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TUITION — TO COMPUTE AMOUNT PAYABLE BY DISTRICT, RESIDENCE OF PUPIL, ATTENDANCE FOREIGN SCHOOL DISTRICT, BASE CHARGES, ACTUAL EXPENSE TO DISTRICT — DEPRECIATION — EXCLUDE DONATIONS: INDIVIDUAL, FEDERAL GOVERNMENT, ANY OTHER SOURCE — SECTION 7595-1d G.C.

SYLLABUS:

In computing the amount of tuition payable by the district of residence of a school pupil who attends school outside such district in pursuance of Section 7595-1d, *General Code, the depreciation charges on property used in the conduct of the school attended by such non-resident pupil to be added to the other expenses of conducting the said school as provided by the statute, should be based upon the actual expense to the district — the real cost of the property to the district — exclusive of any part of the cost of the property which had been met by donations from individuals, the federal government or from any other source.*

Columbus, Ohio, June 26, 1941.

Hon. E. N. Dietrich, Director of Education,
Columbus, Ohio.

Dear Sir:

This is to acknowledge receipt of your request for my opinion, which reads as follows:

> "Section 7595-1d of the General Code, which contains the formula used in determining tuition rates, provides that, in computing a tuition rate, to the total expense of conducting a school there may be added 'depreciation charges not exceeding 5% per annum, based on the actual cost of all property used in conducting such school.'
>
> We are writing to request your formal opinion interpreting the term 'actual cost.' If a school building has been erected as a P.W.A. project and its construction financed in part through a grant of Federal funds or if the construction of a building has been financed in part through the gift of a private individual: is it proper to base the depreciation charge upon the entire amount of money invested, including the amount of such grant or gift, or should the depreciation charge be based only upon that part of the investment financed through local taxation?"

The answer to the question submitted, depends upon the proper interpretation of the law which makes provision for the payment of tuition in schools attended by pupils who are non-residents of the district wherein the school attended is located. Speaking generally, the law provides that such tuition shall be paid by the district of residence and shall be adjusted as between the district of attendance and the district of residence by the Department of Education in the distribution to the various school districts throughout the State of the state public school fund. The pertinent part of Section 7595-1d, General Code as amended by the 93rd General Assembly (118 O.L. 675) and now in force, which pertains to this subject, reads as follows:

> "Sec. 7595-1d. Pursuant to law, a pupil may attend school outside his district of legal residence, and for such pupil his board of education shall pay tuition not more nor less than that which shall be computed as follows: Divide the total expense of conducting the school attended, excluding the costs of permanent improvements and debt service; but including depreciation charges not exceeding five per cent per annum, based on the actual *cost* of all property used in conducting such school, by the average daily attendance in such school. The average daily attendance, so used, shall be the same as that used as a basis for the distribution of state or county funds, as provided by law." (Emphasis, the writer's).

The word, "cost" which is underscored in the statutory provision quoted above, was substituted by the Legislature upon the amendment of the statute in 1939, for the word, "value," which had been used in the statute upon its original enactment in 1935 (116 O.L. 585), and which was in force until the amendment spoken of, became effective. This was the only change made in the statute upon its amendment in 1939, except that there was inserted after the provisions relating to the computation of such tuition and its proper allocation by the Director of Education in making distribution of the state public school fund to the district of attendance and deduction from the amount allocable from said fund to the district of residence, the following clause:

> "The Department of Education shall send to said district of residence an itemized statement showing such deduction at the time of such deductions."

This latter mentioned provision, of course, has nothing whatever to do with the amount of tuition payable when a school pupil attends school outside the district of his or her residence or of the manner of computing

such tuition and I mention it here merely to show that so far as the amount of tuition or the manner of computing it is concerned, the only change made by the Legislature upon the amendment of the statute, was to change the expression, "actual value" to "actual cost," thus manifesting an obvious intent upon the part of the Legislature that the manner of computing tuition charges for non-resident pupils should thereafter be on a different basis than before the change — the extent of the difference to be the difference in the import of the two expressions.

It is a well settled principle of law as stated in Crawford on Statutory Construction, Section 304, that:

> "The amended statute should also be construed as if it had been originally passed in its amended form, since the amendment becomes a part of the original enactment. And words used in the original statute should, at least, be presumed to be used in the same sense in the new statute. Conversely, a change in the phraseology creates a presumption that the legislature intended a change of meaning. Indeed, the mere fact that the legislature enacts an amendment is of itself an indication of an intention, as a general rule, to alter the pre-existing law."

The Supreme Court of Ohio, in Lytle v. Boldinger, 84 O.S., 1, stated that it is to be presumed that every amendment of a statute is made to effect some purpose.

It seems too manifest to admit of argument, that the Legislature meant to make a change in the method of computing tuition for non-resident school pupils by amending Section 7595-1, General Code, as it did in 1939. What that change was meant to be, must be determined from a comparison of the language used in the statute as it existed prior to the amendment and that contained after the amendment. The Legislature must have been held to have recognized that the word "cost" meant something different than "value," and that that difference must necessarily have been in the legislative mind at the time, and could have been nothing else than the difference in the ordinary use of the terms. The rule of law applicable to the use of words in legislative enactments as stated by the Supreme Court of Ohio, in the case of Eastman v. State, 131 O.S., 1, is as follows:

> "Words in common use will be construed in their ordinary acceptation and significance and with meaning commonly attributed to them."

