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STATE FOUNDATION FUND—ALLOTMENT TO SCHOOL DISTRICT—NEW SCHOOL ORGANIZED IN FINAL QUARTER OF 1956—STATE BOARD OF EDUCATION—JUSTIFIED IN INCLUDING FOR SUCH QUARTER YEAR NUMBER APPROVED TEACHER UNITS DETERMINED BY AVERAGE DAILY MEMBERSHIP—FIRST TWO WEEKS IN SEPTEMBER THAT SCHOOL IS IN OPERATION—SENATE BILL No. 321—101ST GENERAL ASSEMBLY.

**SYLLABUS:**

Under the provisions of Section 4 of Amended Substitute Senate Bill No. 321, enacted by the one hundred and first General Assembly, the State Board of Education will be justified in determining the allotment of the State Foundation Fund to a school district in which a new school has been organized, starting in the final quarter of 1956, to include for such quarter year the number of approved teacher units determined by the average daily membership in such new school for the first two weeks in September that such school is in operation.

Columbus, Ohio, July 12, 1956

Hon. R. M. Eyman, Superintendent of Public Instruction  
Department of Education, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Section 4 of Amended Substitute Senate Bill No. 321 provides that in distributing funds for the fourth quarter of the

calendar year 1956 the average daily membership shall be the same as that used for the first half of 1956.

“New high schools will be placed in operation in September 1956 in several districts of the state which prior to that time provided instruction within the district in grades 1 to 8 only. Obviously the calculation to determine the amount of state support for these districts for the first half of 1956 does not include an average daily membership figure for grades 9 to 12.

“The State Board of Education through its Finance Committee has requested me to secure from you an opinion as to whether the following procedure would be within the scope of the statutes: The calculation to determine the amount of state funds, for the fourth quarter of 1956, for a school district in which a new high school is established in September, 1956, shall include approved teacher units for grades 9 to 12, the number of such approved teacher units to be determined by the average daily membership of the new high school for the first two weeks of September, 1956, that the school is in operation.”

The entire law bearing on the allowances to the school districts from the state foundation fund underwent a complete revision in the enactment by the 101st General Assembly of Amended Substitute Senate Bill No. 321. It embraces Sections 3317.01 to 3317.14, inclusive, of the Revised Code. By the provisions of Section 4 of the Act all of its provisions are to become effective October 1, 1956, except Amended Sections 3317.01 to 3317.021, of the Revised Code, which became effective January 1, 1956. These two sections have no bearing on the question submitted.

Inasmuch as the computation involved in your inquiry must be made in accordance with the new law, effective October 1, 1956, I shall refer to the sections involved as being of the “Revised Code.” In any references herein to the existing sections, which will be repealed on October 1, 1956, I shall refer to such sections as “existing sections.” Section 3317.02, Revised Code, in so far as pertinent, provides as follows:

“There shall be paid, in the last quarter of the calendar year 1956 and in each calendar year thereafter, to each local, exempted village and city school district, which has a tax levy for current school operation for the current calendar year of at least ten mills, the total sum of the following factors:

“(A) The total approved salary allowance allocated to such district under section 3317.052 of the Revised Code, or the total of the salaries for certificated employees for the current school year, whichever amount is the lesser;

“(B) plus fourteen hundred and twenty-five dollars multiplied by the total number of *approved teacher units credited to such district under section 3317.05* of the Revised Code, for other current expenses;

“(C) plus the total approved transportation costs allocated to such district under section 3317.051 of the Revised Code:

“(D) plus ten per cent of the total approved salary allowance allocated to such district under section 3317.052 of the Revised Code, for the employer’s contribution to the teachers’ retirement fund and the cost of the certificated employees’ sick leave;

“(E) minus an amount equal to ten mills multiplied by the total value of the tax duplicate of such district as certified by the department of taxation under section 3317.10 of the Revised Code.” \* \* \* (Emphasis added.)

Section 3317.05 above referred to, contains a somewhat elaborate schedule for determining the total number of approved teacher units for each school in each district, based on the “average daily membership” in the various grades and graduated according to the size of the school.

