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BOARD OF EDUCATION CANNOT EMPLOY A PRIVATE CONSULTING ORGANIZATION TO AUDIT WORKMEN'S COMPENSATION INSURANCE COSTS TO SCHOOL DISTRICT—§§3313.17 R.C., OPINION NO. 5846, OAG, 1943, p. 108, OPINION NO. 1928, OAG, 1958, p. 206, §3313.37 R.C., OPINION NO. 2456, OAG, 1961.

SYLLABUS:

Sections 3313.17, 3313.37, and 3313.47, Revised Code, do not authorize a board of education to employ a private consulting organization to audit workmen's compensation insurance costs charged to the school district under Sections 4123.01, 4123.38, and 4123.39, Revised Code.

Columbus, Ohio, February 27, 1962

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

Dear Sir:

Your request for my opinion reads as follows:

“Several inquiries have been received in this office from boards of education asking if public school funds may be used to

pay the cost of employing a consulting and service organization to audit Workmen's Compensation insurance costs which have been charged to the various school districts.

"It has been indicated to the administrative officials of the interested school districts that savings may be incurred by having the Workmen's Compensation insurance costs audited by a firm specializing in this type of work.

"As the interest in this question is of state-wide concern, will you please issue your formal opinion on the following:

"Does the board of education of a school district, under its corporate powers, as set forth in Section 3313.17 of the Revised Code, have the authority to execute a contract with a private service organization for an audit of the cost of Workmen's Compensation insurance charged to a school district; and may the board authorize the expenditure of regular school funds to pay the cost thereof?"

It is a well-settled rule that a board of education has only those powers granted by statute or necessarily implied from those granted. In this regard, the first paragraph of the headnote of *Board of Education v. Ferguson*, 68 Ohio App., 514, reads as follows:

"1. The authority of boards of education is derived solely from the statutes and is limited strictly to such powers as are expressly granted or clearly implied."

Also, in *State, ex rel. Clarke v. Cook, Auditor*, 103 Ohio St., 465, the second paragraph of the syllabus reads:

"2. Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (*State, ex rel. Locher, Pros. Atty., v. Menning*, 95 Ohio State., 97, approved and followed.)"

And in Opinion No. 5846, Opinions of the Attorney General for 1943, page 108, it is stated at page 110:

"It is equally well settled that the authority of administrative boards such as boards of education, to act in financial transactions must be clearly 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 political subdivision for which the board acts.

"State, ex rel. v. Menning, 95 O.S. 97;
"State, ex rel. v. Pierce, Auditor, 96 O.S. 44;
"Peter v. Parkinson, Treasurer, 83 O.S. 36."

Except for Section 3315.061, Revised Code, dealing with a *county* board of education, I have found no provision of law specifically relating to the authority of a board of education to employ a private organization to perform a study or survey for the board; and it does not appear that this section authorizes a county board to employ a private organization to audit workmen's compensation costs. Said Section 3315.061 reads as follows :

"A county board of education may expend funds for the purpose of conducting studies or surveys pertaining to school district organization and building needs, curriculum and instructional needs, and needs for improved or additional services that may be rendered by such board. A county board of education may publish reports prepared in connection with such activities."

The syllabus of Opinion No. 1928, Opinions of the Attorney General for 1958, page 206, reads as follows :

"A county board of education has authority under the provisions of Section 3315.061, Revised Code, to contract with state universities or other agencies to conduct studies or surveys relating to school district organization and building needs, curriculum and instructional needs, and needs for improved or additional service. Opinion No. 1086, Opinions of the Attorney General for 1957, p. 604, modified."

While Section 3315.06, *supra*, does authorize a *county* board of education to contract for certain studies and surveys, the auditing service here in question does not appear to be one of the types of surveys contemplated by that section. An audit of workmen's compensation insurance costs would certainly not pertain to school district organization, building needs, or curriculum and instruction needs. And the payment of workmen's compensation costs is not a service rendered by the board.

