

824.

APPROVAL—BONDS OF PERRY RURAL SCHOOL DISTRICT,  
LICKING COUNTY, OHIO, \$1,500.00. (UNLIMITED).

COLUMBUS, OHIO, July 2, 1937.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of Perry Rural School District, Licking  
County, Ohio, \$1,500.00. (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school building bonds dated June 1, 1937, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

825.

SCHOOLS, PARTICIPATION IN PUBLIC SCHOOL FUND,  
WHEN.

## SYLLABUS:

1. *In the case of a school having less than three teachers and an average daily attendance of less than one hundred and eighty pupils, the board of education in the school district must establish to the satisfaction of the director of education and the state controlling board that such school is an essential and efficient part of the state school system, in order to participate in the state public school fund.*

2. *In the case of a school having more than three teachers and an average daily attendance of less than one hundred and eighty pupils by virtue of the provisions of Section 7595-1, General Code, it is entitled to receive from the state public school fund the certain, specified, assured and*

*definite amount provided for in the schedule set up in Section 7595-1, General Code, but cannot receive the benefits of the minimum operating costs, as set up in the schedule in Section 7595-1c, General Code, unless it establishes to the satisfaction of the director of education and the state controlling board, that the school is an essential and efficient part of the state school system, as provided for in Section 7595-1c, General Code.*

COLUMBUS, OHIO, July 2, 1937.

HON. E. L. BOWSHER, *Director of Education, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads, as follows:

“Under the provisions of the School Foundation Program Act, the administration of the State Public School Fund is vested in the Director of Education, subject to the approval of the State Controlling Board. Section 7595-1c, General Code, provides, in part:

‘If and when the board of education of a school district maintaining one or more schools, each or any of which has an average daily attendance of less than one hundred eighty pupils, shall establish to the satisfaction of the Director of Education and the State Controlling Board that such schools are essential and efficient parts of the state school system, \* \* \*.’”

Under the requirements of this section each school board presents to the Director of Education a list of all schools operated in the district, together with the supporting data indicating whether or not each such school is an essential and efficient part of the system. It happens that in certain instances the local board of education has been unable to justify the continued operation of one or more schools as essential and efficient parts of the system when measured by every known standard of necessity, efficiency and economy. Consequently, such schools have not been approved by the State Controlling Board for participation in the State Public School Fund.

The specific question on which we desire your official opinion, may be stated as follows:

Must the board of education in each school district establish to the satisfaction of the Director of Education and the State Controlling Board that a school having less than 180 pupils in average daily attendance, is an essential and efficient part of the state school

system in order to participate in the State Public School Fund?

In order to eliminate the wasteful expenditure of state public school funds for the operation of an inefficient and unnecessary school, does the State Controlling Board have the authority to disapprove an inefficient and unnecessary school for distribution purposes?"

Sections 7595, 7595-1, and 7595-1c, General Code, are pertinent to the answer of your question.

Section 7595, General Code, creates a state public school fund for the support and maintenance of the public school system and for the equalization of educational advantages throughout the state; and provides that this fund is to be administered by the director of education, with the approval of the state controlling board, and subject to the restrictions of law.

Section 7595-1, General Code, provides in clear, plain and unambiguous language: that, there shall be apportioned and paid from the state public school fund *to each school district* of the state, *except* the "districts maintaining one or more schools, each or any of which have fewer than three teachers," a certain specified amount for each pupil, based on average daily attendance in grades nine to twelve, inclusive; that, this apportionment and payment from the state public school fund, as provided for in this section, represents a definite, certain, assured and uniform distribution to which every school in the state, except those schools employing less than three teachers, is entitled, providing, however, that the board of education of each school district has complied with, and performed the statutory requirements imposed upon each local district in order to participate in the state public school fund; that, under the provisions of this section, any school having three or more teachers, and having performed all the mandatory requirements, is entitled to its share of the state public school fund, on the basis of apportionment provided for in this section, regardless of the number of pupils in average daily attendance in each school; and that, under the provisions of this section, any school that has less than three teachers, regardless of the number of pupils in average daily attendance does not share in the state public school fund on the basis of apportionment provided for in this section, but is limited "by the minimum operating cost of the school foundation program as defined by law, or as determined by the director of education pursuant to law."

Section 7595-1c, General Code, provides as follows:

“For the purpose of distributing the state public school fund, the minimum operating cost of a foundation program is hereby defined to be:

(a) For pupils in average daily attendance in grades one to eight, inclusive, twenty-five cents a day for each pupil, for a term not to exceed one hundred eighty days.

