

1583.

WHEN BOARD OF EDUCATION ESTABLISHES A HIGH SCHOOL IT BECOMES MANDATORY TO MAINTAIN STANDARDS OF CLASSIFICATION—IF BOARD OF EDUCATION MAINTAINS UNCLASSIFIED SCHOOL IT EXPENDS FUNDS NOT AUTHORIZED BY LAW—CLASSIFICATION—SECOND GRADE CERTIFICATE—TUITION FOR FOURTH YEAR.

SYLLABUS:

1. *If a board of education, in its discretion, establishes a high school within its school district, a mandatory duty then becomes imposed upon that board to maintain a high school which will meet certain standards so that the high school can be classified by the director of education as a first or second, or third grade high school.*

2. *If the board of education maintains a high school that has not been classified, it is expending public funds for maintaining and conducting a type of school that is not authorized by law.*

3. *A board of education must offer within its high school a course of high school studies that requires four years, or three years, or two years for completion. If it offers a four year course, it must meet such standards that will entitle it to be classified by the director of education as a first grade high school; if it offers a three year course, it must meet such standards that will entitle it to be classified as a second grade high school; and if, it offers a two year course it must meet such standards that will entitle it to be classified as a third grade high school.*

4. *Where a pupil attended a second grade high school for three years and during the time between such pupil's entrance and completion of the third year in such second grade high school, the certificate of second grade, was revoked, such pupil is entitled to have tuition paid for one year at a first grade high school by the board of education of the school district wherein said pupil resides.*

COLUMBUS, OHIO, December 8, 1937.

HON. WILLIAM J. PORTER, *Prosecuting Attorney, Union County, Marysville, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“Mrs. C. S., a resident of Taylor Township, Union County, Ohio, has sent her daughter to Taylor Rural School for

three years' high school, which said school is a second grade school.

This year she is sending her daughter in to Marysville High School, which is a first grade school, to complete her fourth year of high school work. The school board of Marysville is demanding tuition from either Mrs. S. or the Taylor Rural School Board. The question in my mind is, under and by virtue of Section 7748, of the General Code of Ohio, should the Board of Education of the Taylor Rural School or Mrs. S. pay the tuition to the Marysville School Board, keeping in mind that the Taylor Rural School is but a second grade school.

"There is considerable contention in regard to this matter, and for that reason, I am asking you to kindly favor me with an early reply and thus very greatly oblige."

I am advised by the Department of Education: that, the school of Taylor Rural School District is centralized; that, the high school offers four years of high school work; and that on December 2, 1936, the certificate for a second grade high school that had been issued to Taylor Rural School District was revoked by the Director of Education for failure to meet standards.

A mandatory duty rests upon a board of education to offer and furnish high school work, or to make it accessible to every pupil of compulsory school age in the district. This imposed duty on each and every board of education was clearly set forth in the case of *State, ex rel. Masters, vs. Beamer et al.*, 109 O. S., 133, where the Court at page 145, said:

"In the opinion of this court, however, the fact that the board of education has an option in determining the manner of providing high school work does not give it an option to exercise none of the options provided, and thus to fail to furnish high school work to pupils who have completed the elementary course and are within the compulsory school age. In other words, the manner of providing high school work is optional, the manner in which the high school work is to be made accessible to the pupils is optional; *but the board of education of a school district has no option as to whether it will or will not furnish, or will or will not make accessible, high school work to pupils of the class contemplated.* The mandatory duty rests upon the board of education, in one of the ways provided, to offer and furnish high school work, or to make it accessible to every

pupil of compulsory school age in the district.” (Italics the writer’s.)

It is important to note at this time, that in defining the duty of a board of education in the case of *State vs. Beamer, supra*, the Supreme Court also described the kind of high school work that a board of education must furnish or make accessible to the pupils, as being “of the class contemplated.” It therefore becomes necessary to determine what is meant by the “class contemplated.”

Section 7651, General Code, makes it mandatory that “the high schools of the state shall be classified by the director of education.” This section reads as follows:

“The high schools of the state shall be classified by the director of education into high schools of the first, second and third grades and junior high schools upon such standards consistent with Sections 7652, 7652-1 and 7653, General Code, as he may formulate. He shall issue certificates of grade to such schools when their ratings are determined after inspection and such shall be the grades of such schools until the grade is changed or certificate revoked after a subsequent inspection or evident failure to meet standards. Provided, however, that no certificate of any high school shall be revoked or denied or grade changed because the board of education of such school does not provide a course of instruction of more than thirty-two weeks in any school year, or because of inadequate gymnasium facilities.”

Section 7652, General Code, defines a high school of the first grade as “a school in which the courses normally require for completion four years beyond the eighth grade of the elementary school,” “high schools of the second and third grades are schools in which the courses require normally three and two years, respectively, beyond the eighth grade.”

Section 7652-1, General Code, requires that every high school shall include in the requirements for graduation, one unit of American history and government; and that, at least one-half unit of agriculture shall be taught in every rural and village high school.

Section 7653, General Code, provides as follows:

“First, second and third grade high schools shall require respectively the completion of sixteen, twelve and eight units for graduation. A unit shall mean the equivalent of at least one hundred twenty sixty-minute hours of prepared classroom exercise in a subject.”

It is important to note that no mandatory duty rests upon a board of education of a school district to maintain within the school district a high school for the pupils residing in the district that offers a four year course of study, or three year or two year course of study in high school subjects. As stated in the case of *State, ex rel. Masters vs. Beamer, supra*, the duty is to furnish "high school work to pupils of the class contemplated." This duty can be performed by the board of education maintaining its own high school, or making such necessary provisions in order that high school work will be accessible to the pupils residing within the district in a high school situated outside of the school district.

It therefore is entirely optional with the board of education whether it shall maintain a high school within its school district. If it chooses to maintain a high school it is also entirely within the discretion of the board of education to determine whether it will offer a four year, or three year, or two year course of study. However, if a board of education determines to maintain a high school, then automatically, by virtue of the provisions of Section 7651, *supra*, it becomes mandatory that the high school which the board of education has, in its discretion established, be classified by the Director of Education. A duty then becomes imposed upon that board of education to maintain a high school which will meet certain standards in order that the high school can be classified as a first, or second or third grade high school. In other words, a board of education cannot determine to maintain a high school that offers a four year course of high school work and requires "sixteen units of one hundred and twenty sixty-minute hours of prepared class room exercise" in conformity with Section 7653, General Code, and say we have complied with the law by offering within the school district a high school course of four years, and that is all that any pupil residing in the school district can demand. This cannot be done because Section 7651, *supra*, demands that the high school be classified by the Director of Education as a first or second or third grade high school. A board of education cannot by merely furnishing a high school course of four, or three, or two years escape from having its high school classified.

It is my judgment that, if a board of education determines to establish a high school within its district, a compliance with Sections 7652, 7652-1 and 7653, General Code, as to number of years and graduation requirements is not sufficient but that along with such compliance the high school must be classified by the Director of Education, as provided in Section 7651, *supra*.

Section 7748, General Code, provides in part, as follows :

"A board of education providing a third grade high school

shall be required to pay the tuition of graduates from such school, and of other children who have completed successfully two years of work in a recognized high school, residing in the district at a first grade high school for two years, or at a second grade high school for one year and at a first grade high school for one additional year. A board providing a second grade high school shall pay the tuition of graduates, and of other children of like advancement, residing in the district at a first grade high school for one year. No board of education is required to pay the tuition of any pupil to high school for more than four school years. * * *

There can be no doubt as to the language of this section requiring, as stated in 36 Ohio Jurisprudence, page 395, that a "board of education of a district maintaining only a second or third grade high school must pay the tuition of its graduates in high schools of a higher grade for a period long enough to complete a four year high school term."

If the board of education of a school district offers an approved first grade high school course to the pupils residing in the school district, it is furnishing the required high school work, since a pupil can demand no more than the privilege of graduating from a first grade high school.

If the board of education of a school district maintains a high school that has been classified as a second or third grade high school, or, for failure to meet certain requirements, has not been classified by the director of education, it is offering less than it is required, since by the provisions of Section 7748, supra, it is made mandatory for a board of education maintaining a third grade high school to pay tuition for a pupil residing in its school district at a first grade high school for two years or at a second grade high school for one year and at a first grade high school for one year, and if it maintains a second grade high school it must pay tuition at a first grade high school for one year.

If the high school has not been classified, it is not a high school, within the meaning of Section 7651, supra, and cannot be termed as such. As stated hereinabove, it is optional with the board of education to establish and maintain a high school, but, it can be said that if a board determines to maintain a high school, it is assumed that it will maintain one that has been classified in accordance with the provisions of Section 7651, supra. Therefore, when a board of education maintains a high school that has not been classified, it is obvious that the board is expending public funds for the maintaining and conducting of a type of school that is not authorized by law, since the law makes no provision for an unclassified high school and Section 7651, supra,

emphatically provides that "the high schools of the state shall be classified."

It is an old and uniformly accepted doctrine that public officers, such as members of a board of education, have no powers except such as are expressly conferred by statute, or such as are necessarily implied from the powers so conferred. The Supreme Court, in the case of *Schwing vs. McClure, et al., Trustees*, 120 O. S. 335, clearly stated this doctrine as follows:

"Members of a board of education of a school district are public officers, whose duties are prescribed by law. Their contractual powers are defined by the statutory limitations existing thereon, and they have no power except such as is expressly given, or such as is necessarily implied from the powers that are expressly given."

To the same effect is the well known rule of law that an administrative board may not expend money except as provided by statute; and that, if authority to do so is of doubtful import, the doubt is resolved against its exercise. This principle of law was clearly enunciated by the Supreme Court of Ohio, in the case of *State ex rel. Locher vs. Menning, et al.*, 95 O. S., 97, at page 99, the court said:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

See also, *State ex rel. A. Bentley & Sons Co., vs. Pierce, Aud.*, 96 O. S., 44.

