

June 21, 1950

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ARIZONA ATTORNEY GENERAL

Mr. F. Lewis Ingraham
County Attorney
Yuma County
Yuma, Arizona

Attention: Mr. William W. Nabours
Deputy County Attorney

Dear Mr. Ingraham:

We have your letter of April 14, wherein you ask for our opinion on the following question:

"We should like to have your opinion as to whether any high school or common school district has the right to include the following items in their annual budget:

Tennis travel
Future Farmers of America travel
Band travel
Home Ec. travel
New band uniforms
Football suits
Subsidy to student body organization
Trip to national student body meeting
State student body convention
Girls League
The school paper (a paper published by the school)
The school annual."

To answer your question it is necessary to separate the activities listed. We will first consider the following three activities:

1. Future Farmers of America travel
2. Trip to national student body meeting
3. State student body convention

A school district has only such powers as are conferred by statute by express words or necessary implication. We are unable to find any statute, expressly or by implication, authorizing a school district to expend school funds for any of the three purposes above mentioned. In the case of Austin v. Barrett, 41 Ariz. 138, 16 P. 2d 12, the court considered the question as to whether a county supervisor could collect mileage for traveling between his home and his office, the court held the charge could not be made and said:

"The first and principal rule to be followed, in determining whether a claim against a county is legal, is that the person making the claim must show some statute affirmatively authorizing it, either directly or by reasonable implication.* * *"

Therefore, it is our opinion school funds could not be used for these purposes, and that an item for such an expenditure could not be included in the budget.

We are not advised as to the nature of this activity of the Girls League, nor do we understand what is meant by "Subsidy to student body organization", and therefore cannot give you an opinion on these matters. In the case of Beard v. Board of Education, 16 P. 2d 900 (Utah) the court discusses the connection between student body organizations and public school systems, and this case may be helpful to you in determining whether these charges are proper charges against the school fund.

We do not think the expense of publishing the school annual can be included in the school budget, because such expense is not authorized by law. On January 29, 1949 we gave an opinion to the County Attorney of Cochise County on the right to spend school money for the school annual, a copy of which is enclosed herewith.

The item, "The school paper (a paper published by the school)" could be a proper expenditure of school funds, if the publication is in connection with a part of one of the courses taught in the school. We understand some of the schools conduct a class in "Publications" or other similar work which is in the nature of pre-journalism work. If this is part of the course adopted by the school authorities, then the charge would be proper and the item could be included in the budget.

Under the authority of Alexander v. Phillips, 31 Ariz. 503, 254 P. 1056, our Supreme Court held that football games are part of the prescribed course of study for public school students, and if such games are a part of the prescribed course of study for public school students, and if such games are a part of the course, then the district is authorized to expend school funds to buy equipment necessary to conduct the prescribed course of education. In Hallett v. Post Printery & Publishing Co., 68 Colo. 573, 192 P. 658; 63 ALR 619, the court said:

" * * * that it is undoubted that the board may provide for the physical as well as the mental education of the pupils, and may, within reasonable limits as to expense, provide means and instrumentalities to that end.
* * *"

Therefore, we are of the opinion the district may legally purchase football uniforms for the school's football team. We touched on this subject generally in the opinion to the County Attorney of Cochise County, hereinbefore mentioned.

The item "New band uniforms" might be considered a part of the equipment necessary to conduct the school's course in musical education, and equipment necessary to conduct a school recreation center, as provided for by Chapter 44, Laws of 1949 (Sec. 54-435 ACA 1939, Supplement), which is as follows:

"Any board of school trustees or city board of education shall have power to operate school buildings and grounds for the purpose of providing a public play and recreation center, and to organize and conduct therein such community recreation activities as will contribute to the physical, mental and moral welfare of the youth residing in the vicinity. A school recreation center may be open at such times as the board deems advisable, including evening hours and vacation days, and shall be conducted in accordance with rules prescribed by the board."

Therefore, if the governing body of the school district deems it advisable or necessary that band uniforms be furnished to carry on the prescribed activities, then an expenditure for the items would be legal and such an item could be included in the budget.

We shall consider the items, "Tennis travel" and "Band travel" together. Your letter does not inform us why the travel is necessary, but we assume it is in connection with the activities of the tennis teams in athletic contests and the band travels in connection with its work in musical education and the activities of a recreation center.

The only statutory authority for furnishing transportation for students is to get children to and from home to

school. Our Supreme Court has never passed on this question, but in the Iowa case of Schmidt v. Blair, 213 N.W. 593, the court held that under statutes similar to our statutes on transportation of pupils, that a school district could not spend school funds for transporting students to and from athletic contests.

The Utah Supreme Court followed the Iowa case to a certain extent in Beard v. Board of Education, supra. The Utah case expressed a more liberal view and said:

" * * * The decree very properly enjoins the use of school trucks, at the expense of the school treasury, for transporting students and others to and from these entertainments. As already indicated, the furnishing of free transportation to students living $2\frac{1}{2}$ or more miles from school is authorized by statute, and is justified by the provisions of the law providing for the free school system, and making it compulsory for children between 6 and 18 years of age to attend the public schools. The provision for free transportation places all children in a consolidated district on an approximate equality, and such equality should be maintained as near as possible where compulsory attendance is required. Let it be assumed that the athletic and other contests, games and social entertainments, lectures and dramas have a proper place in the educational system, yet the question remains whether the board of education has authority to furnish transportation to students and patrons to and from the schoolhouse, at the expense of the district school funds, for the purpose of attending such activities. The language of the statute is 'transportation to and from school.' Attendance at school is compulsory. But there is no provision of law authorizing free transportation to students attending activities or entertainments where attendance is not compulsory. The expenditure of school funds for this purpose was properly enjoined. Schmidt v. Blair, 203 Iowa 1016, 213 N.W. 593. There is testimony to the effect that students playing in the school band and taking part in dramatic per-

performances and athletic contests are required by the school authorities to attend the functions in which they personally participate. The other students may attend such performances at their option, and, when they do attend, it is merely as spectators, and not because their attendance is required. The decree should not enjoin the furnishing of free transportation to students whose attendance is required after school hours at school activities. * * * (Emphasis supplied)

We think the rule stated in the Utah case is the better one and it is our opinion if students, as members of the band or athletic teams, are required by the school authorities to attend extra curricula activities of the school as part of their course of instruction, the transportation of students who are so compelled to attend such activities would be a proper charge against the district and could be included in the budget. See also Notes 63 ALR 417 and 118 ALR 810.

The next question is whether an item of "home Ec. travel" is a proper item to be included in the budget. Subsection 9 of Section 54-416, ACA 1939, Supplement, provides that boards of trustees may establish departments of household economics as a part of the school system, and it follows the board would be authorized to expend any money necessary to conduct classes on the subject. We do not believe this authorization would justify an expenditure for travel for students or instructors unless travel is necessary to carry on the course of instruction on the subject. We are unable to see where it would be necessary for a student in home economics to travel in pursuing his studies on the subject; however, we are not fully advised on the facts in this particular, and until we are so advised cannot give a definite opinion.

Very truly yours,

FRED O. WILSON
Attorney General

EARL ANDERSON
Assistant Attorney General

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