

2073

1. LUNCH ROOMS—BOARD OF EDUCATION AUTHORIZED TO PROVIDE LUNCH ROOMS — USE, PUPILS AND OTHERS CONNECTED WITH SCHOOLS—ROTARY FUND —APPROPRIATIONS—GENERAL FUND OF SCHOOL DISTRICT — ROTARY FUND SHALL BE KEPT SEPARATE FROM OTHER TRANSACTIONS OF BOARD — SECTION 4839-6 G. C.
2. BOARD WITHOUT AUTHORITY TO PAY DIRECTLY FROM GENERAL FUND EXPENSE TO ESTABLISH AND OPERATE LUNCH ROOMS—MAY AMPLIFY LUNCH ROOM ROTARY FUND BY APPROPRIATIONS FROM GENERAL FUND.

SYLLABUS:

1. Section 4839-6, General Code, authorizes a board of education to establish and operate lunch rooms for providing lunches to pupils and others connected with the schools under its control, and provides for the establishment of a rotary fund for the operation of such lunch rooms and authorizes appropriations to such rotary fund from the general fund of the school district, and provides that such rotary fund shall be kept separate from other transactions of the board.

2. A board of education is without authority to pay directly from the general fund the expense of establishing and operating such lunch rooms, but may under the provisions of Section 4839-6, amplify from time to time the lunch room rotary fund by appropriations from the general fund.

Columbus, Ohio, November 18, 1952

Hon. Clyde Hissong
Superintendent of Public Instruction
Columbus, Ohio

Dear Sir:

I have before me your communication, requesting my opinion and reading as follows:

“Section 4839-6 of the Ohio General Code makes provision for a board of education to provide facilities and management in the schools under its control for the preparation and serving of meals to pupils and other authorized persons.

"In order to properly interpret Section 4839-6 of the Ohio General Code we would like your opinion with respect to the following question :

"Does a board of education have the legal authority to pay lunchroom labor costs from the General Fund?

"With the passage of the 'National School Lunch Act' in 1946, known as Public Law 396—79th Congress, considerable impetus was given to the development of the School Lunch Program in Ohio and throughout the country. Ohio now receives about \$2¼ million dollars of Federal funds annually to distribute to participating schools to assist with the purchase of food. In addition approximately three-quarters of a million dollars worth of food is donated and distributed by the USDA to public schools. Last year we approved 1509 schools for participation. The total operating expenditure was approximately \$13,500,000.

"With today's costs of operation many boards of education are faced with an operating deficit when all expenses are paid from the lunch account with current lunch receipts. During the 1951-52 school year 39% of our boards of education operated on a deficit basis. In most cases this deficit was eventually paid from general funds of the district.

"In many other instances boards of education are currently paying part or all of the lunchroom labor costs from general funds. This procedure will usually avoid deficit operations. *At the same time many other boards of education are reluctant to do so because they are not certain whether it is legally permissible.*

"Inasmuch as this question is coming to our attention with increased frequency, I would therefore appreciate your opinion on whether a board of education may legally pay lunchroom labor costs from general funds."

Section 4839-6, General Code, to which you refer reads in part, as follows :

"The board of education of any city, exempted village or local school district may provide facilities in the schools under its control for the preparation and serving of lunches, and other meals or refreshments to the pupils, the teachers, and to other employees therein, and to other persons taking part in or patronizing any activity in connection with the schools, and may provide the management of such lunchrooms, which facilities shall not be operated for profit; provided that the privileges and facilities granted hereunder by any board of education shall apply to all pupils and teachers and no restrictions or limitations shall operate against any such pupil or teacher in the use of such facilities except for reasons applicable to all alike. * * *

“The enforcement of this law will be under the jurisdiction of the state department of education.

“A board of education shall provide rotary funds for the operation of lunch rooms and for the purchase and sale of uniform school supplies *either by appropriations from the general fund or accumulation from sales or receipts. Each such fund shall be kept separate from other transactions of the board.*

“The board of education may also make provision by appropriations out of the general fund of the district or otherwise for serving free lunches to such children as it may determine are in need thereof.” (Emphasis added.)

