THE HATFIELD CASE

Concerning the Control of Funds Derived from Extracurricular Activities in the Public Schools

A Report

of the

JOINT STATE GOVERNMENT COMMISSION

to the

GENERAL ASSEMBLY

of the

COMMONWEALTH OF PENNSYLVANIA

NOVEMBER 1948

The Joint State Government Commission was created by Act No. 459, Session of 1937, as amended by Act No. 380, Session of 1939, and Act No. 4, Session of 1943, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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LETTER OF TRANSMITTAL

To the Members of the General Assembly of the Commonwealth of Pennsylvania:

Pursuant to the provisions of Act No. 459, Session of 1937, as amended by Act No. 380, Session of 1939, Section 2(b), we submit herewith a report dealing with the decision of the Pennsylvania Superior Court in the Hatfield case and the implications of the decision as regards the future of extracurricular activities, such as sports, carried on in conjunction with the instructional programs of the public schools.

In accordance with Act No. 4, Session of 1943, Section 1, the Commission created a "subcommittee" to facilitate and expedite the investigation and the formulation of remedial legislation.

On behalf of the Commission the cooperation of the members of the subcommittee is gratefully acknowledged.

WELDON B. HEYBURN, *Chairman.*

Joint State Government Commission
Capitol Building
Harrisburg, Pennsylvania
November 1948

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SUMMARY OF FINDINGS AND RECOMMENDATIONS

The decision of the Pennsylvania Superior Court in the case of Hatfield Township School District Auditors' Petition,[1] to the effect that monies collected in the form of admission and membership fees "must be handled exactly as tax monies" has caused confusion and uncertainty in the conduct of desirable extracurricular activities such as sports and other events traditionally carried on in conjunction with instructional programs in the public schools.

The Commission recommends remedial legislation which will facilitate the financing of extracurricular activities in the traditional manner subject, however, to official audit and control by local school boards.

[1] 161, Pa. Superior Ct., 388 (1947); see Appendix B for text of the court's opinion.

I. FINANCING OF EXTRACURRICULAR ACTIVITIES PRIOR TO SUPERIOR COURT'S DECISION

Prior to the decision of the Pennsylvania Superior Court in the Hatfield case, extracurricular activities of the public schools were financed out of membership and admission fees. In some school districts it was established practice to subject the financial transaction coincident to extracurricular activities to a school district audit. In other districts the financial management was not subject to a district audit, but was handled by some school employee or student acting under the supervision of a school employee. This arrangement made for considerable flexibility in the management of activities which are not an integral part of the instructional program.

It appears that the latitude for which these arrangements provided is essential if athletic, dramatic and other events are to be an adjunct to regular instructional programs. Latitude is essential because the present School Code rigidly prescribes the expenditures which school boards may legally make. For example, the School Code does not authorize school boards to purchase liability insurance. Some districts consider such coverage desirable.

II. THE FACTS OF THE HATFIELD CASE AND THE SUPERIOR COURT'S DECISION

The facts of the Hatfield case are briefly as follows:

Monies raised by various classes, athletic and school activities were deposited in an "activities account" and a savings account in charge of the supervising principal of the "Hatfield Joint Consolidated School District" (Montgomery County). The supervising principal kept a ledger purporting to show that the monies received from various activities were divided into separate accounts. There were other accounts or funds of the school district, derived from taxes, which were paid by the school district into the activities account to be used as petty cash for some of the general expense items of the district. The auditors of the district requested the production of the records pertaining to the "activities account." The board refused to produce the records of the accounts which did not involve monies of the district. The auditors, upon a petition granted by the lower court, obtained an order upon the school board to produce the accounts and records in question. From this order an appeal was taken to the Superior Court by the officers, board of directors and supervising principal of the school district.

