

2962.

APPROVAL, NOTES OF CANAL WINCHESTER VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—\$6,150.00.

COLUMBUS, OHIO, July 26, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2963.

BOARD OF EDUCATION—UNAUTHORIZED TO SUBMIT TO ELECTORS OF DISTRICT QUESTION OF WHETHER OR NOT HIGH SCHOOL BE DISCONTINUED.

*SYLLABUS:*

*It is not within the power of a board of education to submit to the electors of its district a question of whether or not a high school maintained by the board should be discontinued, and no election machinery is provided by law for that purpose.*

COLUMBUS, OHIO, July 27, 1934.

HON. NORTON C. ROSENRETER, *Prosecuting Attorney, Port Clinton, Ohio.*

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

“I would like to have your opinion covering an inquiry directed to me and arising out of the following:

The Erie Township School District in this county has been operating a second-class high school at La Carne, Ohio, so chartered by the state Department of Education. This calls for a three year course, and it is then necessary for the high school pupil to finish his or her education by taking the last year either at Port Clinton, Ohio, or at Oak Harbor, Ohio, with the board paying the tuition and providing the transportation for said last year of high school education.

It now develops that many people within the district, including those who have children attending the school, have requested the Board of Education to abandon this high school and to send all of the children having completed the first eight grades, to the high schools of the cities hereinbefore mentioned, for the full term of four years.

The board members are not in favor of initiating such action, as I understand they have a right to do under the statute, but prefer that the people of the school district vote on the issue if possible, at the oncoming August primary election, or if time does not now allow, at the November election.

I would, therefore, inquire if the Board of Education can have this matter placed on the ballot this fall for determination by the electors of

the district. Also, what procedure would have to be taken by the board thereon?"

Under the terms of Section 7690, General Code, the board of education in each city, village or rural school district is vested with the management and control of all schools of whatever nature in their respective districts.

It is the duty of boards of education in the several districts to provide high school facilities for the resident youth of their districts who have completed the work of the elementary schools and have received certificates of graduation from such schools. High school facilities may be furnished in a high school maintained by the board or by the payment of tuition in other high schools. It is the board's duty to determine the manner by which such high school facilities will be furnished, and no authority exists for the determination of this question by any other agency or by submitting the question to the patrons of the school or the electors in the school district. The law relating to the initiative and referendum does not apply to school districts.

It is well settled that boards of education as well as other administrative boards created by statute, have such powers only as are expressly granted by statute, together with such implied powers as are necessary to carry out the express powers granted. *Peter vs. Parkinson*, 83 O. S., 36; *Schwing vs. McClure*, 120 O. S. 335.

This rule is strictly applied in cases involving the expenditure of public funds. *State ex rel. vs. Pierce*, 96 O. S., 45.

To submit to the voters a question such as the determination of whether or not a high school should be maintained by a board of education, or discontinued if one is already in existence, would involve some expenditure of public funds for the printing of the ballots at least, and this would therefore be an illegal and unauthorized expenditure.

The law with respect to elections is purely statutory. As stated by the Supreme Court, in *State vs. Harmon*, 31 O. S., 250-260:

"Our system of elections is unknown to the common law. The whole subject is regulated by statute."

Inasmuch as no provision is made by statute for the submission to the electors of a school district, of a question such as the one mentioned in your inquiry, it clearly follows that it may not lawfully be done.

I am therefore of the opinion in specific answer to your question that it is not within the power of a board of education to submit to the electors of its district a question of whether or not a high school maintained by the board should be discontinued, and no election machinery is provided by law for that purpose.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*