High School Board—Donation of Part of Its Apportionment.

A County High School Board has no authority to donate or expend school funds for the purpose of inducing outside students to attend.

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My dear Mr. Baker:

This office is in receipt of a letter from Monroe Watters, a member of the School Board, of Denton, Montana, in your county, submitting a question of the legality of expenditure of school funds, under circumstances set out in his letter. Inasmuch as Mr. Watters indicates that the practice is somewhat general and has been advised by the County Superintendent, I am addressing my answer to him through your office. The question is included in the following statement from his letter:

> "We have a second-class district and a nice little high school of some 44 pupils. As an inducement to outside pupils, who would not attend our school or perhaps any other high school, we have been giving a percentage of the high school apportionment which we receive from their attendance. This year we have offered 40% of such apportionment to pupils within our district whose parents are unable to send their children to school without some such aid. * * * Our County Superintendent Miss ..... said we had the right to extend this aid. * * *"

If the Board has authority to expend school funds in the manner indicated, such authority must be found in the statute. In Lebcher v. Commissioners of Custer Co., 9 Mont. at page 320, the court used the following language in defining the powers of municipal officers:

> "An individual may contract as to lawful subjects as he pleases. Municipal corporations or public officers are bound by the law. They are authorized by the law of their creation to make certain contracts. They are creatures of the law, and not of nature. They have not natural rights, but only rights given by the law. Their contracts obtain validity only by force of the law authorizing their making. It follows that, if they make contracts that the law does not empower them to enter into, there is no authority for such contract, nothing for it to stand upon, and it falls of its own weight. It is void."

In State ex rel. Bean v. Lyons et al., 37 Mont., at page 362, Chief Justice Brantly used the following language:

> "No other provision has been called to our attention, nor have we been able to find any, which enlarges the powers conferred by this section or modifies the duty enjoined. It must, therefore, be regarded, not only as a grant of power to such boards, but also as a limitation upon their power, both as to its extent and as to the mode of its exercise. That is the rule of construction applicable to all statutes granting and defining the powers of such municipal or quasi municipal bodies."

If the powers of the Board to enter into contractual relations on behalf of the district must be found in the statute, it would necessarily follow that they could not make a gift or donation of school funds, except by express authorization of some provision of the statute.

It is contended that this is a great help to many pupils as well as great financial help to your district, as it swells the attendance of the High School and thus enables the district to secure a greater proportion of the general county levy for High School maintenance, all of which is no doubt true. The same argument might be used if some school board in the State should advertise to give to each child moving into the district, or to the parents or guardian of such child, 40, 60 or 80 per cent, or all of the child's apportionment of the general school levy and income funds. This would probably add to the school census of the school district adopting the plan, as well as tend to increase the general population and wealth of the community. However, other districts would, in order to offset the advantage gained by your district, soon be compelled to adopt the same plan and would probably increase the percentage of donation, and the competition would continue until all the school districts of the State would be giving to each child, in order to retain him in the district, his entire apportionment of the general school fund. Thus the original purpose of allowing him any share would be entirely lost, and the school funds, instead of being used for the child's education as was originally intended, would be devoted to charity.

However, it is unnecessary to pursue this line of argument further, as there is no provision of law that any part of the school funds, from whatever source derived, may be donated to students in the manner indicated.

Section 2004 of Chapter 76 of the Laws of 1913, as amended by Chapter 196 of the laws of 1919, provides:

> "County School moneys may be used by the County Superintendent and trustees for the various purposes, as authorized and provided in this Act, and for no other purpose, except that in any district, any surplus in the general school fund to the credit of said district, after, providing for expenses of not less than nine months' school * * * may be used for the purpose of retiring bonds and improving buildings and grounds, or erecting school buildings, a teacherage or barn. If any school moneys shall be paid by authority of the Board of Trustees for any purpose not authorized by this Chapter, the trustees consenting to such payment shall be liable to the district for the repayment of such sum, and a suit to recover the same may be brought by the county attorney, or if he shall refuse to bring the same a suit may be brought by any taxpaying elector in the district."

From the foregoing, it is my opinion that expenditure or donation of school funds in the manner indicated is illegal.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.