From the foregoing, it can be said: that, there is no provision in the law whereby a board of education is authorized to offer more than a four year course in high school subjects; that, if it offers a four year course, it is required to meet the standards that will entitle the high school to be classified by the director of education as a first grade high school; and that a first grade high school can offer no more or no less than a four year course of study in high school subjects, since Section

7652, *supra*, defines a first grade high school as "a school in which the courses normally require for completion, four years beyond the eighth grade of elementary school."

By the same reasoning, it can tersely be stated: that, if a high school offers a three year course, it is required to meet the standards so that it can be classified as a second grade high school, and as a second grade high school it is not authorized to offer more or less than a three year course of study in high school subjects; and that if the high school offers a two year course, it is required to meet the standards so that it can be classified as a third grade high school, and as a third grade high school it is not authorized to offer more or less than a two year course of study in high school subjects.

To compel a pupil to attend for four years, a high school that has not been classified, just because it offers a four year course, would result in such pupil being denied entrance privileges in a case where a pupil may enter a university without taking an entrance examination if the pupil was graduated from a first grade high school, but is compelled to take the entrance examination if the pupil was graduated from a high school of a lesser grade. Section 7748, *supra*, affords to every pupil attending a second or third grade high school the privilege of graduating from a first grade high school. It affords this same opportunity to pupils in a district that does not maintain a high school, by permitting the payment of "tuition of any pupil to high school for not more than four years." It therefore can be said that the "contemplated class" of high school work that a board of education must furnish or make accessible to the pupils residing in the district is a course of high school work that provides the privilege of graduating from a first grade high school.

I am not unmindful of the fact that it can be contended that since the Taylor Rural School District is centralized, and offers a four-year high school course, by virtue of Section 7749, *supra* it is exempt from the payment of tuition for its pupils in any other high school.

Section 7749, General Code, provides as follows:

"When the elementary schools of any rural school district in which a high school is maintained, are centralized and transportation of pupils is provided, all pupils resident of the rural school district who have completed the elementary school work shall be entitled to transportation to the high school of such rural district, and *the board of education thereof shall be exempt from the payment of the tuition of such a portion of four years as the course of study in the high school maintained by the board of education includes.*" (Italics the writer's).

It is true that Taylor Rural School District offers a four year course beyond the eighth grade. Yet, for some reason, it has failed to meet the standards set by the Director of Education to be classified as a certain grade high school. I am advised: that, previous to revoking a certificate of a high school, the board of education is notified of its failure to meet required standards, and given sufficient time to prepare to meet such standards; and that, the requirements are such that can be met by a board of education if it so desires. However, it is not within the jurisdiction, or any concern of this office to delve into the reason or reasons for the board of education's failure to meet the required standards.

Sectin 7749, supra, standing alone, exempts a board of education from payment of tuition of any pupil if it offers a four year course of study. However, there is nothing in this section that can be interpreted or construed as exempting a high school maintained in a centralized rural school district and offering a four year course, from being classified as a first, or second, or third grade high school as mandatorily required by the provisions of Section 7651, supra. Section 7749, supra, must be interpreted and construed in the light of Sections 7651, 7652, 7652-1 and 7653, supra.

It can be said that when a high school is referred to in Section 7749, supra, it is assumed that such high school has been classified as required by law.

In the fall of 1936, when the pupil herein referred to entered the high school maintained by the Board of Education of Taylor Rural School District, said high school was of a second grade, and at the end of the 1936-37 year, upon the completion by the pupil of three years' high school work in that high school she was entitled to have her tuition paid for one year, at a first grade high school. The Board of Education of Taylor Rural School District had it within its power either to meet such requirements so that its high school would retain its second grade certificate, or to take the necessary steps so that the high school would be classified as a first or third grade high school. Not having retained its certificate of a second grade high school or becoming classified as a first or third grade high school, it cannot deprive this pupil of the privilege of attending a first grade high school during her fourth year of high school work, and graduating therefrom. The Board of Education of Taylor Township Rural School District must pay the tuition for the fourth year of said pupil.

Therefore, in specific answer to your question it is my opinion that,

the Board of Education of Taylor Rural School District is required to pay the tuition for the fourth year of the pupil referred to in your communication, in a high school of the first grade.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1584.

APPROVAL—CANAL LAND LEASE EXECUTED BY THE
STATE OF OHIO TO RALPH R. KISER OF TROY, OHIO.

COLUMBUS, OHIO, December 8, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said department to one Ralph R. Kiser of Troy, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$7.50, there is leased and demised to the lessee above named the right to occupy and use for cottage site and agricultural purposes that portion of the abandoned Miami and Erie Canal property, including the full width of the bed and banks thereof, located in Concord Township, Miami County, Ohio, and described as follows:

Beginning at a line drawn across said canal property at right angles to the transit line of the H. E. Whitlock Survey of said canal through station 8180+65 of said survey and running thence southerly with the lines of said canal property, two hundred and sixty-five (265') feet, as measured along said transit line to a line drawn through station 8178+00, and containing eighteen thousand five hundred and fifty (18,550) square feet, more or less; excepting therefrom any portion of said canal property now occupied by the Dixie Highway.

Upon examination of this lease, which is one executed by you under authority of the DeArmond Act, so-called, 114 O. L., 546, I find that