suggested that the authority to employ teachers and fix their salaries might be construed as authorizing the providing of life insurance as a part of that salary. I know of no authorities wherein the word salary has been so interpreted.

I believe it to have been the general consensus of opinion among school officials, as well as other persons, that the authority given to boards of education to employ teachers and fix their salaries meant that that salary should be fixed to provide for the payment at stated intervals of a stated sum of money. While this fact alone does not preclude the placing of a different interpretation on the word salary than that which is generally understood to be proper, if such different interpretation is really the proper one, the familiar rule of construction that an administrative interpretation of a law, while not conclusive, is, if long continued, to be reckoned with most seriously, must not be lost sight of. Such administrative interpretation will not be disregarded unless it is necessary to do so.

I am of the opinion that the word salary, as used in Section 7690-1, supra, wherein a board of education is authorized to fix the salaries of its teachers, cannot be construed as authorizing the board to furnish life insurance or any other commodity as a part of that salary. The fixing of a salary, in my opinion, means providing for the payment at stated intervals of a fixed sum of money. To interpret the statute authorizing the fixing of salaries of teachers to mean, as a part of those salaries, provision might be made for the payment of premiums on group life insurance policies would be placing such a construction on the language of the statute as to allow the salaries to be fixed in terms of house rent, groceries or other commodities.

I am not unaware of the growing practice among large corporations to take out group policies of life insurance for the benefit of their employes. It seems to me that this policy is to be commended and it may well be that, upon like economic considerations, teachers in public employment should be similarly protected. A matter of policy of this kind might perhaps well receive legislative consideration. In view of the conclusions, however, hereinabove set forth, I am of the opinion, in specific answer to your question, that boards of education are without statutory authority to pay from school funds part of the premium on a group life insurance policy for the protection of the teachers in its employ.

Respectfully,

GILBERT BETTMAN,

Attorney General.