The application of the above formulae to the determination of the allowances for the full years after 1956, would appear to be clear. The problem with which we are here concerned is how they may be adapted to a determination of the allowance for the final quarter of 1956. Section 4 of the Act under consideration, undertakes to deal specially with this problem. In that section it is provided as follows:

“It is the intent and purpose of this act that in distributing funds for the fourth quarter of the calendar year 1956 *the average daily membership shall be the same as that used for the first half of 1956*. The certification of the name of each certificated employee, with the amount of training, the type of teaching certificate held, and the annual salary of each as required by section 3317.041, of the Revised Code, shall for the fourth quarterly distribution of the calendar year 1956 be based upon the school district’s employment rolls for the first two full school weeks of the month of April, 1956, and such certification shall be made to the state board of education not later than April 30.”

(Emphasis added.)

Now, it is quite evident that when the allowance from the foundation fund for the first half of 1956 was made, the act under consideration and its various provisions were not in existence and that that allowance was made up according to the provisions of the law as it then stood, and still

remains, as found in existing Sections 3317.01 et seq., Revised Code. Under those provisions as found in existing Section 3317.03, it appears that the superintendent of schools in each county, city, and exempted village school district is required to certify to the superintendent of public instruction "the average daily membership figures to be used in computing the payments authorized by Section 3317.02 of the Revised Code, and in computing the foundation program amounts under Section 3317.05 of the Revised Code." Referring to existing Section 3317.05, we find that the total amount of a school district's foundation program was to include:

"(A) An amount equal to one hundred thirty-seven dollars and fifty cents for each pupil in average daily membership in grades one to eight, inclusive;

"(B) An amount equal to sixty-eight dollars and seventy-five cents for each pupil five years of age or over in average daily membership in kindergarten classes;

"(C) An amount equal to one hundred sixty dollars for each pupil in average daily membership in grades nine to twelve, inclusive;"

It is manifest that in districts which, at the time of making up the estimate for the first half of 1956, had high schools in addition to the lower grades, the average daily membership in such high schools would be taken into consideration, and the estimated amount made up in accordance with the total average daily membership in the entire school so constituted; but the proposition which you have submitted presupposes a district which had no high school at that time, but shall have organized a high school starting with the fourth quarter of 1956, and the problem presented is how shall such district obtain the advantage of the increased total membership thus occasioned if it is to be confined by the provisions of Section 4 above quoted, to the formula, "*the average daily membership shall be the same as that used for the first half of 1956?*"

Your letter propounding your question indicates very clearly that it would be desirable from the standpoint of your board, and highly advantageous to a district that has been thus enlarged, if you could add to the *total* of the average daily membership used in computing the allowance for the first half of 1956, the average daily membership of the new high school in the first two weeks of September, 1956. But the total thus obtained would certainly not be "the same" as that used in the first half of the year.

But are we forced to conclude that the legislature in making this reference to "average daily membership" in computing the allowance for the final quarter of 1956, meant to limit the allowance to the *total number* of pupils which the district had back in 1955, when the computation for the first half of 1956 was made? To do so, would be to ascribe to the legislature an intent to deprive a district of credit for a new high school or perhaps an elementary school that might be organized in the district after the allotments for the first half of the year had been determined. In view of the manifestly liberal provisions of the new law I find it very difficult to reach that conclusion and I do not believe that we are forced to do so. An examination of the statutes which both before and since the amendment of the new act relate to the ascertainment of the *average daily membership* of a district will suggest another meaning for the language of Section 4. In Section 3317.03 of the existing law, it is provided:

"The superintendent of schools in each county, city, and exempted village school district shall, for the schools under his supervision, certify to the superintendent of public instruction the average daily membership figures to be used in computing the payments authorized by section 3317.02 of the Revised Code and in computing the foundation program amounts under section 3317.05 of the Revised Code." \* \* \*

As amended in the new act, the certificate of the superintendent is to be as to the average daily membership in the first two weeks of October.

Let it be noted that in the present provision there is nothing requiring the superintendent to make his certification at any particular time and it would appear that he might have made a series of certifications in case the average daily membership should have been increased by the organization of new schools.

