

law seems to have attempted to state in the most direct terms that the computation shall be directly on amounts paid, that is, in cases under paragraph 1 "the entire compensation paid to the driver", and in paragraph 2, "one-half the amount paid for transporting pupils", and in paragraph 3, "one-third the amount paid for transporting pupils." In either of the three cases mentioned, where the district owns all of the means of transportation, where it owns the vehicle and not the means of locomotion, or where it owns neither the vehicle or means of locomotion, the intent of the law means "amount paid" for transporting pupils; that is, the amount of money actually paid out by the board of education on vouchers issued for services rendered, and it is not possible to read into section 7787 any construction that the apportionment of the state common school fund allowed for transportation of pupils should consider depreciation, repairs, replacement, storage, taxes, insurance or interest upon investments, since the definition of personal service expense is made by statute and is thus limited wholly to those exact things which the statute sets out in its own definition.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1865.

SCHOOLS—HOUSE BILL NO. 592, 108 O. L., 1132, PROVIDING FOR REPLACEMENT FUND DOES NOT CHANGE OR MODIFY PROVISIONS OF SECTION 7603—MONEYS RECEIVED FROM SALE OF SCHOOL PROPERTY UNDER SECTIONS 4756 AND 7730-1 G. C. SHOULD BE PLACED IN CONTINGENT FUND.

The provisions of House Bill No. 592 (Sec. 7587-1, 7587-2, 7587-3, 7587-4 and 7587-5 G. C., 108 Ohio Laws, Part II, p. 1132) providing for a replacement fund, would not change or modify the provisions of section 7603 that moneys received from the sale of school property sold in compliance with sections 4756 and 7730-1 G. C., should be placed in the contingent fund of the board of education.

COLUMBUS, OHIO, February 21, 1921.

HON. H. F. BURKET, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

"The board of education of Union township sold on the 15th day of January, 1921, five abandoned school houses and grounds pertaining to each. The board of education wants to know whether the money derived from the sale of these school buildings and this real estate should be placed in a building fund or should be placed in a contingent fund for school purposes. Apparently this sale was made under section 7730-1, found in Vol. 108 of the Ohio Laws, Part 2, page 1173."

In considering your question you are advised that nowhere in the existing statutes is there any specific statement as to where money should be placed, where such funds have resulted from the sale of school buildings and grounds. However, your attention is invited to section 7603 G. C., which reads as follows:

"The certificate of apportionment furnished by the county auditor to the treasurer and clerk of each school district must exhibit the amount of money received by each district from the state, the amount received from any special tax levy made for a particular purpose, and the amount received from local taxation of a general nature. The amount received from the state and the proceeds of the levy retained in the county under section seven thousand five hundred and seventy-five of the General Code, and the common school fund shall be designated the 'tuition fund' and be appropriated only for the payment of superintendents and teachers and the transportation of school pupils. Funds received from special levies must be designated in accordance with the purpose for which the special levy was made and be paid out only for such purpose, except that, when a balance remains in such fund after all expenses incident to the purpose for which it was raised have been paid, such balance will become a part of the contingent fund and the board of education shall make such transfer by resolution. Funds received from the local levy for general purposes must be designated so as to correspond to the particular purpose for which the levy was made. Moneys coming from sources not enumerated herein shall be placed in the contingent fund."

It is noted that the last sentence of the above section reads:

"Moneys coming from sources not enumerated herein shall be placed in the contingent fund."

This is a blanket provision and by reading section 7603 G. C. it is found that no provision occurs therein for the placing of moneys received from the sale of school property in any particular fund. Therefore this last sentence, as quoted, would apply—that moneys coming from the sale of school property sold under the provisions of sections 4756 and 7730-1 G. C. should be placed in the contingent fund. The building fund, to which you make reference, is created in section 7587 G. C. as one of the four funds into which the school levy shall be divided by the board of education. There is no specific provision of law found for placing money received from the sale of school property in the building fund created under the provision of section 7587 G. C. On the other hand, section 7603, *supra*, has been in existence for some time and in the various amendments made to it, including the last one in House Bill 615, 108 O. L., Part 2, page 1309, there has been no change made in the closing sentence of such section, reference to which has heretofore been made.

It is presumed that the board of education possibly has in mind that this money, arising from the sale of school property, ought to be placed in some fund to be used toward the replacement of buildings. Pertinent to that view of the matter your attention is invited to the provisions of House Bill 592, appearing at page 1132, 108 O. L., Part 2, being an act to authorize boards of education to establish, maintain and disburse a replacement fund. This new act appears in the General Code as supplemental sections 7587-1, 7587-2, 7587-3, 7587-4 and 7587-5. This new legislation provides that the

"board of education of any school district *may establish and maintain a replacement fund, and for that purpose set aside annually out of its revenue such sum as it may determine necessary for said purpose.*"

As to the manner in which such replacement fund may be used, section 7587-5 reads:

"The replacement fund so accumulated shall not be reduced, disposed of or expended for purposes other than those specified in section 1 hereof. * * *"

The purposes mentioned in section 1 (7587-1) of House Bill 592, are set forth in the following language:

"In case of total or partial destruction of any of the property of said board of education from any cause or in case, because of the unfitness of such property, it becomes necessary at any time to demolish the same in whole or in part, such replacement fund may be used to rebuild, on the original site or elsewhere, or to restore, repair or improve *the property so damaged, demolished or destroyed*, and for said purposes the board of education may sell or use any of the securities or moneys of such replacement fund."

The replacement fund provided for under this new legislation by the last General Assembly is in a sense largely analogous to the building fund, but the establishment of the replacement fund is not mandatory upon every board of education, but may be established by any board of education of its own choice, and the board may thereafter set apart "out of its revenue" such sums as it may determine necessary for such purposes. In the case of school property sold by the board of education, there is no "total or partial destruction" of the property "because of the unfitness of such property", and neither does school property sold come within the language of "the property so damaged, demolished or destroyed."

It would therefore appear that the provisions of House Bill 592, providing for a replacement fund as recently enacted, would not change or modify the provisions of section 7603 that moneys received from the sale of school property should be placed in the contingent fund of the board of education.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1866.

COUNTY AGRICULTURAL SOCIETIES—MONEY RAISED BY SECTION 9887 G. C. IS A FUND PROPERLY WITHIN CONTROL OF SAID SOCIETY AND COUNTY COMMISSIONERS OR AUDITOR ARE WARRANTED IN TURNING OVER SAID FUND TO PROPER OFFICER OF SAID SOCIETY UNDER PROVISIONS OF SECTIONS 9897 AND 9892 G. C.

Money raised by county commissioners for the benefit of county agricultural societies, in accordance with the provisions of section 9887 G. C., is a fund properly within the control of said agricultural society, and the county commissioners or auditor are warranted in turning over said fund to the proper officer of the county agricultural society in accordance with the provisions of sections 9897 and 9892 G. C.

COLUMBUS, OHIO, February 21, 1921.

HON. EARL C. KRUEGER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—The following communication dated January 17, 1921, and request for an opinion on the same has been received by this department: