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1. A CONSOLIDATED SCHOOL DISTRICT WHICH IS RECEIVING SCHOOL FOUNDATION FUNDS EQUAL TO THE TOTAL ALLOCATED TO THE SEPARATE DISTRICTS FOR THE YEAR IN WHICH THE CONSOLIDATION TOOK PLACE IS NOT RECEIVING FUNDS UNDER A "SIMILAR MINIMUM GUARANTEE" AND SHOULD NOT BE EXCLUDED FOR THAT REASON FROM RECEIVING FUNDS APPROPRIATIONS FROM THE EMERGENCY BUS PURCHASE BILL—

2. THE THREE-YEAR MINIMUM GUARANTEE EXTENDED TO NEWLY CONSOLIDATED SCHOOL DISTRICTS UNDER AUTHORITY OF SECTION 3317.02, R.C. APPLIES ONLY TO FUNDS RECEIVED PURSUANT TO SEC. 3317.02 AND 3317.05, R.C., AND DOES NOT INCLUDE EMERGENCY SCHOOL BUS MONEYS—§§3317.02, 3317.05, 3317.051, R.C.

SYLLABUS:

1. A consolidated school district which is receiving school foundation funds equal to the total allocated to the separate districts for the year in which the consolidation took place is not receiving funds under a "similar minimum guarantee" as referred to in Amended Substitute House Bill No. 831 of the 103rd General Assembly and, therefore, should not be excluded for that reason from receiving funds from the appropriation in said bill for emergency school bus purchases.

2. The three-year minimum guarantee extended to newly consolidated school districts under authority of Section 3317.02, Revised Code, applies only to those funds received pursuant to Sections 3317.02 and 3317.05, Revised Code, and does not include emergency school bus moneys which are allocated pursuant to Section 3317.051, Revised Code.

Columbus, Ohio, May 12, 1961

Hon. Robert O. Hamilton, Prosecuting Attorney
Union County, Marysville, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Can a consolidated school district which is receiving school foundation funds equal to the total allowed to the individual districts for the year in which consolidation takes place, receive emergency school bus moneys under Amended House Bill No. 831 passed June 30, 1959?”

“This past year there was a consolidation effected in our county consisting of three local school districts now operating as one district.

“Under Section 3317.02 of the total of school foundation funds for the three years following consolidation shall not be reduced below the total received by the three individual districts for the year in which the consolidation takes place.

“Paragraph 1 on page 36 of Amended House Bill 831 as passed June 30, 1959 provides as follows :

“‘No moneys from the foregoing appropriations for school transportation operating costs, emergency school bus purchases, and contract bus additional costs shall be paid to any school district which receives state aid pursuant to section 3317.02 of the Revised Code equal to nineteen hundred and twenty-five dollars multiplied by the number of approved teacher units or as to state aid payable on or before December 30, 1959 an amount equal to the amount of state support received during the calendar year ending December 31, 1955 or *equal to such similar minimum guarantees as may be set forth in Section 3317.02* of the Revised Code as amended by the 103rd General Assembly.’

“The question arises as to whether the minimum applicable to the consolidated district is considered a ‘similar minimum guarantee’ under Bill 831. By so interpreting it would mean that the consolidated district would not be reimbursed for emergency

school bus purchases, whereas the three former districts would have been allowed such funds if there had been no consolidation.

“This would result in the consolidated district receiving less state funds than the individual districts would have been entitled to, and is seemingly against the spirit and intention of the school foundation program.

“Because of the urgent need of the school district purchasing a new bus, we would appreciate your consideration in giving a reply at an early date.”

Section 3317.02, Revised Code, reads in pertinent part as follows :

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“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.”

Two question arise concerning the applicability of this provision to the payment of emergency school bus money as outlined in your request. The first is whether the above quoted minimum applicable to consolidated districts is to be considered a “similar minimum guarantee” as that term is used in the portion of Amended Substitute House Bill No. 831, quoted in your request.

Section 3317.02, *supra*, as it was enacted effective January 1, 1958 (127 Ohio Laws, 521), contained three paragraphs which could be construed as minimum guarantees. One was a guarantee of an amount not less than nineteen hundred and twenty-five dollars multiplied by the number of approved teacher units credited to such district under Section 3317.05 of the Revised Code.

The second paragraph in the nature of a guarantee read as follows :

“If the amount arrived at by the above formula is less than the total amount of state support such district received during the calendar year ending December 31, 1955, then there shall be paid to such school district an amount equal to that received during the calendar year ending December 31, 1955, under the provisions of sections 3317.02 and 3317.04 of the Revised Code, including an amount equal to the amount of tuition paid for such district from state funds and the amount such district received for special education but exclusive of the amount such district received for the purchase of school buses and for the retirement of such bus notes.”

The third paragraph which might be regarded as a minimum provided as follows :

“In no event shall there be paid to each local exempted village and city school district an amount less than nineteen hundred and twenty-five dollars multiplied by the number of approved teacher units credited to such district under section 3317.05 of the Revised Code.”

Apparently referring to the 1958 version of Section 3317.02, Revised Code, as that section had not been amended by the 103rd General Assembly at the time the appropriation act was passed, the General Assembly in Amended Substitute House Bill No. 831, the general appropriation act, referred expressly to two of these three so-called minimum guarantees. It referred to the “nineteen hundred and twenty-five dollar guarantee” and to the “1955 state support guarantee.” Nothing was said in this House Bill in reference to the guarantee promised to the consolidated districts.

Two of the possible “minimum guarantees” were mentioned ; the third was not. It would have been very easy for the General Assembly to have inserted into the House Bill some reference to this third possible guarantee (relating to consolidated districts) if it had intended to include that minimum guarantee as a bar to participation in the emergency bus fund. It could have referred to all three types of minimums proposed in Section 3317.02, *supra* (effective 1958), and then said “or equal to such similar minimum guarantees as may be set forth in Section 3317.02 of the Revised Code as amended by the 103rd General Assembly.”

By making specific reference only to two types of minimum guarantees or amounts “equal to such similar minimum guarantees,” I believe the minimum granted to consolidated districts was not meant to be such a “minimum guarantee” for purposes of Amended Substitute House Bill No. 831. “Similar minimum guarantees” refer to any guarantees which might be analogous to the two specifically mentioned in the House Bill. Instead of a “nineteen hundred and twenty-five dollar guarantee” the General Assembly changed the sum to two thousand dollars when it amended Section 3317.02, Revised Code. The “1955 minimum” was repealed and a new formula was diagrammed, the “75.00 minimum,” which was not to be based on 1955 figures and which was not to be considered a “minimum guarantee” under Amended Substitute House Bill No. 831.

The intent of the General Assembly regarding consolidated districts

was that such districts should not be denied any appropriation which would have been received by the separate districts of which the new district is composed had consolidation not taken place. Consolidations were not to be penalized, but all that might have been due these districts separately was to be available to the new district. This was the apparent policy of the General Assembly to meet school districting problems.

This does not mean, however, that any consolidated school district is *guaranteed* emergency school bus moneys. It must be noted that the three-year minimum guarantee for consolidated districts insures receipt of only those moneys which the separate districts had received in the year of consolidation under authority of Sections 3317.02 and 3317.05, Revised Code. No provision is made in either of these statutes for payment of emergency school bus moneys or any other form of transportation costs except that expended for transportation of physically handicapped children. Emergency school bus payments are authorized only by Section 3317.051, Revised Code, and the rules of the State Board of Education made pursuant to such section and the appropriation act. It follows, therefore, that allocations of emergency school bus funds are not part of the three-year minimum guarantee extended to newly consolidated school districts pursuant to Section 3317.02, Revised Code.

It is, therefore, my opinion and you are accordingly advised as follows:

1. A consolidated school district which is receiving school foundation funds equal to the total allocated to the separate districts for the year in which the consolidation took place is not receiving funds under a "similar minimum guarantee" as referred to in Amended Substitute House Bill No. 831 of the 103rd General Assembly and, therefore, should not be excluded for that reason from receiving funds from the appropriation in said bill for emergency school bus purchases;

2. The three-year minimum guarantee extended to newly consolidated school districts under authority of Section 3317.02, Revised Code, applies only to those funds received pursuant to Sections 3317.02 and 3317.05, Revised Code, and does not include emergency school bus moneys which are allocated pursuant to Section 3317.051, Revised Code.

Respectfully,
MARK McELROY
Attorney General