(a-1) For pupils five years of age or over in average daily attendance in kindergarten classes twelve and one-half cents a day for each pupil for a term not to exceed one hundred and eighty days.

(b) For pupils in average daily attendance in grades nine to twelve, inclusive, thirty-seven and one-half cents a day for each pupil, for a term not to exceed one hundred eighty days.

(c) For pupils in elementary schools and high schools having an average daily attendance of less than one hundred eighty pupils, such amounts per day as will be sufficient to meet the increased cost per pupil due to small classes, to be determined as follows:

If and when the board of education of a school district maintaining one or more schools, each or any of which has an average daily attendance of less than one hundred eighty pupils, shall establish to the satisfaction of the director of education and the state controlling board that such schools are essential and efficient parts of the state school system, the amount to be allowed per pupil for the purpose of determining the minimum operating cost of a foundation program of education shall be such as will enable such school or schools to operate at a reasonable level of educational efficiency. For this purpose, schedules of foundation program operating costs for schools of less than one hundred eighty pupils in average daily attendance shall be established by the director of education; but in no case shall the minimum operating cost of a foundation program of education, upon which is based the allotment of moneys from the state public school fund, be less than one thousand one hundred and fifty dollars per annum for each one-teacher elementary school and two thousand four hundred dollars per annum for each two-teacher elementary school, plus the cost in each case of maintaining approved pupil transportation and tuition foundation programs, or either, as hereinafter provided. Such schedules shall define the minimum operating cost of each of the several foundation programs for schools with small average daily attendance in terms of a specific amount per pupil per day for each size type of school and such specific

amount shall be used in place of the amounts specified in paragraphs (a) and (b) of this section. \* \* \*

The first clause of Section 7595-1c, supra, states that for "the purpose of distributing the state public school fund, the minimum operating cost of the foundation program" is defined. It is to be observed from a reading of Section 7595-1c, supra, that, there must be provided a minimum amount for each school district in the state for operating expenses or costs; that, a schedule is set up of a certain definite amount for each pupil in average daily attendance for the minimum operating costs of each school in the state except elementary and high schools having an average daily attendance of *less* than one hundred and eighty pupils; that, "schedules of foundation program operating costs for schools of less than one hundred and eighty pupils in average daily attendance shall be established by the director of education;" that, the import of the language contained in subsection (c) of Section 7595-1c, is clear, plain and bears no other construction than that, in case of a school of less than one hundred and eighty pupils in average daily attendance, the amount that such school is to receive for the minimum operating cost of the foundation program is to be determined in the following manner: "If and when" the board of education "shall establish to the satisfaction of the director of education and the state controlling board that such schools are essential and efficient parts of the state school system, the amount to be allowed" "shall be such as will enable such school or schools to operate at a reasonable level of educational efficiency."

The language used in subsection (c) of Section 7595-1c, is couched in mandatory terms. "*If and when*" the board of education "*shall establish,*" is a mandatory condition precedent, and upon the performance of this duty by the board of education, the director of education, who is imposed with the mandatory duty of establishing schedules of foundation program operating costs for schools of less than one hundred and eighty pupils in average daily attendance, must allow such an amount per pupil "as will enable such school or schools to operate at a reasonable level of educational efficiency." The language employed is plain, clear and unambiguous, and from this language employed the intent of the legislature is clearly determined. It is obvious that if money is apportioned on per pupil average daily attendance basis, the less number of pupils a school has enrolled the greater its hardship will be in securing sufficient money on which to operate. It receives less money, and yet it is burdened with a certain amount of necessary operating expenses that are incurred in the operation of a school for a few as well as for many. Therefore, it can be assumed: that, the legislature knew when it said, "as will be sufficient to meet the increased cost per pupil due to small

classes," that it would be necessary for the small schools to receive more aid if the purpose of "equalization" was to be fulfilled and that, since the small school was to receive extra benefits it placed the burden upon it to "establish to the satisfaction of the director of education and the state controlling board" that its school is an essential and efficient part of the state school system, and therefore, is entitled to extra aid.

There is nothing inconsistent between Sections 7595-1 and 7595-1c, supra. By the provisions of Section 7595-1, supra, if a school has less than three teachers, it is not entitled to receive from the state public school fund a certain specified definite amount based upon each pupil in average daily attendance, as set up in the schedule in Section 7595-1, supra. By reason of the following language employed in Section 7595-1, supra: "shall be limited by the minimum operating cost of the foundation program as defined by law or as determined by the director of education pursuant to law," the amount that a school of less than three teachers is to receive from the state public school fund is governed by the provisions of Section 7595-1c, supra.