The Superior Court, in considering the whole subject, stated that "where monies or property are derived directly or indirectly through the use of school buildings, or from the expenditure of public funds of the district, the monies thus derived are public property, *must be handled exactly as tax monies and be paid to the district treasurer.*" (italics sup-

plied) The court observed that to give any other plan, "wise and honest as it may be, a legal status, requires a *legislative enactment,* for which even the best of intentions is no substitute." (italics supplied)

III. REMEDIAL LEGISLATION

Upon examination of the pertinent facts and in consultation with representatives of the Pennsylvania State School Directors' Association, the Pennsylvania State Education Association, and the Pennsylvania Interscholastic Athletic Association, the Commission has concluded that:

1. Properly controlled, adequately supervised, and soundly financed extracurricular activities constitute a desirable part of the program of the public schools.
2. The impact of the Superior Court decision upon extracurricular activities is likely to result in their severe curtailment or elimination.
3. Procedures previously followed by local authorities, though these authorities acted in good faith, may be questioned if not in conformity with the Superior Court decision.

Under the circumstances, the Commission recommends the following changes in the School Code to the General Assembly:

1. Addition of a section validating the acts of local authorities which do not conform to the decision of the Superior Court in the Hatfield case.

2. A clarification of Section 627 of the School Code, so that school premises may be used by organizations indirectly associated with education, without obligation to the board for income received from such use.

3. Amend Section 405 by authorizing school organizations to raise and expend funds under the control of said organizations, but subject to official audit.

4. Authorize the board to pay to any activities fund, monies paid to the school board from such funds since September 30, 1947, the date of the decision in the Hatfield case. Such authorization, however, shall not extend into the future following the effective date of the proposed legislation.

5. Provide for the bonding of persons charged with the custody of activities funds.

6. Authorize the board to make rules and regulations governing the establishment and maintenance of such funds.

Drafts of legislation designed to carry the above recommendations into effect will be found in Appendix A.

APPENDIX A

PROPOSED AMENDMENTS TO THE SCHOOL CODE

Section 405. *(a)* The board of school directors *or the board of public education* in every school district, [of the first or second class shall and in every district of the third or four class may,] *shall* prescribe, adopt and enforce such reasonable rules and regulations as it may deem proper, regarding: *(1)* the management, *supervision,* control or prohibition of exercises, athletics, or games of any kind, [taken part in or played by any pupils as members of or in connection with any public school,] *school publications, debating, forensic, dramatic, musical, and other activities related to the school program, including raising and disbursing funds for any or all of such purposes and for scholarships:* and [regarding] *(2)* the organization, management, supervision, control, *financing,* or prohibition of [school publications and of] organizations, *clubs,* [or] societies *and groups* of the members of any class or school; and may provide for the suspension, dismissal, or other reasonable penalty in the case of any appointee, professional or other employee, or pupil who violates any of such rules [and] *or* regulations.

(b) Any school or any class, activity, or organization thereof, with the approval of the board, may affiliate with any local, district, regional, state, or national organization whose purposes and activities are appropriate to and related to the school program.

Section 405.1 (a) The board of school directors may (1) permit the use of school property, real or personal, for the purpose of conducting any activity related to the school program, or by any school or class organization, club, society or group, (2) authorize any school employee or employees to manage, supervise and control the development and conduct of any of such activities, (3) employ or assign any school employee to serve in any capacity in connection with any of such activities.

(b) Notwithstanding the use of school property or personnel, it shall be lawful for any school or any class, or any organization, club, society or group thereof, to raise, expend or hold funds, including balances carried over from year to year, in its own name and under its own management, under the supervision of the principal or other professional employee of the school district designated by the board. Such funds shall not be the funds of the school district, but shall remain the property of the respective school, class, organization, club, society or group. The treasurer or custodian of such funds shall furnish to the school district a proper bond, in such amount and with such surety or sureties as the board shall approve, conditioned upon the faithful performance of his duties as treasurer or custodian. The premium of such bond, if any, shall be paid from the fund or funds secured thereby or from the funds of the school district, at the discretion of the board. The treasurer or custodian shall be required to maintain an accounting system approved by the board, shall deposit the funds in a depository approved by the board, shall submit a financial statement to the board, quarterly, or oftener at the discretion of the board, and shall submit the accounts to be audited in like manner as the accounts of the school district.

(c) All purchases of materials or supplies made by any organization, club, society or group, or by any school or

class, in excess of three hundred dollars, shall be made upon solicitation of quotations or bids from three or more responsible manufacturers of, or dealers in such materials or supplies. All such purchases shall be made from the lowest responsible bidder on the basis of price and quality.

