

OPINION NO. 71-063

Syllabus:

A school district, which cannot otherwise continue in operation, must accept advances from the School District Operations Fund; submit a tax levy to the voters, within thirty days of receipt of the first advance, which will permit operation of the schools until the end of 1972; and continue operation of its schools for thirty days after the first advance or five days after the vote on the tax levy, whichever date occurs first.

To: Martin Essex, Supt. of Public Instruction, Columbus, Ohio
By: William J. Brown, Attorney General, October 1, 1971

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

"The Ohio General Assembly has enacted Section 34 as attached which relates to advancing funds to financially distressed school districts.

"Communications with the districts indicate that some of them may raise the question as to the mandatory character of this section

of law. I should appreciate your opinion on the following question:

"Is a school district which has been authorized by the State Auditor and the Office of the Superintendent of Public Instruction to close the schools or disrupt the school calendar required to request or utilize this advance draw process before school calendar change could take place?"

"Due to the time limitations associated with this matter, your reply at your very earliest convenience would be helpful."

By Section 34 of Amended House Bill No. 986, effective September 22, 1971 (Supplemental Appropriations Act beginning September 18, 1971 and ending September 30, 1971), the General Assembly created the School District Operations Fund; appropriated \$2,750,000 to it; and empowered the State Department of Education to make advances therefrom to those school districts which, because of insufficient funds, will be forced to suspend operations prior to December 15, 1971.

The first sentence of Article III of the Ordinance of 1787, by which the Continental Congress established a form of government for the Northwest Territory, provides as follows:

"Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." (Emphasis added.)

When the State of Ohio was formed from the eastern division of the Northwest Territory, Article VIII, Section 3 of its first Constitution, adopted in 1802, provided in pertinent part:

"* * * But religion, morality and knowledge, being essentially necessary to good government and the happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience."
(Emphasis added.)

Article I, Section 7 of the present Constitution of the State of Ohio, adopted in 1851, provides in pertinent part:

"Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its

own mode of public worship, and to encourage schools and the means of instruction." (Emphasis added.)

Pursuant to this constitutional mandate the General Assembly has placed upon the local boards of education the mandatory duty of establishing and maintaining free public schools. Section 3313.48, Revised Code, provides in pertinent part:

"The board of education of each city, exempted village, and local school district shall provide for the free education of the youth of school age within the district under its jurisdiction, at such places as will be most convenient for the attendance of the largest number thereof. Every day school so provided shall be open for instruction with pupils in attendance for not less than one hundred seventy-six days in each school year, * * *. Each day * * * shall consist of not less than five clock hours with pupils in attendance,* * *."

Furthermore, the General Assembly has made it mandatory that the parents of every school-age child send such child to an accredited school for the full term prescribed. Section 3321.04, Revised Code, provides in pertinent part:

"Every parent, guardian, or other person having charge of any child of compulsory school age * * * must send such child to a school, which conforms to the minimum standards prescribed by the state board of education, for the full time the school attended is in session, which shall not be for less than thirty-two weeks per school year. Such attendance must begin within the first week of the school term or within one week of the date on which the child begins to reside in the district * * *."

The Supreme Court has described the predecessor of Section 3313.48, Revised Code (Section 7644, General Code), as "mandatory". In Rabe v. Board of Education, 88 Ohio St. 403, at page 420 (1913), the Court said:

"* * * [U]nder the mandatory provisions of Section 7644, General Code, it is the duty of the board of education to provide for the establishment of a sufficient number of elementary schools and to continue such schools for at least eight months in the school year, * * *."

The Supreme Court has also held that it is the mandatory duty of every parent to see that his school-age children attend school full time. State v. Gans, 168 Ohio St. 174, at pages 180-181 (1958).

Furthermore, the Supreme Court has said that the school laws must be liberally construed to accomplish their plain objectives. In Rutherford v. Board of Education, 127 Ohio St. 81, at page 83 (1933), the Court said:

"* * * [A]ny doubt must be resolved in favor of the construction that will provide a practical method for keeping the schools open and in operation." (Emphasis added.)

See, also, Board of Education v. Dille, 109 Ohio App. 344, 349 (1959).

To summarize, the Constitution imposes upon the General Assembly the duty of providing a system of education; the General Assembly has made it the duty of local boards of education to establish and maintain free public schools for all children whose parents are compelled by law to send them to school; and the Supreme Court has held that all doubts as to the meaning of the school laws should be resolved in such manner as will keep the schools in operation.

