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SYLLABUS:

A board of education cannot expend monies from recreational funds raised by a special tax levy pursuant to Section 5705.19, subparagraph (H), Revised Code, for the purchase of football equipment for students participating in extracurricular football, whether it be inter-scholastic or intra-scholastic practice and competition.

Columbus, Ohio, April 19, 1963

Hon. John D. Sears, Jr.
Prosecuting Attorney
Crawford County
Bucyrus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have been requested by the Board of Education of the Buckeye Central Local School District for an opinion as to whether or not the said Board of Education can purchase football equipment such as helmets, shoulder pads and uniforms to be worn by the students participating in football games out of the Recreational Fund, which was obtained through a tax levy pursuant to Section 5705.19 of the Revised Code of Ohio.

"I was further requested for an opinion as to whether or not they could use this fund for the purchasing of a site for a football field, which field would be used not only for football but as a playground for other activities.

"I am satisfied that Opinion No. 2479, dated August 25, 1961, answers the question as to the purchasing of a piece of land and that the said school does have that

authority, but according to a 1948 Ohio Attorney General's Opinion, Page 279, the Board of Education does not have the authority to use public funds to purchase football equipment.

"I am requesting your opinion as to whether or not public funds derived from a tax levy for Recreational purposes pursuant to authority of Section 5705.19 of the Revised Code, can be used to purchase football equipment and therefore an exception to the opinion of the Attorney General above referred to."

I concur that the 1961 opinion cited in your letter of request correctly states that a board of education has the authority pursuant to Section 3313.39, subparagraph (B), Revised Code, to purchase a site for an athletic field. There is no doubt that such an expenditure could be made from general school funds but your inquiry presents the question whether this purchase could be made from the recreational fund raised by a special tax levy under Section 5705.19, Revised Code. This particular question was not answered by the 1961 Opinion and although you have not requested my opinion on this particular matter its brief consideration is necessary for a complete response to your request.

The 1961 Opinion ruled that the projects therein contemplated could be financed by a bond issue together with a special tax levy under Section 5705.19 subparagraph (F), *supra*. This paragraph provides that a special levy may be voted:

"For the construction or acquisition of any specific permanent improvement or class of improvements which the taxing authority of said subdivision may include in a single bond issue."

Under subparagraph (F) it is necessary that the resolution state the specific improvement to be made and the funds raised thereby could not be used for another purpose.

I assume by your inquiry the recreational fund you mention was raised pursuant to subparagraph (H) of Section 5705.19, *supra,* which states, "for recreational purposes." Under Section 5705.19, *supra,* it is stated that the resolution of the taxing authority shall set forth the necessity of the additional tax and that "such resolution shall be confined to a single purpose."

In Opinion No. 4044, Opinions of the Attorney General for

1932, 180, it was ruled that the "single purpose" limitation of Section 5705.19, *supra,* requires that the levy be confined to one of the several permissible purposes as outlined therein. It therefore would be sufficient if a resolution merely stated that the special tax is for "recreational purposes." The term "purpose" or "purposes" is defined as that which one sets before himself as an object to be attained or the end or aim to be kept in view of any plan, measure, exertion or operation. *First Federal Savings & Loan Association v. Williams,* Ohio App. 91 N.E. 2d., 34. *Appeal of Schneider,* 79 A. 2d., 865. There is no limitation imposed upon the phrase "recreational purposes" as it appears in Section 5705.19, *supra.* The funds raised for "recreational purposes" are held outside of subparagraph (A) limiting expenditures to current operating expenses and subparagraph (F) limiting expenditures to a permanent improvement specified in the resolution. The fund raised under subparagraph (H) is to be placed in a special fund and can be expended for any recreational purpose as long as it is authorized by law.