Section 4. Whenever heretofore any board of school directors of any district shall have permitted the retention and expenditure or use, by any organization, club, society or group of members of any class or school, or by any class or school, of monies and property realized from athletic events or games of any kind, or from school publications or debating, forensic, dramatic, musical or other activities related to the school program—if such action does not evidence any fraud or conspiracy to violate the provisions of the school laws, then such action of the board of school directors shall be valid and binding on the school district and the same is hereby ratified, confirmed and validated, notwithstanding the fact that such monies or property may have been derived directly or indirectly through the use of public property of the school district or from the expenditure of tax monies. No board of school directors, nor any member, officer or employee thereof, shall be subject to surcharge for, on account of any such action.

Section 5. The board of school directors of any district is hereby authorized and empowered to refund and appropriate to any class or school, or to any organization, club, society or group of members of any class or school, any monies or property realized from athletic events or games of any kind, or from school publications, or debating, forensic, dramatic, musical or other activities related to the school program, that heretofore became the property of the school district, whether or not such monies or property have been derived directly or indirectly through the use of public property of the school district or from the expenditure of tax monies.

Section 627. Insert between paragraphs one and two the following:

Funds raised by individuals, groups, associations, or corporations through the permissive use of school grounds or buildings, now or hereafter authorized by law, shall be the property of the individuals, groups, associations, or corporations and not the property of the school district, subject, however, to such lease, rental or tax charges as the board may at its discretion lawfully impose.

APPENDIX B

Text of Opinion of the Pennsylvania Superior Court in the Case of Hatfield Township School District Auditors' Petition, 161, Pa. Superior Ct., 388 (1947).

Opinion by ARNOLD, J., September 30, 1947:

This appeal is from an order of the court below directing the officers, directors and supervising principal of the Hatfield Joint Consolidated School District to comply with a duces tecum subpoena issued by the official auditors calling for the production of various books, vouchers and papers.

The Hatfield Joint Consolidated School District was formed by the school districts of the borough of Hatfield and the township of Hatfield. Its bank account is carried by its treasurer in the Hatfield National Bank under the name, "Hatfield Joint Consolidated School District," hereafter called the "official account." The warrants or vouchers thereon are executed by the proper officers of the district.

In the same bank is an account called "Hatfield Joint School Accounts," and the sole right to withdraw funds therefrom is possessed by Elmer B. Laudenslager, the supervising principal. This we will refer to as the "activities account." The appellants challenge the right of the statutory auditors to examine this account.

Prior to 1936 money raised by various classes, athletic and school activities had been banked separately with an account for each particular activity, including the athletic association. This resulted in a considerable number of separate bank accounts, all of which bore some relationship to the high school.

In 1936 the board of the consolidated school passed a resolution that the activity and the athletic association accounts be consolidated "under the supervision of the supervising principal *and the control of the school board* . . ., and [that] the account be audited annually." (emphasis supplied.) A later resolution provided that money raised by any class, or through the school, must be used for a class memorial, or a trip to Washington; and any balance be given to the alumni association, the library, or other school activity. By resolution the supervising principal and the treasurer were to sign the vouchers. Later, with the acquiescence of the board, withdrawals were had on the signature of the supervising principal only. In 1937 by resolution all student class funds prior to 1936 were appropriated to the general fund of the consolidated school. A similar resolution confiscated other class monies.

The system thus initiated continued, and into this one activities account, the sole power over which was in the supervising principal (although presumably he was subject to the direction of the board), went monies derived from athletics, dramatics, the school paper, and school annual, various manual training shop activities, and a number of other similar enterprises.

For the fiscal year 1943-1944 there passed into this account over $13,000; for the year 1944-1945, over $16,000.

The supervising principal kept a ledger which purported to show that these monies were divided into some twenty-six accounts, each of which was "an activity." In 1943-1944 the bank balance, thus on paper divided among the various activities, was over $4,000; and for 1944-1945, over $4,500.

In addition to this checking account there was carried in the same bank a savings account, in excess of $1800 and also under the sole control of the supervising principal.

