

tion, be elected. The legislature directed that such appointed board should organize so that its proceedings would be orderly, but did not provide specific terms for its officers as it did for those of regularly elected boards.

With respect to elected boards, the apparent intent of the law is that they shall elect their own officers and that they shall not elect them for terms running beyond the life of the board. This is evidenced by the provision that the term of a clerk be limited to two years at most, or for no longer time than until a new board organizes. It should be noted that the life of a board of education is two years. That is to say that the terms of some members on the board expire each two years and new members are elected, providing the scheme of electing boards of education, and of the organization of those boards, as set up by the school code of 1904, is carried out. See repealed Sections 4713, Opinions of the Attorney General for 1928, page 506.

In accordance with the policy of permitting each board to elect its own officers, I am of the opinion that a temporary board appointed for a newly created school district does not have the power to elect a clerk for a longer time than until the expiration of the life of the board, that is, until a board regularly elected in accordance with the statute, to succeed the appointed board, qualifies and organizes as provided by Section 4747, General Code.

I am therefore of the opinion, with reference to the specific matter set up in your inquiry, that the board of education appointed by the Brown County Board of Education for the Fayetteville-Perry School District created on September 30, 1929, did not possess the power to elect a clerk whose term should extend beyond the time that a board of education elected to succeed the said appointed board should qualify and organize in accordance with Section 4747, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3971.

BOARD OF EDUCATION—UNAUTHORIZED TO PUBLISH BULLETIN—SPECIFIC CASE.

SYLLABUS:

1. *School districts are political subdivisions of the state, created for the purpose of maintaining and administering a system of public education. Boards of education for these school districts, are arms or agencies of the state for the promotion of education throughout the state.*

2. *Boards of education, in their financial transactions, are limited strictly to the powers granted to them by statute.*

3. *A board of education is without authority to publish, at public expense, superintendents' bulletins or other bulletins or reports with reference to the activities of the schools under their jurisdiction.*

COLUMBUS, OHIO, January 21, 1932.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

"May the Board of Education of the Cincinnati City School District pay to 'The School Index', a paper published by teachers in the High

School, as a private venture, for the publication of the Superintendent's Bulletin, the nature of which is indicated in the first column of the enclosed clipping of 'The School Index'."

"The School Index" is a paper published, as you state, as a private enterprise. It circulates largely among the patrons of the Cincinnati schools as second-class mail, is published "every Friday of the school year", and purports to be "an exponent of the Cincinnati school system" "for teachers and parents". The subscription price is \$1.50 per year. Its editor and publisher is connected with the Cincinnati schools. There is an advisory editorial board of six members all of whom I understand, are teachers in the Cincinnati schools. One member of this board is elected by the principals of schools in the Cincinnati district, another by the teaching body, and a third by the Mothers' Federation.

The issue of The School Index, of December 8, 1931, submitted with your inquiry, consists of eight pages, approximately eleven by fifteen and a half inches, with four columns of printed matter on each page. In addition to a large amount of advertising, there are several announcements of meetings of teachers and committees, of concerts and other entertainments, a calendar for teachers, the program of the holiday session of the State Teachers' Association, various comments on school administration, some personals, and a copy of the "Superintendent's Bulletin." This bulletin is carried on the first page, and takes up little more than two columns. About one-third of this bulletin is an appreciation of the work of a retiring member of the Cincinnati Board of Education, another third consists of comments and a quoted extract from an announcement addressed by the secretary of one of the luncheon clubs of the city to its membership, with reference to an address to be made to the club on the following week. The remainder of the bulletin consists of an announcement of the annual holiday meeting of the Ohio Educational Association to be held in Columbus, and a notice of the observance of "Girls' Week" by the Cincinnati schools.

Your inquiry resolves itself into two questions:

- (1) Whether or not a board of education may pay from public funds for the publication of a superintendent's bulletin, such as this one.
- (2) Whether or not, if authority exists for the publication of this bulletin, publication of it may be made in a paper such as The School Index.

School districts are political subdivisions within the state, created for the purpose of maintaining and administering a system of public education. The maintenance of the public school system is a state function, and boards of education are arms or agencies of the state, created by the legislature of the state, for the purpose of administering locally, within the several school districts, the state's policies and regulations with respect to the schools. See *Board of Education of Cincinnati vs. Volk*, 72 O. S., 469, at page 480.