Opinion No. 455, Opinions of the Attorney General for 1951, 200, and Opinion No. 1697, Opinions of the Attorney General for 1960, 617, appear to be in conflict with the above conclusion. These Opinions were based upon the law prior to amendments to Section 5705.19, *supra,* subparagraphs (K) and (L). In the 1951 and 1960 Opinions, the respective resolutions for the support of the county retarded children's program and county welfare were held to fall under subparagraph (A) for current operating expenses which did not include permanent improvements. The Opinions ruled that in order to provide the necessary funds within the single purpose requirement, the improvement had to be specified in the resolution in accordance with subparagraph (F), *supra.* Under the fact situations of these Opinions the only means available for raising funds for a permanent improvement by a special levy was to prepare the resolution in accordance with subparagraph (F) which required a specifiec designation of the proposed improvement. That is a different situation from that presently under consideration.

It is my opinion that the fund acquired pursuant to Section 5705.19, subparagraph (H), *supra,* may be expended by the board

of education for purchase of a site for an athletic field as authorized by Section 3313.39, subparagraph (B), *supra.*

The question now presented is whether this recreational fund may be used for the purchase of football equipment. This expenditure like any other use of public funds must be authorized within the expressed or reasonably implied provisions of the law. Although the board of education is authorized to provide certain recreational facilities for the community pursuant to Section 3313.57 and Section 3313.59, Revised Code, I assume by your reference to "students" you are concerned with organized football within the public schools.

There is no doubt that physical education is an integral part of the public school educational program. Section 3313.60, Revised Code, directs that the board of education shall provide a graded course of study in physical education. The first definition of the term "physical education" as contained in the statute appeared in Opinion No. 635, Opinions of the Attorney General for 1933, page 558. This opinion was directed to the proposed expenditure of school funds for equipping students participating in interscholastic athletics. The opinion ruled as follows:

> "* * * I am of the opinion that the term 'physical education' which the statutes of Ohio direct shall be included in the curriculum of the public schools of Ohio does not include what is commonly called 'interscholastic athletics', that is the playing of games in competition by picked teams representing the several schools. Interscholastic athletics is not a proper public school activity within the scope of 'physical education' as the term is used in our statutes. That being the case, it is not a proper subject for which the Director of Education may, in his discretion prescribe or approve as a part of the courses in physical education and therefore it is not within the powers of a board of education to expend public funds for necessary 'apparatus' to enable the school teams to engage in such interscholastic athletics or to support or promote such activities in any respect."

This same reasoning was followed in Massachusetts in *Brine v. City of Cambridge,* 164 N. E., 619, and *Wright & Ditson v. Boston,* 170 N. E., 72. There is no question that the 1933 opinion correctly states the Ohio law that public school funds cannot be expended to support interscholastic sports. Basic to such a ruling

is that public school funds are for the benefit of all students and cannot be expended for the primary use of a selected group of students even though there is a derivative school and community benefit. The same limitation would be against a municipality owning a baseball or football club.

Although interscholastic sports are outside of the physical education program prescribed by statute, the board of education may authorize such sports and supervise student participation and use of school facilities and personnel under Section 3313.20, Revised Code, may promulgate rules governing the expenditures of the athletic fund raised from gate receipts and private contributions; Opinion No. 356, Opinions of the Attorney General for 1939, and may expend monies received from such funds for athletic equipment; Opinion No. 3246, Opinions of the Attorney General for 1962 issued August 31, 1962.

Despite the full control and supervision of interscholastic sports, I concur with the 1933 opinion that the board of education cannot use public funds from general or special taxes to equip students participating in interscholastic football.

In your letter you specifically refer to Opinion No. 3293, Opinions of the Attorney General for 1948. The syllabus on page 279 of the Opinion reads as follows:

> "Where a board of education establishes football practice and playing among the students in its school, as a part of its physical education program, and permits the organization of groups or teams for that purpose, it may not lawfully use public funds to purchase such items of equipment as helmets, shoulder pads and uniforms to be worn by the students participating."

Although the 1961 Opinion of my predecessor referred to this Opinion as dealing with "interscholastic sports," the facts clearly describe an intraschool activity. The facts of that Opinion were presented as follows:

> "In a school district the playing of football is a part of the physical education program. Students who participate in this activity are divided into groups or teams and games are played between such groups or teams."