This savings account, too, was divided on the ledger of the supervising principal into six accounts: Hatfield Joint School; Library; Farmcraft; Miscellaneous Department; Athletic Association; Orange and Black (school publication).

Both the checking and the savings accounts created from these activities were "audited" only by two members of the school board appointed by the president, and their so-called audit was offered in evidence. It did not show the sources of the deposits but merely the gross deposits of $11,411.06, during the fiscal year 1943-44. It did not show the items withdrawn nor to whom paid, but merely the aggregate checks which were in excess of $9,400. In the year 1944-45 the checks paid were in excess of $12,600.

In the ledger of the supervising principal was a "miscellaneous general account," a "miscellaneous tuition account" and a "miscellaneous book account," and each showed a balance in varying amounts. These admittedly were funds of the school district derived from taxes, and by the school district paid into the activities account, and used as a petty cash account of the consolidated school district, known colloquially as an "In and Out Account." Thus from the activities account were paid items of general expense of the school district, such as janitor's salary, school supplies and fuel.

The appellant concedes that these three accounts are subject to official audit, but contends that the school district need only show, (a) the vouchers from the district to the activities account, (b) proper vouchers from the activities account for proper expenditures, and (c) the balance on hand. But on this phase the whole account is subject to audit, and not the particular items sought to be segregated. Apparently the activities account carried by the supervising

principal is treated by the appellant as creating a debtor-creditor relationship between the some twenty-six activities (including the school district itself) and the supervising principal, and that the "debt" owed the school district is to be audited by merely an inspection of the ledger balance. But to determine whether there are sufficient funds to pay these three "creditor" activities the balances thus shown on the ledger, there must be a determination of whether sufficient funds are on hand to pay the other twenty-three; otherwise if there is a shortage so that all may not be paid, there would be no way of determining where the shortage should fall. But the supervising principal is not a licensed private banker, though he is acting as if he were. The funds of the district rather are trust funds in his hands, which he and the board have intentionally intermingled with other funds. This carries the whole intermingled fund into audit, for the activities account is subject to check for other purposes than that of the school district. This is an illegal device and contrary to the School Code. It is also subject to official audit to safeguard the public funds. The activity account concerned in this appeal is subject to audit for another reason: The monies are under the control of the district, acting through its directors. It determines what may be done with funds derived from these class activities. It determines what bills shall be paid from the funds derived from activities such as athletics, school publications and dramatics. While the checks or vouchers are manually executed by the supervising principal, they are in fact issued by the board through him as its agent. They are therefore subject to an official audit, for §2601 of the School Code of 1911 (24 PS 2201) provides: "The finances of every school district . . ., in every department thereof, *together with* the accounts of all school treasurers, school depositories, . . . directors' association funds, sinking funds, and other funds

belonging to or controlled by the district, shall be properly audited. . . ." (emphasis supplied.)

Appellants also allege in this case that the duces tecum subpoena was invalid because it summoned each of them (who were in fact officers of the consolidated district) to bring with them the papers and records of the school district *of the township,* and did not require the records of the consolidated district. But when the appellants appeared before the auditors, in obedience to the subpoena (and this they were bound to do regardless of the duces tecum clause) they did not refuse to produce the papers of the consolidated school district because they had not been called for by the duces tecum clause. Instead they stated that they *had* brought with them the documents of the consolidated school, but that they refused to give them up to the auditors. The reason now alleged as an excuse for disobeying the subpoena is not the reason on which they stood.

Appellants have asked us to determine whether the activities account is subject to official audit even though no tax monies were in it, and state: "This question is a matter of interest to every district in the Commonwealth. The decision in this case will affect every school district. . . . [and] . . . will decide once and for all the status of such funds . . . even as the legislature established the status of the cafeteria funds [§8 of Act of 1931, P. L. 243, and Act of 1945, P. L. 688, (24 PS 331)]."[1] Indeed the evidence in this case disclosed four other nearby communities operating a similar system, and in fact the system is widespread. It is fraught with great danger. High school football and other athletics have achieved great popularity, and this means that almost any school district, depending in a degree upon the skill of the athletes, has athletic events the admission fees

[1] By the School Code of 1911, §2514, 24 PS 2173, library accounts are also subject to official audit.

of which aggregate a large sum of money, probably in excess of $10,000. It would be a great blow to the public school system if, by embezzlement or lack of care, such funds should be lost. Not only has the school board a moral duty to perform but there is also a legislative imperative. The public school system of this commonwealth is entirely statutory. Within the constitutional limitations the legislature is supreme, and there reposes in the courts no power to permit deviation from its commands; and neither the local school districts nor the State Department of Education may by-pass the duties enjoined.