With respect to certain phases of school administration, boards of education have had delegated to them broad powers, and they possess, by force of this delegation, wide discretion, as for instance, in the making of rules and regulations to govern the conduct of teachers and pupils in the schools, the selection of school sites, and similar matters. With respect to school district property and the expending of school funds, boards of education act in the capacity of mere trustees

and their powers with respect thereto are limited strictly to those delegated to them by the legislature. Being agencies or arms of the state, boards of education are said to possess only such powers as are expressly granted to them or incidentally necessary to carry out such express grants of power. This rule has been consistently referred to and applied by the courts of this state and elsewhere in a number of cases. Reference has been made to it so frequently in opinions of this office as to scarcely merit its extended discussion at this time; it has become such a settled rule of law by its repeated and universal application as to be beyond dispute. See *Schwinn vs. McClure*, 120 O. S., 335; *State ex rel Clarke vs. Cook*, 103 O. S., 465. In the latter case, the Supreme Court likened boards of education to county commissioners, of whom it has been said in many cases, that so far as financial transactions are concerned, they are vested with limited powers only. In *Jones, Auditor vs. Commissioners of Lucas County*, 57 O. S., 189, it is said:

“The board of county commissioners represents the county in respect to its financial affairs only so far as authority is given to it by statute.”

See also *Peter vs. Parkinson*, 83 O. S., 36, *State ex rel. Locher, Prosecuting Attorney vs. Menning*, 95 O. S., 97, *State ex rel. A. Bentley & Sons Company vs. Pierce, Auditor*, 96 O. S., 44. In the Bentley case, supra, the principle that administrative boards, such as boards of education and boards of county commissioners, have delegated powers only, and are strictly limited to the powers so delegated, is further restricted by the rule stated in the third branch of the syllabus, which reads as follows:

“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.”

Boards of education do not possess any so-called home rule powers; this is definitely settled by the case of *Miami County vs. Dayton*, 92 O. S., 215, where it is said, in the eighth branch of the syllabus:

“The doctrine of home rule does not now, and never did, have any application to the governmental affairs of a state or the governmental affairs of a district within the state created by the state for the exercise of certain state sovereign powers.”

A search of the statutes, which are the source of all power of a board of education, discloses that the only grant of power to a board of education to publish, at public expense, any report or bulletin is found in Section 291, General Code, which directs the fiscal officer of each political subdivision or taxing district to publish a financial report of the subdivision or district in such form as the Bureau of Inspection and Supervision of Public Offices may direct.

I know of no other or further grant of power to a board of education to publish reports or bulletins at public expense. In its absence, we must conclude that the power does not exist, and that a board of education may not publish bulletins or reports of any kind, and pay for such publication from public funds.

A somewhat similar question relating to the power of a board of health, was

submitted to a former Attorney General. See Opinions of the Attorney General for 1927, page 969. The question there submitted was whether or not a city board of health might lawfully expend its funds to pay the cost of printing and publishing a report of its activities in the form of a bulletin. In the course of his opinion, the Attorney General said:

"In order, therefore, for a city board of health to be justified in expending its funds to pay the cost of printing and distributing a quarterly report such as the one under consideration, authority to make such expenditure must be found in some statute. * * * A search of the statutes fails to reveal any specific or implied authority conferred upon such boards of health to publish quarterly reports such as the one under consideration or to publish other periodical reports."

Moreover, even if authority were granted to a board of education to publish bulletins of the kind mentioned, and it were authorized to make publication thereof in a newspaper of general circulation, as most such grants of power do provide, it would not be allowable to publish them in "The School Index" as this publication, in my opinion, is not a "newspaper of general circulation," within the meaning of that phrase, as used in such statutes. In an opinion of a former Attorney General, found in Opinions of the Attorney General for 1928, at page 696, it is held:

"A paper or magazine published by the student body for the public schools of a county school district, issued monthly during the school year only, and containing no general news of interest to the reading public, other than news strictly pertaining to the activities of the county schools and the students therein, is not a 'newspaper' in the sense that the word is used in Section 291, General Code, requiring the publication of the financial report of school districts in a 'newspaper' published or of general circulation in the district."

While no doubt the use of the publication in question provides a convenient means for the distribution of information from the superintendent to the teachers, and the superintendent has authority to disseminate such information otherwise than by this method, yet I am confronted with the general rule which has heretofore been discussed with respect to the financial powers of boards of education and especially the uniform rulings of past Attorneys General as well as the courts to the effect that, in order to justify an expenditure for advertising, there must exist statutory authority therefor. I am consequently constrained to hold against the existence of the authority here questioned, even though the expenditure be in all respects commendable in this instance.

I am therefore of the opinion, in specific answer to your question, that the Cincinnati Board of Education is not authorized to pay the publishers of "The School Index" for the publication of a superintendent's bulletin.

Respectfully,

GILBERT BETTMAN,

Attorney General.