Therefore, if a school has less than three teachers and more than one hundred and eighty pupils, it is to receive that certain definite amount for each pupil in average daily attendance, in accordance with the schedule set up in Section 7595-1c, for minimum operating cost of a foundation program, in grades one to eight, twenty-five cents a day for each pupil; in grades nine to twelve, thirty-seven and one-half cents a day, etc.

If a school has three or more teachers and an average daily attendance of more than one hundred and eighty pupils it is entitled to receive from the state public school fund the certain specified, assured and definite amount provided for in the schedule set up in Section 7595-1 supra, and to the benefits of the minimum operating costs as set up in the schedule in Section 7595-1c, supra.

If a school has more than three teachers and an average daily attendance of less than one hundred eighty pupils by virtue of the provisions of Section 7595-1, supra, it is entitled to receive from the state public school fund the certain, specified assured and definite amount provided for in the schedule set up in Section 7595-1, supra, but cannot receive the benefits of the minimum operating costs as set up in the schedule in Section 7595-1c, supra, unless it establishes to the satisfaction of the director of education and the state controlling board that the school is an essential and efficient part of the state school system, as provided for in Section 7595-1c, supra.

If the school has less than three teachers, and an average daily attendance of less than one hundred eighty pupils by virtue of the language in Section 7595-1, General Code, which exempts schools of less than three teachers and makes such a school subject to the pro-

visions of Section 7595-1c, supra, when it states, "as determined by the director of education pursuant to law" and by the language itself employed in (c) of Section 7995-1c, supra, the board of education of such a school must establish to the satisfaction of the director of education that the school is an essential and efficient part of the state school system. Otherwise, under the provisions of Sections 7595-1 and 7595-1c, supra, it is entirely barred from participating in the state public school fund.

A reading of the statutes hereinabove referred to, fails to disclose any ambiguity. The language employed is plain, certain, clear and free from any doubt. Therefore, there can be no doubt but that the provisions contained in Section 7995-1c, supra, requiring the board of education to establish to the satisfaction of the director of education and the state controlling board that the school is an efficient part of the state school system, means exactly what it says, and is mandatory upon the board of education.

It is a fundamental rule of law that, if a statute is plain, certain and unambiguous, so that no doubt arises as to its scope and meaning, there is nothing left for construction. This principle of law was enunciated by the Supreme Court of Ohio, in the case of *Slingsluff vs. Weaver*, 66 O. S. 621, where it is said:

"But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

It is obvious: that, in a case where a board of education must establish to the satisfaction of the director of education and the state controlling board that a school is an essential and efficient part of the state school system, that it is within the discretion of the director of education and the state controlling board to determine whether it has been satisfactorily shown that such school is an essential and efficient part of the state school system; and that, if the director of education and the state controlling board determine that such has not been satisfactorily shown they have the authority to bar such a school from participating in the state public school fund, so long as they have not exercised their discretion in an arbitrary, prejudiced or biased manner.

Before concluding, I desire to call attention to a recent request

that came to this office. Although that request is not pertinent to your question, it related to a case where it was impossible for the board of education to perform the duty imposed upon it under the provisions of Section 7595-1c, supra. In other words, it involved the limitation of this mandatory provision, and therefore, I think it advisable at this time, to mention the same. The informal opinion I rendered in response to that question, held: •

“In a case where the board of education of a school district refused to reopen schools upon the filing of petitions, as provided for in Section 7730, General Code, and the schools were duly reopened by an order of a court of competent jurisdiction, the board of education of the school district would be unable to comply with the provisions of Section 7595-1c, of the General Code, and ‘establish to the satisfaction of the director of education and the state controlling board that such schools are essential and efficient parts of the state school system’; that, therefore, the order of the court to reopen such school has the effect of establishing to the satisfaction of the director of education and the state controlling board that said schools are essential and definite parts of the state school system, and that, the board of education cannot be penalized for failure to take any action in a situation where an order of the court has made it impossible.”

In specific answer to your question, it is my opinion: that, in the case of a school having less than three teachers and an average daily attendance of less than one hundred and eighty pupils, the board of education in the school district must establish to the satisfaction of the director of education and the state controlling board that such school is an essential and efficient part of the state school system, in order to participate in the state public school fund.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*