It is not clear whether these facts describe an extracurricular

physical education program or whether the activity is part of the graded course of physical education. However, the conclusion of the opinion stated:

> "It may be strongly urged that football is a rough game and that it is hard on bodies and clothing of the players. But that does not in my opinion make these protective articles of wearing apparel a part of the 'apparatus' incident to the prescribed course of physical training."

Different legal considerations and laws are applicable when we consider extracurricular activities and academic activities within the curriculum of the school. It is therefore necessary to distinguish these different activities.

A graded course of study is a course in one of the various subjects required by law or other academic subjects included in the approved curriculum. Students must attend various prescribed or elected courses during regular school hours. The students receive academic credits for work completed in such courses which ultimately apply toward promotion or graduation requirements. The function of the school and educational program is not necessarily confined to the school curriculum. Today, the school offers to the students voluntary participation in many official and semi-official organized activities which are in addition to the school curriculum. Students receive no academic credits for these extracurricular activities which may include participation in competitive activities among various schools as well as participation in club and competitive activities within the school.

The legislature has recognized the public interest in the extracurricular program of the schools by expressly providing that the expense of directing, supervising and coaching pupil activity in various programs including athletics shall be paid as other school expenses. Section 3313.53, Revised Code. The legislature has made this singular provision for financial assistance for extracurricular activities.

Physical education as prescribed under Section 3313.60 is compulsory for all students and must be designed to promote general physical fitness. In the case of *Rockwell v. School District No. 1*, 220 P. 142, page 143, the Supreme Court of Oregon made the following comment:

> "Physical education contemplated by the statute is a course of training for all of the pupils of a school and not for the training of a few. Physical education training is required to be given in order to better the physical condition and welfare of all pupils, and, under the statute such physical training shall conform to that prescribed by the State Superintendent of public instruction. The prescribed course does not include the playing of football, nor the coaching of pupils for competition in football with other teams."

Throughout many school systems today there is a growing participation in intraschool football from the grade school level through high school. These programs are open to voluntary student participation after school hours and are in every sense of the word an extracurricular activity. Although the board of education has control over this activity and responsibility to see there is proper supervision and proper safety precautions taken, it has no authority to expend any public school funds, including recreational funds raised under Section 5705.19, *supra,* for equipment and uniforms. The students participating represent a special interest group which cannot be the recipient of financial benefit from public funds. If such programs are to be properly maintained they must be sponsored by private organizations or operate out of the school athletic fund.

It is therefore my opinion that money in the recreational fund raised by a special tax levy cannot be used for the purchase of equipment or the promotion of extracurricular intramural sports.

When discussing extracurricular activities the expenditure fails because it primarily benefits a special interest group and does not meet the test of public use within the school. This criterion of course is not applicable when discussing a graded course of study for the benefit of all the students. In order to provide proper physical education as a graded course of study, equipment and supplies are as necessary for school use as books, maps, laboratory equipment and analogous teaching aids. The board of education however does not have unlimited spending power and its authority is found in Section 3313.37, Revised Code, which states the board may "provide the necessary apparatus and make all other necessary provisions for the schools under its control."

The 1948 Opinion discussed the applicability of this statutory

spending authority to various items in relation to graded courses of study. However, I do not think your inquiry has reference to a situation where football is part of the physical education course prescribed by statute and it is doubtful that it could ever be so adapted to the requirements of the statute. Consequently, it is not necessary to discuss whether any exception can be taken to the 1948 Opinion with regards to the matter of equipment and supplies for a graded course of study.

Therefore it is my opinion and you are hereby advised that a board of education cannot expend monies from recreational funds raised by a special tax levy pursuant to Section 5705.19, subparagraph (H), Revised Code, for the purchase of football equipment for students participating in extracurricular football, whether it be interscholastic or intrascholastic practice and competition.

Respectfully,
WILLIAM B. SAXBE
Attorney General