There may, of course, be unfortunate instances in which a local board of education does not have sufficient funds to maintain its schools in operation within the minimum standards prescribed by the State Board of Education (Section 3301.07 (D), Revised Code). But even in such cases, the General Assembly has prohibited the local board from closing its schools, except upon authorization by the Superintendent of Public Instruction after certification by the Auditor of State that the necessary funds actually are unavailable; and the General Assembly has directed that the local board reopen its schools as soon as funds do become available. Section 3313.483, Revised Code, provides in pertinent part:

"A board of education, upon the adoption of a resolution stating that such board may be financially unable to open on the day or to remain open for instruction on all days set forth in its adopted school calendar and maintain minimum standards as may be required by the state board of education, shall request the auditor of state to determine whether such situation exists. If the auditor of state finds that the board of education has attempted to avail itself to the fullest extent authorized by law of all lawful revenue sources available to it * * * he shall certify that finding to the superintendent of public instruction and shall certify the date on which the district will have remaining only such moneys as are necessary for maintaining the district while the education program is suspended and the date on which the district, by utilizing all lawful revenue sources for securing such

moneys, will have available sufficient moneys to open or re-open the instruction program meeting the required minimum standards.

"Upon receipt of such certification, the superintendent of public instruction may authorize such school district to delay the opening of its schools or close schools on or after the certified date on which the district will cease to have sufficient funds and order such district to open or reopen on the certified date on which it will again have sufficient funds available. The order to open or reopen may be extended by the superintendent of public instruction for good cause shown.

"No board of education may delay the opening of its schools or close its schools for financial reasons unless so authorized by the superintendent of public instruction." (Emphasis added.)

In the case of the financially distressed school districts to which your letter refers, sufficient funds to enable them to operate have now been made available by the General Assembly. Section 34 of Amended House Bill No. 986, supra, reads as follows:

"Section 34. There is hereby appropriated to the School District Operations Fund, herewith created, the sum of \$2,750,000 out of any moneys in the state treasury to the credit of the general revenue fund, which are not otherwise appropriated.

"The moneys in the School District Operations Fund shall be administered by the State Department of Education and may be released by the Department upon a certification of the Auditor of State by September 1, 1971 or thereafter that a city school district, exempted village school district or local school district is without moneys to continue to operate and will in fact be forced to suspend operations between the effective date of this act and December 15, 1971.

"To be eligible to receive any portion of these funds, a school district must submit to the voters of that school district within thirty days after the first advance of such funds, but not later than December 15, 1971, a tax levy for operating purposes that will, if adopted, permit the school district to operate for the balance of the current calendar year, and the succeeding calendar year.

"The State Department of Education shall advance funds to an eligible school district in an amount to permit normal school operations in that district for a period of up to thirty calendar days, provided such funds shall not be released for more than five days following such vote, or after December 15, 1971. In no event shall a school district receive a sum greater than the remaining payments to be made in fiscal year 1971-72 calculated pursuant to section 3317.02 of the Revised Code as in effect on September 1, 1971.

"A school district receiving funds under the provisions of this section shall repay the sums so received into the non-earmarked general revenue fund upon such conditions as may be agreed upon by the State Department of Education and the school district involved.

"Repayment shall be made through regularly monthly deductions of a portion of the state aid normally paid to the school district by the State Department of Education in accordance with the provisions of section 3317.02 of the Revised Code. Final repayment shall be made not later than June 30, 1972. Failure of the school district to adopt a proposed tax levy as required by this section shall permit the State Department of Finance to begin immediate withholding of any school foundation moneys due that district after December 1, 1971 for the repayment of the advance made under this section.

"The Section shall remain in effect through June 30, 1972."

To summarize, this section provides that \$2,750,000 is appropriated for the benefit of financially distressed school districts; that the Department of Education may make advances from this fund to a distressed school district as soon as the Auditor of State certifies that such district is without funds to continue to operate; that, within thirty days of receipt of the first advance, such district must submit to its voters a tax levy sufficient to permit it to continue to operate until the end of 1972; that the advances shall be made in amounts sufficient to permit operations for thirty days at the most, but for no more than five days following the vote on the tax levy; and that the advances shall be repaid by deductions from the payments normally received by the district from the State School Foundation Program (Section 3317.02, Revised Code). What the Section does, in effect, is to permit advances to be made from the Foundation Program of money which would later be paid to the school districts in due course.

Section 3313.483, supra, provides that no board of education may close its schools if funds for normal operations are available. Funds have now been made available by the General Assembly, and the Auditor of State has apparently already certified that the school districts in question cannot continue to operate unless they receive additional money. In view of the mandatory nature of the laws set forth above, I conclude that you have no choice but to make the advances, and that the districts in question must accept the money, submit a tax levy to the voters within thirty days after receipt of the first advance, and continue school operations for thirty days following the first advance or five days following the election, whichever date occurs first.

In specific answer to your question it is therefore my opinion, and you are so advised, that a school district, which cannot otherwise continue in operation, must accept advances from the School District Operations Fund; submit a tax levy to the voters, within thirty days of receipt of the first advance, which will permit operation of the schools until the end of 1972; and continue operation of its schools for thirty days after the first advance or five days after the vote on the tax levy, whichever date occurs first.