In this connection, I call particular attention to Section 3317.12, Revised Code, which in its present form will be effective up to October 1, 1956. That section provides:

"The superintendent of public instruction shall recalculate the amount due any school district, on the basis of the current average daily membership rather than on the average daily membership for the previous school year, whenever it appears to him that the average daily membership has changed to such an extent as to render the original calculation either excessive or inadequate. He shall prescribe standards for determining and certifying such

change in average daily membership upon the basis of which such recalculation will be considered and made."

There appears to be no reason why a superintendent of any school who finds his enrollment increased in the early weeks of the Fall term of 1956 by the opening of new schools or otherwise, should not take advantage of that section, at least up to October 1st and make a request for an additional allotment for the last quarter of the year. Nor do I see any reason why your board, even though acting after the new law becomes effective should not take that additional request into consideration in fixing such allotment.

May we not assume that the legislature in endeavoring to take care of all conditions that might prevail and changes that might occur in the final quarter of 1956, intended that the procedure established and in use before the new enactment, including the provision of Section 3317.12, supra, should be followed?

Even though it may not be perfectly clear that this was the intention of the legislature, these changes certainly raise a reasonable doubt and an ambiguity in the law. It is well recognized by the courts that where the language of a statute is ambiguous we have the right to resort to the established rules of construction for the purpose of ascertaining the intention of the lawmaking body. This proposition is well illustrated in the leading case of *Slingluff v. Weaver*, 66 Ohio St., 621, where the court had before it an act of the legislature which appeared to strip that court of a large portion of its appellate jurisdiction. While the court held in that case that there was no ambiguity in the law, yet it stated the principle of construction that was applicable in any case where there is such ambiguity, as follows:

"The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it. And where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear understanding and, as shown by the context manifestly intended, inserted."

In the construction of statutes it is well recognized that the prime purpose is to determine the real purpose and intent of the lawmaking

body, and that for such determination we have a right to resort to all parts of the act in question and all laws that are in *pari materia* therewith. See Crawford on Construction of Statutes, Section 231.

In the case before us, it was manifestly the intention of the legislature to provide substantial allowances from state funds for the various school districts of the state, and there is certainly nothing in the act from which we could infer any purpose whatsoever to discriminate against any districts or to penalize them for their growth. The construction which I have suggested for the language of Section 4 of the act relative to the average daily membership would carry out this manifest purpose of the legislature. The opposite construction would be clearly destructive of that purpose.

In Crawford on Statutory Construction, Section 161, the author speaking of the legislative purpose, indicates the broad scope of the process of construction:

“Consequently, in seeking to ascertain the legislative purpose, the court will resort, among other things, to the circumstances existing at the time of the law’s enactment, to the necessity for the law and the evil intended to be cured by it, to the intended remedy, to the law prior to the new enactment, and to the consequences of the construction urged. \* \* \*

“Consequently, when construing a statute, the reason for its enactment should be kept in mind, and the statute should be construed with reference to its intended scope and purpose. The court should seek to carry out this purpose rather than to defeat it.”

Acting under the provisions of the existing law which was applied to the first half of the year, it would appear to me that the superintendent of each district would be clearly within his right in making a supplementary certification to the state board of education at the earliest possible time after the beginning of the operation of a new school in the last quarter of 1956, as to the daily average membership of that school, and that your board would be justified in considering such certification and determining the allotment that should be made to that district under Section 3317.02, Revised Code. Obviously, the first two weeks that the new school is in operation in September, would be the earliest opportunity for ascertaining and certifying such average membership.

Accordingly, it is my opinion and you are advised that under the provisions of Section 4 of Amended Substitute Senate Bill No. 321, enacted by the one hundred and first General Assembly, the State Board of Educa-

tion will be justified in determining the allotment of the State Foundation Fund to a school district in which a new school has been organized, starting in the final quarter of 1956, to include for such quarter year the number of approved teacher units determined by the average daily membership in such new school for the first two weeks in September that such school is in operation.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General