

2261

CLERK OF A BOARD OF EDUCATION CANNOT DEDUCT FROM MONEYS DUE EMPLOYEES OF THE BOARD ANY AMOUNTS REPRESENTING TAXES DUE TO ANOTHER STATE FROM SAID EMPLOYEES; AND THE BOARD MAY NOT SO INVEST THE CLERK WITH THIS POWER TO DEDUCT—§3313.20, R.C.

SYLLABUS:

The statutes of this state do not authorize a clerk of a board of education to deduct from moneys due employees of the board any amounts representing taxes due to another state from said employees; and the board of education may not adopt a rule under Section 3313.20, Revised Code, purporting to invest the clerk with the power to so deduct.

Columbus, Ohio, June 14, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads in part as follows:

“1. Where a neighboring state enacts a state income tax with such tax being applicable to all residents of that state, is the clerk of the board of education of a school district in the state of Ohio authorized to deduct from the salaries of teaching and non-teaching employees whose residence is in a state subject to a state income tax, the amount of such authorized tax deductions to the Tax Commission and/or Treasurer of said state?

“2. If such tax deductions are not specifically authorized by statute, may a clerk of a board of education of an Ohio school district, by authority of his board, make such deductions from the salary of a teaching or non-teaching employee whose residence is in a state subject to state income tax on the basis of the powers given to boards of education under the provisions of Section 3313.20, Revised Code, wherein the board of education is authorized to make such rules and regulations as are necessary for its government and the government of its employees?”

The duties of the clerk of a board of education are specifically promulgated by statute. Sections 3313.22 through 3313.32, Revised Code, establish the duties of the clerk. None of these sections, however, authorize a clerk to deduct from the salaries of employees of a board of education, those sums of money which may be owing to another state for taxes or other purposes. Further, Section 3313.20, Revised Code, which authorizes a board of education to make rules and regulations necessary for the government of its employees, can not be construed to authorize the deduction from employees' salaries of certain sums for disbursement to another state for the payment of taxes levied by that foreign state. As to the statutes of a foreign state, such can not, of course, provide a procedure for any Ohio official to follow.

Accordingly, it is my opinion and you are advised that the statutes of this state do not authorize a clerk of a board of education to deduct from moneys due employees of the board any amounts representing taxes due to another state from said employees; and the board of education may not adopt a rule under Section 3313.20, Revised Code, purporting to invest the clerk with the power to so deduct.

Respectfully,
MARK MCELROY
Attorney General