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WHERE ENTIRE LOCAL SCHOOL DISTRICT IS TRANSFERRED TO ANOTHER LOCAL SCHOOL DISTRICT—FOUNDATION MONEYS ACCRUING TO THE RECEIVING DISTRICT MAY NOT BE LESS THAN SOME OF AMOUNTS ACTUALLY RECEIVED BY THE TWO DISTRICTS SEPARATELY IN YEAR IN WHICH TRANSFER WAS CONSUMMATED—§§3311.231, 3317.02, R.C.

SYLLABUS:

Pursuant to Section 3311.231, Revised Code, where an entire local school district is transferred to another local school district, foundation moneys accruing to the receiving district are determined in accordance with Section 3317.02, Revised Code; and, under the provisions of both such sections, such moneys may not be less, in any year during the next succeeding three years following the transfer, than the sum of the amounts actually received by the two districts separately in the year in which the transfer was consummated.

Columbus, Ohio, February 15, 1960

Hon. Randall Metcalf, Prosecuting Attorney
Washington County, Marietta, Ohio

Dear Sir:

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

“Your opinion is solicited on the following problem:

“Section 3311.231 became effective July 28, 1959. In November of 1959 ‘A’ local school district was transferred to ‘B’ local school district. You may assume the transfer is proper and

complete in all respects pursuant to the above section and that the transfer has been approved by both districts.

“The last paragraph of the foregoing Section reads as follows :

“If an entire district is transferred, foundation program moneys accruing to a district receiving school territory under the provisions of this section shall not be less, in any year during the next succeeding three years following the transfer, than the sum of the amounts received by the districts separately in the year in which the transfer was consummated.

“Question: ‘A’ local school district received foundation money for three-fourths of 1959 up until the time they disbanded their public school. Even though they did not receive foundation money for the full year, will ‘B’ local school district be entitled to receive an amount of money equal to that which ‘A’ did in fact receive in 1959?”

Your request also raises the question whether “B” local school district is entitled to the amount originally allocated to “A” local school district for all of 1959. This opinion will treat both questions.

Section 3311.231, Revised Code, the relevant portion of which is quoted above, must be interpreted in the light of Section 3317.01, *et seq.*, Revised Code, where the formula for determining the foundation program money due each school district is set forth. This formula is tied to current items within the local school district. For example, in Section 3317.02, Revised Code, one of the items entering into the calculation of the total allowance is the number of approved “teacher units” credited to the district. Section 3317.05, Revised Code, provides the method of calculation of “approved teacher units.” There is a sliding scale depending upon the grade and the average *daily* membership. For example it is provided :

“(B) The average daily membership in grades one through eight, as certified under section 3317.03 of the Revised Code, if more than one hundred seventy-four, shall be divided by thirty;”

Section 3311.29, Revised Code, after directing that any school district which does not maintain public schools shall be dissolved and its territory joined with another school district, provides :

“* * *

“The superintendent of public instruction shall be without authority to distribute funds under sections 3317.02, 3317.04 and 3317.12 of the Revised Code to any school district which does not maintain schools.”

Note also the syllabus of Opinion No. 191, Opinions of the Attorney General for 1959, which states:

“Under the provisions of Section 3317.01, *et seq.*, Revised Code, providing for the distribution of the foundation fund, the state board of education, having allotted to a school district for a given year a certain amount from such foundation fund, may re-calculate such allotment and reduce the same by reason of transfers of a portion of the territory of such district.”

In these last two categories of change in school territory and by implication of the items that enter into current costs, the allocation of foundation program money is also affected.

My opinion that the minimum amount of foundation program money allocated must reflect current items is strengthened by Section 3317.02, Revised Code, reading in part as follows:

“* * *

“All funds allocated to school districts under this section shall be used to pay *current* operating expenses only.” (Emphasis added)

It must be obvious that the increase or decrease in the items comprising current operating expenses should be reflected in the allocation of the foundation program money which is to be used for paying these very expenses.

Furthermore, the foundation program money due is to be *calculated* quarterly, for Section 3317.11, Revised Code, contains this provision:

“The amounts due the districts, as provided in section 3317.02 of the Revised Code, shall be distributed to such districts in quarterly payments. On or before the last day of February, May, August, and November in each year, the state board of education shall calculate the amounts to be paid to the respective districts as such quarterly payments, and shall certify to the auditor of state the amounts of such quarterly payments, whereupon the auditor of state shall issue his warrants on the treasurer of state in favor of the respective districts for the amounts so certified and the treasurer of state shall forthwith pay the same to the designated districts.”

Note the definite provision that on or before the last date of each February, etc., the state board of education is to *calculate* the amounts to be paid to the respective districts.

This direction to calculate quarterly coupled with the statutory scheme in Section 3317.02, Revised Code, of a formula based upon the current items within a local school district leads me to believe that the minimum foundation program money should reflect those items which are current in that year and stop when they do.

Finally, Section 3311.231, Revised Code, provides in part:

“* * * moneys accruing to a district receiving school territory under the provisions of this section shall not be less, * * * than the sum of the amounts *received* by the districts separately in the year in which the transfer was consummated.” (Emphasis added)

The use of the word “received” rather than “receivable” in this section adds greater strength to my opinion that the legislature intended the minimum foundation program money allocable to reflect current items.

Further, Section 3317.02, *supra*, providing the formula for payments to districts, provides:

“* * *

“Whenever school districts are consolidated as a result of the creation of a new school district or the transfer of territory from one or more school districts to another district or districts, pursuant to Chapter 3311. of the Revised Code, the total apportionment of funds to the affected districts under sections 3317.02 and 3317.05 of the Revised Code for the year in which such consolidation takes place shall not be reduced on account of such consolidation during the next succeeding three years.

“* * *”

Therefore, to return to the hypothetical statement of facts in your query, “B” local school district is entitled to receive in 1960 not less than the sum of the amounts *actually* received by “A” and “B” local school districts in 1959, for only the amounts actually received reflect current items.

Accordingly, it is my opinion and you are advised that, pursuant to Section 3311.231, Revised Code, where an entire local school district is transferred to another local school district, foundation moneys accruing to the receiving district are determined in accordance with Section 3317.02, Revised Code; and, under the provisions of both such sections, such moneys may not be less, in any year during the next succeeding three

years following the transfer, than the sum of the amounts actually received by the two districts separately in the year in which the transfer was consummated.

Respectfully,

MARK McELROY

Attorney General