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EDUCATION, BOARD OF—DISCRETION—AUTHORIZED TO SUSPEND TEMPORARILY OR PERMANENTLY ALL SCHOOLS WITHIN DISTRICT—EDUCATION OF PUPILS PROVIDED FOR IN ONE OR MORE OTHER SCHOOL DISTRICTS—SECTION 4836-2 G. C.

SYLLABUS:

Under the provisions of Section 4836-2 of the General Code, a board of education, in the exercise of a sound discretion, is authorized to suspend temporarily or permanently all the schools within its district and to provide for the education of the pupils under its charge in one or more other districts.

Columbus, Ohio, September 5, 1947

Hon. Vernon Lee, Prosecuting Attorney, Tuscarawas County
New Philadelphia, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Your opinion is urgently requested for an interpretation of Section 4836-1 and 4836-2 of the General Code of Ohio as to the legality of the action of the Board of Education of a local school district in assigning all elementary and high school pupils to schools without the district. Specifically, does Section 4836-1 of the General Code require a local school district to provide schools within its district? Does Section 4836-2 of the General Code permit a Board of Education of a local school district to temporarily or permanently suspend all schools within the district at its discretion?”

Section 4836-1, General Code, provides as follows :

“The board of education of each city, exempted village and local school district shall provide for the free education of the youth of school age within the district under its control, at such places as will be most convenient for the attendance of the largest number thereof. Every day school so provided shall continue not less than thirty-two weeks in each school year.”

Section 4836-2, General Code, reads as follows :

“The board of education of each city, exempted village and local school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause. Whenever any school is suspended, the board of education of the district shall at once provide for the assignment of the pupils residing within the territory of the suspended school to such *other school or schools* as may be named by the said board of education.” (Emphasis added.)

The words, “within the district” might be considered as determining the place where the board of education is to provide for the free education of the youth of school age. I do not, however, consider that it was intended they should have that meaning. The natural reading of the sentence leads one to the conclusion that these words were intended to modify the words, “the youth of school age.”

Section 4836-2 above quoted, expressly authorizes a board of education to suspend either temporarily or permanently any school in its district, because of disadvantageous location or for "any other cause." Prior to the enactment of the new school code of which the above quoted sections are a part, Section 7730, General Code, was in effect and contained substantially all the provisions of Section 4836-2 supra, and in addition, contained a provision that upon a petition being filed with the board of education between May 1 and August 1 of any year, signed by the parents or guardians of twelve children who were affected, the local board of education must reopen a school so suspended, for the ensuing school year. The General Assembly saw fit to strike out this provision, thereby evidencing an intention to give the board of education broad discretion both in the matter of closing schools and reopening the same.

Section 4855-3, General Code, provides in part as follows:

"The board of education of any city, exempted village or local school district *may contract with the board of another district for the admission or transportation or both*, of pupils into any school in such other district, on terms agreed upon by such boards within the limitations of law. * * * The expense for the attendance of non-school resident pupils and for their transportation, if any, shall be credited and paid in the manner provided in sections 4848-4 and 4848-5 of the General Code; but no compensation from state funds shall be made to a receiving district for the unauthorized attendance of non-school resident pupils but in case of such unauthorized attendance compensation for the attendance of pupils shall be made to the district in which such pupils are school residents." (Emphasis added.)

That the General Assembly clearly contemplated that a board of education might for cause which it deems sufficient, provide for the education of the children of its district in the schools of another district is further shown by reference to Section 4848-4, General Code, which is a part of the school foundation plan. This section provides in part as follows:

"For districts with pupils in approved attendance in the schools of other districts, an amount equal to the total of the approved budget of tuition cost which shall be in addition to the amounts specified in paragraphs (a) and (c) or (d) of this section, provided, that where a district of school residence maintains no schools and the tax rate for current operating expenses of the district of school residence is less than that of the district of attendance, there shall be deducted from the budget of

tuition cost of the district of school residence, an amount, equal to the computed yield of a tax on the general tax list and duplicate of the district of school residence, at a rate equal to 100 per centum of the difference in the tax rates of the respective districts.

Provided, further, that where a district of school residence maintains no schools and has pupils in approved attendance in the schools of more than one other district and where the total tax rate for current operating expenses of the district of school residence is less than the average of all the total tax rates for current operating expenses of the district of attendance, there shall be deducted from the budget of tuition cost of the district of school residence an amount equal to the computed yield of a tax on the general tax list and duplicate of the district of school residence at a rate equal to 100 per centum of such difference."

Here, is a clear recognition of the fact that a board of education may not only close a portion of its schools but may if it deems proper, maintain no schools whatsoever and may distribute the pupils either to one or several other districts.

Accordingly, in specific answer to your question it is my opinion that under the provisions of Section 4836-2 of the General Code, a board of education, in the exercise of a sound discretion, is authorized to suspend temporarily or permanently all the schools within its district and to provide for the education of the pupils under its charge in one or more other districts.

Respectfully,

HUGH S. JENKINS,
Attorney General.