WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

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ENROLLED
Committee Substitute for
HOUSE BILL No. 1252

(By Mr. Nicklasch & Miss Solomon)

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PASSED April 8, 1977

In Effect ninety days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1252

(By Mr. Wiedebusch and Miss Shuman)

[Passed April 8, 1977; in effect ninety days from passage.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-eight; and to amend and reenact section thirteen, article five, chapter eighteen of said code, relating to the authority of the state board of education and the county boards of education to regulate the sale of certain foods on public school property; to regulate the installation of vending machines; allowing county boards to establish rules and regulations for hiring of school bus drivers; and criminal offenses and penalties in regard to keeping and posting of records of certain funds.

Be it enacted by the Legislature of West Virginia:

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-eight; and that section thirteen, article five, chapter eighteen of said code be amended and reenacted, all to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-28. Authority to regulate the sale of certain foods on school property; vending machines therefor; nutritional education required.

1 The state board of education shall have authority to promulgate rules and regulations:
(1) To generally supervise the sale in public schools of foods such as fruit juices, dried fruits, milk, peanuts, cheese, soft drinks, canned soup, candy and confections;

(2) To generally supervise the installation in public schools of vending machines for the dispensing of such foods;

(3) To provide generally for the education of students concerning the value of nutritional eating habits; and

(4) To generally supervise the policies of the county boards of education governing sales of such foods.

Such rules and regulations shall not prohibit the sale of soft drinks candy, fruit juices, dried fruits, milk, peanuts, cheese, canned soup and confections to students in grades ten through twelve enrolled in three-year senior high schools or to students in grades nine through twelve enrolled in four-year senior high schools: Provided, That such rules and regulations shall prohibit a student from purchasing such foods prior to the close of the lunch period.

Such rules and regulations shall not prohibit the sale of soft drinks, candies, fruit juices, dried fruits, milk, peanuts, cheese, canned soup or confections in other schools during bona fide extracurricular activities during which such foods have heretofore been lawfully sold.

Such rules and regulations shall not deprive the county boards of education of the immediate control and supervision of such sales.

ARTICLE 5. COUNTY BOARD OF EDUCATION.


The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the legal responsibility to require that records be kept and posted semiannually in a conspicuous place on the premises of the participating school or schools of all receipts and disbursements of all
funds collected or received by any principal, teacher, student or
other person in connection therewith, any programs, activities
or other endeavors of any nature operated or carried on by or
in the name of the school, or any organization or body directly
connected with the school, to audit such records and to
conserve such funds, which shall be deemed quasi-public
moneys, including securing surety bonds by expenditure of
board moneys. If any principal, teacher, student or other
person, required to keep the post records under the provisions
of this section, shall willfully fail to do so, or shall willfully
post inaccurate records, he shall be guilty of a misdemeanor,
and, upon conviction thereof, shall be fined not less than
one hundred dollars nor more than five hundred dollars;

(2) To establish schools, from preschool through high
school, inclusive of vocational schools; and to establish
schools and programs, or both, for post high school instruction,
subject to approval of the state board of education;

(3) To close any school which is unnecessary and to
assign the pupils thereof to other schools: Provided, That
such closing shall be officially acted upon and teachers and
service personnel involved notified on or before the first
Monday in May, in the same manner as provided in section
four of this article, except in an emergency, subject to the
approval of the state superintendent, or under subdivision
(5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily
attendance falls below twenty pupils for two months in
succession, and send the pupils to other schools in the district
or to schools in adjoining districts. If the teachers in the school
so closed are not transferred or reassigned to other schools,
they shall receive one month's salary;

(6) (a) To provide at public expense adequate means of
transportation, including transportation across county lines,
for all children of school age who live more than two
miles distance from school by the nearest available road and
to provide at public expense and according to such regula-
tions as the board may establish, adequate means of trans-
portation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto, at public expense, by rules and regulations and within the available revenues, transportation for those within two miles distance; and to provide in addition thereto, at no cost to the board and according to rules and regulations established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by such commission, or the local or county chapter thereof: Provided, however, That in all cases the buses or other transportation facilities owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided further, That buses shall be used for extracurricular activities as herein provided only when the insurance provided for by this section shall have been effected;

(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (7) of this section;

(7) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils be let out to contract, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify;

(8) To employ and to provide in-service training for teacher aides, the training to be in accordance with rules and regulations of the state board;

(9) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach therein;

(10) To employ legal counsel;
(11) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees.

No policy or contract of public liability insurance providing coverage for public liability shall be purchased as provided herein, unless it shall contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense to any claim covered by the terms of such policy, the defense of governmental immunity. In any action against the board, its officers, agents or employees, in which there is in effect liability insurance coverage in an amount equal to or greater than the amount sued for, the attorney for such board, the attorney for such insurance carrier, or any other attorney who may appear on behalf of the board, its agents, officers or employees shall not set up the defense of governmental immunity in any such action.

(12) To establish rules and regulations not inconsistent with the provisions of section twenty eight, article two, chapter eighteen of this code and rules and regulations promulgated pursuant thereto, governing and supervising the sale on school property of foods such as fruit juices, dried fruits, milk, peanuts, cheese, soft drinks, canned soup, candy and confections, the installation of vending machines for the dispensing of such foods, and the education of students concerning the value of nutritional eating habits.

“Quasi-public funds” as used herein are defined as any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

The board of each county shall expend under such regulations as it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Claurence L. Christian Jr.
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

G. Wielaad
Clerk of the Senate

C. Slavensky
Clerk of the House of Delegates

J. Backstrom
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within is disapproved this the 57th
day of April, 1977.

John B chapman
Governor