Section 3313.17, Revised Code, to which you refer, reads as follows :

"The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property."

Said Section 3313.17 does state that a board of education is a body politic and corporate and capable of contracting and being contracted with. In view of the rule noted above that such a board has only that

power expressly granted or necessarily implied from that granted, the power to contract is limited to those instances where the board has specific or implied authority to participate in the activity which is the subject of the contract. Accordingly, I do not consider that Section 3313.17, *supra*, authorizes a board of education to employ a consulting organization as in the present case.

What I have said about Section 3313.17, *supra*, applies equally to Section 3313.47, Revised Code, reading:

“Each city, exempted village, or local board of education shall have the management and control of all the public schools of whatever name or character in its respective district. If the board has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint janitors, superintendents of buildings, and such other employees as are provided for in such annual appropriation resolution.”

Although each board of education has the management and control of all of the public schools in its respective district, such management and control is subject to the statutory authority given to the boards to so manage and control.

Also to consider is Section 3313.37, Revised Code, which reads in part:

“The board of education of any school district, except a county school district, may build, enlarge, repair, and furnish the necessary schoolhouses, purchase or lease sites therefor, or rights of way thereto, or purchase or lease real estate to be used as playgrounds for children or rent suitable schoolrooms, either within or without the district, and provide the necessary apparatus and make all other necessary provisions for the schools under its control.

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While Section 3313.37, *supra*, states that a board of education may “make all other necessary provisions for the schools under its control,” such language has been held to relate only to the physical properties constituting schools. In this regard, the second headnote of *Board of Education v. Ferguson, supra*, reads:

“2. The provisions of Section 7620, General Code, relate to the physical properties constituting schools and not to these persons who attend them, and do not authorize a board of education to provide special care, attention and treatment for those

pupils who are diseased or are susceptible to disease. The term 'apparatus' as used in this section is not broad enough to include the purchase of special sleeping garments."

And as I stated in my Opinion No. 2456, Opinions of the Attorney General for 1961, issued on August 16, 1961:

"It seems obvious that this statute does indeed limit "apparatus" and "all other necessary provisions" to the actual physical properties of the schools themselves."

The first paragraph of the syllabus of Opinion No. 2456, *supra*, reads as follows:

"1. Section 3313.37, Revised Code, does not authorize the board of education of a city, exempted village, or local school district to contract for comprehensive school surveys and studies, including building-related studies."

In view of the foregoing, I conclude that Section 3313.37, *supra*, does not authorize a board of education to employ a consulting firm as in the instant case.

As to the requirement to pay workmen's compensation insurance costs, division (B) of Section 4123.01, Revised Code, includes each school district within the term "employer," and Section 4123.38, Revised Code, requires each employer to pay into the public insurance fund the amount of money determined by the industrial commission. Section 4123.39, Revised Code, provides the procedure followed by the industrial commission in determining contributions.

I am aware that in complying with the law pertaining to workmen's compensation costs, school boards are required to keep many records, which records must be accurate. And, possibly, in employing a company specializing in this work, the board might be able to save money for the district. Absent any express or implied authority to employ such a company, however, the board cannot so proceed. As discussed above, I have been unable to find any express statutory authority for a board to employ an organization to perform such work for the board; nor do I believe that such authority may be implied as necessary. While the board certainly has a duty to perform as to workmen's compensation, it may perform that duty without hiring an outside organization, it can, and has, performed the duty in question with its own authorized employees.

Considering the foregoing, and in view of the general rule that if there is doubt as to the authority to act in a financial transaction the doubt must be resolved against the expenditure, I answer your specific question in the negative.

In conclusion, it is my opinion and you are advised that Sections 3313.17, 3313.37, and 3313.47, Revised Code, do not authorize a board of education to employ a private consulting organization to audit workmen's compensation insurance costs charged to the school district under Sections 4123.01, 4123.38, and 4123.39, Revised Code.

Respectfully,

MARK McELROY

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