In the so-called activity accounts various situations obtain. Of course, if pupils of a class give money to a supervising principal to purchase for them class jewelry or similar things, the school district has no official duty (although it may have a moral duty), for the supervising principal acts as agent of the pupils. This is the smaller end of the problem. At the other pole, a school district, acting under the express provisions of §405 of the Code, 24 PS 339, has athletic events. These activities produce large sums of money from paid admissions. Under the instant system these sums of money are not disbursed through the treasurer, nor through a resolution of the board, but are solely at the command of one individual, who has no statutory standing or duty. It is possible that some school district may neither *directly* nor *indirectly* furnish any money for the playing field or stadium; or for the coaching of the athletes, or for their uniforms or playing togs, or for the apparatus with which the sport is connected, or for the lighting of the field; although it is very doubtful whether such case exists. But it is certainly true that, if a school district operates and expends tax money for the acquisition, maintenance or lighting of the playing field, or for the payment of services of a coach, the admissions charged result from the use of public property and from

the expenditure of tax monies and are the property of the school district, must go into the official account of the treasurer thereof, and are subject to audit.

The monies derived from the sale of admissions to witness the event in question come into being because of (1) the use and wear of the school building and grounds; (2) the use and wear of personal property owned by the district; (3) the payment to employes such as coaches for their services; (4) the payment by the district for light, heat and various maintenance charges, including janitor service. By reason of the use of these public funds the event takes place, and from it are reaped the admission fees paid to witness the performance. The pupils are not expected to and do not furnish any of the money. The admission fees could not belong to them, and indeed if taken they would be professionals instead of amateurs. The spectators are not to get their money back. No one has any investment except the school district. The money raised by admissions therefore belongs to the district, which by its property and funds made the admission fees possible.

Of lesser importance, but in the same category, are the admission fees charged for dramatic and musical enterprises held in the buildings of the district. These belong to the district for the same reasons and with the same results. For instance, the school districts usually and properly provide musical instruments, just as they provide equipment and uniforms for athletics. In the instant case admission fees were expended through the activities account for such instruments, but it was frankly admitted that when bought the instruments belonged to the district. So do the admission fees themselves.

We have not attempted to discuss each situation that may present itself, but where monies or property are derived directly or indirectly through the use of school buildings,

or from the expenditure of public funds of the district, the monies thus derived are public property, must be handled exactly as tax monies and be paid to the district treasurer.

We have some difficulty in understanding why it is desirable to have this system, which is alleged to be general in the state, and thus handle these funds separate and apart from the general funds of the district. It is said that it is a convenience, although of course convenience cannot over-ride the legislative mandate that the funds must be handled by the treasurer. There would seem to be no greater inconvenience in placing these funds with the school treasurer and having the same sort of ledger accounts opened as are exhibited in this system; or separate bank accounts could be opened by the treasurer for the athletic or other activities of the school district. If the purpose is to encourage the activities to be self-supporting; or to discourage the excessive use of tax monies to promote activities;—the same result can also be accomplished by this method. Certain it is that the statute never contemplated that large sums of money thus coming in through the use of the school property and appropriations should pass into the hands of those who are not officials and have no public or official responsibility, who are not statutorily required to be bonded, and whose expenditures are not subject to public inspection and audit. Probably the real reason for the system lies in the fact that those in charge of our schools, having full confidence in their own integrity and educational skill, feel that there would be considerable difficulty in making members of the public understand the wisdom of the expenditures in question. With that position we have sympathy, but to give that plan, wise and honest as it may be, a legal status, requires a legislative enactment, for which even the best of intentions is no substitute.

Order affirmed.