The words, "cost" and "value" are not technical terms; they are words in common use, and I believe their import is well understood. No difficulty seems to have existed prior to the amendment of the statute in 1939 as to the meaning of the word, "value," as it then appeared in the statute relating to tuition for non-resident pupils. I am informed that the word was accorded its ordinary meaning as defined by lexicographers, by the Department of Education in applying the provisions of the statute, and it should follow that since the amendment of the statute, the word "cost" should be construed as having been used in a sense determined on the same basis. In the Century Dictionary the word "cost" is defined as follows:

> "1. The equivalent or price given for a thing or service exchanged, purchased or paid for; the amount paid, or engaged to be paid for some thing or some service.
>
> 2. That which is expended; outlay of any kind, as of money, labor, time or trouble; expense or expenditure in general."

The word "value" is there defined as follows:

> "Worth; the property or properties of a thing in virtue of which it is useful or estimable, or the degree in which such a character is possessed; utility; importance, excellence.
>
> The amount of other commodities commonly represented by money, for which a thing can be exchanged in the open market; the ratio which one commodity has over others in traffic. In a restricted (and the common, popular sense), the amount of money for which a thing can be sold."

Upon examination of many decided cases where the terms, "actual cost" and "actual value" have been the subject of consideration by courts, it appears that the term, "actual cost" is ordinarily construed as being synonymous with "real cost" or "expense," while "value" or "actual value" is usually accorded the same meaning as "worth" or what an article may be sold for by a willing seller to a willing purchaser.

In the case of Cummings v. National Bank, 101 U.S., 153, the same being an appeal from the Circuit Court of the United States for the Northern District of Ohio, wherein the Supreme Court of the United States had under consideration the meaning of the term, "actual value," as used in the statutory law of Ohio with respect to the assessing of property for purposes of taxation, the court, on page 162, quotes with approval from Burroughs on Taxation, page 227, Section 99, as follows:

> "The phrases 'salable value,' 'actual value,' 'cash value' and others used in directions to assessing officers, all mean the same thing and are designed to effect the same purpose."

In the case of Boyle, County Treasurer, v. Hipp, 92 Fed., 2d, 338, decided by the United States Court of Appeals, Sixth Circuit, in 1937, the Court cites with approval the Cummings case, and notes particularly the reference by the Court in that case to Burroughs on Taxation, as mentioned above.

In the case of Territory v. Honolulu Rapid Transit & Land Company, 23 Haw., 387, 390, the Court said:

> "The term 'actual cost' means money actually paid out, or 'real cost.' It may be considered as synonymous with 'expense' and as excluding all profit."

The term "actual value" has been considered in many cases, and has been usually regarded as being the same as "market value" or "salable value." In the case of State v. Lee (Montana, 1936) 63 Pacif. 2d, 135, it is said:

> " 'actual value' fixed in statute as measure of computation for taking property, held to be 'market value' or price that probably would result from fair negotiations where seller is willing to sell and buyer desires to buy."

In Grant v. Dugan, 94 Fed. 2d, 859 (1938), the Court said:

> " 'actual value' of corporation's stock for stamp tax purposes was what a seller could readily get for it in cash from willing purchasers."

See also Taylor v. Olds, 67 S.W. 2d, 1102, 1103; State v. Yates, 10 O.D., Rep. 182. Many similar cases might be cited.

Perhaps "market value" or "salable value" are not proper measures of actual value of property to a school district. Market value of such property might be considerably more or less than the real or intrinsic value of the property to the district, dependent upon circumstances. A more nearly proper conception of the actual value of school property to a school district would, I believe, be expressed by the term "replacement value," and I am informed that while the statute, as it existed prior to its amendment in 1939, was in force, administrative officials regarded the term "actual value" as being practically synonymous with "replace-

ment value," at least to the extent that consideration was not given in the computation of tuition charges under Section 7595-1d, General Code, to the fact that in many instances the actual cost of the property to the district was much less than its real value by reason of the fact that in those instances the acquiring of property had been financed in part by donations from individuals or the federal government. By reason of the change upon the amendment of the statute, of the term "actual value" to "actual cost" it seems evident that it was the intent of the Legislature to correct this situation by not permitting the district affected to capitalize upon donations it may have received at the expense of other districts which had not been so fortunate as to have received outside financial aid in the construction of their school plants.

It should be borne in mind that the purpose of those features of the so-called School Foundation Law which provide for the administration of the State Public School Fund, including the provisions that relate to the payment of tuition of non-resident pupils from said fund is, as expressed in the title of the Act of the Legislature whereby the law was passed, and supported by its history:

> "For the purpose of creating a public school fund in the state treasury and providing for the distribution thereof, with a view to providing a thorough and efficient system of common schools throughout the state, promoting economy and efficiency in the operation thereof, and providing for the equalization of educational opportunities; * * * "

It would not be in furtherance of the "equalization of educational opportunities" to allow a school district that had been donated a portion of its school plant or a portion of the funds to build the plant, to receive earnings on those donations from the State Public School Fund in proportion that other districts which had not been the recipients of such aid, received such earnings. Under the provisions of the statute with respect to non-resident tuition as it existed prior to its amendment in 1939 and as interpreted by administrative officials, such a result obtained, and in my opinion it was to correct this inequity that the statute was amended as it was.

In the light of what has been hereinbefore said, I am of the opinion that in computing the amount of tuition payable by the district of residence of a school pupil who attends school outside such district in pursuance of Section 7595-1d, General Code, the depreciation charges on

property used in the conduct of the school attended by such non-resident pupil to be added to the other expenses of conducting the said school as provided by the statute, should be based upon the actual expense to the district — the real cost of the property to the district — exclusive of any part of the cost of the property which had been met by donations from individuals, the federal government or from any other source.

Respectfully,

THOMAS J. HERBERT,

Attorney General.