

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

Hon. Stirling M. Harrison

November 24, 1951

3. On April 10, 1951 the board of supervisors appropriated out of its surplus funds \$15,000 for the purchase of the site.

4. November 14, 1951 the school board accepted a proposal of the owner to sell approximately 25 acres of land for the high school site.

Honorable Stirling M. Harrison
Commonwealth's Attorney for Loudoun County
Leesburg
Virginia

My dear Mr. Harrison:

You have requested my opinion concerning a question raised by the Division Superintendent of Schools for Loudoun County in his letter to you of November 5th. I quote as follows from his letter:

"The question has arisen: Does the School Board of Loudoun County have the legal right to use surplus funds for the current fiscal year to pay an architect for preliminary work on plans for a new central high school?"

"The essential facts are:

1. On March 5, 1951 on request of the school board the county board of supervisors approved an application for a literary loan and an application for the use of State School Construction Funds for a new central high school. The literary loan application was approved by the State Board of Education on May 24, 1951.

2. On April 5, 1951 the school board adopted a resolution requesting the board of supervisors to appropriate \$15,000 for purchase of a site for the new high school.

3. On April 10, 1951 the board of supervisors appropriated out of its surplus funds \$15,000 for the purchase of the site.

4. On April 11, 1951 the school board accepted a proposal of the owner to sell approximately 30 acres of land for the high school site.

5. In the preparation of the school budgets for 1950-51 and 1951-52 the costs for architects fees were not in any case listed separately, but considered as part of the cost of new buildings, which item was included in each budget. In the supplementary explanations for the 1951-52 budget no mention was made of the new high school building.

"Particular reference is made to Sections 22-72 and 22-122 of the Code. The latter sections seem to us to define the meaning of 'items' to which reference is made in Section 22-72.

"Attention is also called to a Virginia Court decision--182 Va. 266, 28 S. E. (2nd) 698, which probably most nearly covers our question."

The fact that the Board of Supervisors has already approved a loan from the Literary Fund for the construction of the new central high school and has already appropriated \$15,000 out of surplus county funds for the purchase of thirty acres of land for the new high school site cannot, in my opinion, be construed as approving the use of surplus school funds for the payment of an architect's fee for preliminary plans for the new central high school. Such action on the part of the Board of Supervisors must necessarily be considered as being made independently of approval of the school budget for the fiscal year beginning July 1, 1951.

I have before me the above mentioned budget, the pertinent part of which reads as follows:

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The conclusion reached by me follows former opinions of this office which are a continuation of sections 22-72 and 22-122 of the Code. For your information, as follows from my opinion addressed to the Honorable
SUMMARY OF SCHOOL BUDGET 1951-52
Capital Outlays - New Buildings.....\$67,000

SYNOPSIS OF SCHOOL BUDGET 1951-52
New Buildings.....\$67,000

DETAILS OF SCHOOL BUDGET 1951-52
New Buildings.....\$67,000

1951-52
Arcola Addition \$67,000

The above information concerning expenditures for new buildings is quoted from pages 2, 5 and 18 of the document entitled "LOUDOUN COUNTY SCHOOL BUDGET - Fiscal Year Beginning July 1, 1951" and such document is so named by the Division Superintendent in his letter of transmittal to the Board of Supervisors. Under these circumstances it is my opinion that the "DETAILS OF SCHOOL BUDGET" is an integral part of the school budget for the fiscal year beginning July 1, 1951, and that it cannot now be treated simply as "supplementary explanations".

Therefore, since the school budget, as approved by the Board of Supervisors, did not include funds for a new central high school, I am of the opinion that the School Board has no legal right to use surplus school funds for the purposes set forth in the Division Superintendent's letter without first obtaining the approval of the Board of Supervisors.

The opinion quoted above follows the decisions of the Supreme Court of Appeals in the cases of Scott County School Board v. Board of Supervisors, 102 Va. 712, and Board of Supervisors v. Scott County School Board, 123 Va. 604. In the first instance the

The conclusion reached by me follows former opinions of this office which deal with the interpretation of sections 22-72 and 22-122 of the Code. For your information I quote as follows from my opinion addressed to the Honorable Robert Bolling Lambeth, Commonwealth's Attorney for Bedford County, under date of June 12, 1950:

"Section 22-72 of the Code provides that county school boards may incur only such costs and expenses as are provided in its budget unless they first secure the consent of the tax levying body. * *

"Of course, if the school budget did not include any item for capital expenditures, Section 22-72 referred to above would prohibit the expenditures of funds therefor until the approval of the tax levying body is first secured, at which time the Board of Supervisors can require that the specific school projects be itemized. Likewise, if the school budget named certain projects, the funds can be used only for the one specified unless the approval of the Board of Supervisors is first secured.

"Section 22-122, which deals with the preparation of school budgets, provides that the 'estimate so made shall clearly show all necessary details in order that the governing body and the taxpayers of the county or of the city may be well informed as to every item of the estimate'. Under the section, the Board of Supervisors could have required a more detailed account of the capital expenditures planned at the time the school budget was submitted for approval, but, if it did not and instead approved a sum for that general purpose, it is my opinion that the school board may expend the funds provided on such capital improvement projects as it deems most appropriate."

The opinion quoted above follows the decisions of the Supreme Court of Appeals in the cases of Scott County School Board v. Board of Supervisors, 169 Va. 213, and Board of Supervisors v. County School Board, 182 Va. 266. In the first mentioned case

the Court pointed out that what is now section 22-72 of the Code of 1950 means that "whatever costs or expenses are incurred must [either] be shown in a budget which has been approved by the board of supervisors or by its consent". (169 Va. at page 216).

The second case arose in Chesterfield County and presented the question of whether the Board of Supervisors could reduce an individual item in the estimates or budget submitted to it by the School Board so as to bind the School Board not to expend more than the amount approved by the Board of Supervisors for that particular item. The Court held that Boards of Supervisors are concerned only with the total amount of tax to be levied and cannot limit individual items of the school budget. In other words, the Board of Supervisors has the right to fix the amount of money to be raised by local taxation for school purposes but does not have the right to reduce or eliminate individual items of the budget submitted by the School Board.

My attention has been called to the following language of the Court in the Chesterfield County case which is suggested might be construed as authority for the School Board of Loudoun County to use the surplus school funds as proposed in the Division Superintendent's letter to you:

" * * * After the board of supervisors have appropriated money for schools, the exclusive right to determine how this money shall be spent is in the discretion of the school board, so long as they stay within the limits set up in the budget'." (*Italics supplied*). (182 Va. at page 281).

It is to be noted that the Court used the word, "limit", in the plural rather than in the singular. I am, therefore, of the opinion that the above quoted language does not mean that a school board may expend school funds for whatever purpose it wishes so long as the amount of the total budget is not exceeded. The word, "limits", must necessarily refer to the limits of the individual items set up in the budget. In any event, the Court, in the Chesterfield County case, made it clear that surplus school funds could not be expended for items not included in the school budget without consent of the Board of Supervisors, for upon consideration of what is now section 22-72 it said:

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" : Under this last quoted section, I am of the opinion that 'its budget' refers to the estimate submitted by the school board to the board of supervisors. If the school board wanted to expend money for purposes not set up in its estimate, then it would be required to get the consent of the tax levying body. * * ' " (182 Va. at page 278).

To repeat, it is my opinion, based upon section 22-72 of the Code and upon the two Supreme Court cases discussed herein, that a school board in expending funds provided for the operation of the county schools must spend money for the purposes and "within the limits set up in the budget".

Very sincerely yours,

J. Lindsay Almond, Jr.
Attorney General