Prior to the enactment of the above section in 1943, Section 4762-1, General Code, was in force. That section read as follows:

“The board of education of any school district may provide facilities in the schools under its control for the preparation and serving of lunches to the pupils, the teachers, and to other employees therein, and may provide for the operation and management of such lunch rooms, which shall not be operated for profit; provided, that the privileges and facilities granted hereunder by any board of education shall apply to all pupils and teachers, and no restrictions or limitations shall operate against any such pupil or teacher in the use of such facilities except for reasons applicable to all alike. *The accounts of earnings and expenses of school lunch rooms shall be kept in a lunch room fund, separate from other transactions of the board of education. A fund of operating capital for lunch rooms may be provided either by appropriation from the contingent fund or by accumulation from lunch room earnings.*” (Emphasis added.)

In Opinion No. 3102, Opinions of the Attorney General for 1926, page 49, that section was under consideration and it was held as disclosed by the syllabus:

“The lunch room fund provided in section 4762-1 G. C., shall be considered as a part of the general school funds to be deposited in the usual depositaries and paid out upon warrants properly signed by the president and clerk of the board of education as provided in section 4768 G. C.”

It will be observed that then, as now, the law authorized an appropriation from other school funds, to the school lunch fund, and it was provided that the account of the earnings and expenses of school lunch rooms should be kept in a fund separate from other transactions of the board of education.

In Opinion No. 2682, Opinions of the Attorney General for 1928, page 2288, a similar holding was made, the syllabus of the opinion reading as follows:

“Moneys in the school lunch room fund established under authority of Section 4762-1, General Code, are to be considered as a part of the school funds of the district and deposited in the depositories provided for such school funds and paid out upon warrants signed by the clerk and president of the board of education.”

In the course of the opinion it was said:

“The purpose of providing that separate accounts be kept of the earnings and expenses of school lunch rooms is obvious. The statute provides that such lunch rooms shall not be operated for profit, and unless the transactions relating to lunch rooms are kept separate from other transactions of the board, no means would be available whereby it might be conveniently determined whether or not the lunch room was being operated at a profit. It perhaps would not have been necessary to have provided for establishing a separate lunch room fund only for convenience in accounting, but the Legislature has seen fit to do so, just as it has provided for the establishment of other specific funds.

“This does not mean, however, that the moneys in the lunch room fund are to be treated any differently from moneys in other funds. In fact, this fund is to be made up from appropriations from other funds of the board if the earnings of the lunch room are not sufficient to provide operating capital. * * *”

These opinions make it clear that the school lunch fund is recognized by the law as one of the regular operating funds of a school district for the carrying out of one of the powers granted to boards of education in the operation of the schools. They also make clear the proposition that this fund can be maintained not only from the receipts from the sale of lunches to pupils and teachers, but also may be amplified by appropriations from the general fund of the district. In its early form, appropriations might be made from the “contingent fund.” In the present statute such appropriations are authorized to be made from the “general fund.”

It does not, however, follow that the expenses of operating such lunch room may be paid directly from the general fund. The statute makes it clear that the school lunch fund is to be set up as a special fund, distinct from the general fund, and the reason for making it a special fund is very aptly stated in the quotation which I have made from the 1928 opinion.

I do not consider that the language of the statute in authorizing appropriations from the general fund to a rotary fund "for the operation of lunch rooms," limits the board of education to one initial appropriation, or denies it the right to make supplemental appropriations when needed. The use of the plural word "appropriations" adds strength to that conclusion. The fact, mentioned in your letter, that the Federal Government contributes a substantial sum to the support of the project, is evidence that the whole plan is intended to supply the pupils and other patrons with lunches at very modest rates. In my opinion, the legislature intended to give the board of education somewhat wide discretion in contributing to that end by the use of public funds at its disposal, when deemed necessary.

It is accordingly my opinion that while the expenses of the operation of the lunch room cannot be paid directly from the general fund, yet it is within the authority of the board of education to amplify the lunch room fund when necessary, by appropriations from the general fund.

Respectfully,

C. WILLIAM O'NEILL
Attorney General