

1100.

FREE WATER SERVICE TO SCHOOL DISTRICT—SECTION 3963 G. C.
DOES NOT AUTHORIZE SUCH SERVICE WHEN CITY SCHOOL
DISTRICT INCLUDES TERRITORY OUTSIDE OF CITY OR VILLAGE.
—EFFECT OF AMENDMENT TO SECTION 3963 G. C., 108 O. L. ---

1. *Under the provisions of section 3963 G. C. as now in force, a city or village is not required or authorized to furnish free water service to the school district in which said city or village is situated, when said city school district includes territory outside of the boundaries of the city or village.*

2. *Section 3963 G. C. was amended in H. B. 561 and in the absence of a referendum against the measure, it will become operative May 12, 1920. The amended section only requires a city board of education of a district which includes territory outside of the boundaries of the city to pay its proportionate share for water service furnished said district in the ratio which the tax valuation of the property outside of the city or village bears to the tax valuation of all the property within the district.*

COLUMBUS, OHIO, March 24, 1920.

HON. F. B. PEARSON, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"I am asking that you give an opinion on the following:

The city of Dayton, Ohio, furnishes water to the various school buildings in the city school district of Dayton, Ohio.

Said city school district embraces territory outside the corporate limits of Dayton. A number of schools in the city school district have pupils enrolled from territory outside the corporate limits of the city, but within the boundaries of the city school district.

Is the board of education legally bound to pay the city of Dayton for water furnished to all the school buildings in the above city school district, or for only water furnished to those buildings in which the pupils are enrolled partly outside the corporate limits of Dayton, but within the city school district?

Would the fact that the high schools enroll pupils from the entire district affect your answer?"

Section 3963 G. C., which is relevant to your inquiry, provides as follows:

"No charge shall be made by the director of public service in cities, or by the board of trustees of public affairs in villages, for supplying water for extinguishing fires, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, the cleaning of market houses, the use of any public building belonging to the corporation, or any hospital, asylum, or other charitable institutions, devoted to the relief of the poor, aged, infirm, or destitute persons, or orphan or delinquent children, or for the use of public school buildings but, in any case where the said school building, or buildings, are situated within a village or cities, and the boundaries of the school district include territory not within the boundaries of the village or cities in which said building, or buildings are located, then the directors of such school district shall pay the village or cities for the water furnished for said building or buildings."

This section was amended in house bill 561, which was filed in the office of the secretary of state February 11, 1920, and will become operative ninety days thereafter, unless a referendum should be instituted upon said measure. Inasmuch as said original section is now in force, and the question you present arises under its operation, this opinion must consider the same in connection with your statement of facts.

The following is quoted from an opinion of the attorney-general, of record in the annual report of the attorney-general, 1911-1912, page 548:

"Under the language of section 3963, General Code, the water furnished to school buildings which are located in cities whose school district is partly in the city and partly comprises territory outside of the city, must be paid for by the director of such district to the city."

In the case of the city of Canton vs. Board of Education of Canton City School District, decided by the common pleas court of Stark county, January 29, 1916, Judge Day in his opinion in part said:

"* * * The city of Canton claims that the board of education of the Canton city school district, by reason of the fact that the boundary of a city school district includes territory outside the boundary of the municipal corporation of Canton, is liable to and compelled to pay the city of Canton for water furnished to all the school buildings controlled by said board of education by virtue of section 3963, General Code of Ohio, as amended in O. L., volume 102, page 94.

The board of education contends that under said section, it is not liable for water service used in the public buildings since all the school buildings are within the corporate limits of the city of Canton.

The question to be determined in this case depends upon the construction to be given section 3963, General Code, as amended.

The reading of said section, leaving out the words not necessary to be stated, and referring to other matters, will read as follows:

'No charge shall be made * * * for supplying water for the use of any public school buildings but, in any case where the said school buildings are situated within a city and the boundaries of the school district including territory not within the boundaries of the city, in which said buildings are located, then the directors of such school districts shall pay the city for the water furnished for said buildings.'

The provisions of the statute seem to be plain, and it will hardly be necessary to place a construction upon its provisions. The words used in the statute are plain and ordinary words, and there being no ambiguity, the only thing for the court to do is to give the language its ordinary meaning.

There is no way to determine the intent of the legislature, and not being able to go into the intent of the legislature, the only thing that the court can do is to say that the legislature meant exactly what it said in the statutory provisions.

We are unable to say that the intention of the legislature was different from its expression of such intent in the wording of the provisions of the statute and in view of the language used, we think that there can be but one meaning, that where the school buildings are situated within a city, the school district of which includes territory attached to it for school purposes, the directors of such district shall pay the city for the water furnished to the school buildings.

That being true, we are of the opinion that the board of education of the Canton city school district should be required to pay the city of Canton,

Ohio, for the water furnished said school buildings, as stated by the readings of the meters attached to the finding of facts in the case."

This decision was later affirmed by the court of appeals of said county.

It is the opinion of this department that a city board of education in a district that includes territory outside of the corporate limits of the city or village is not entitled to receive any free water under the provisions of section 3963 in the form in which it is now in force. However, it should be noted in this connection that said section as amended changes the foregoing rule. The amended section provides:

"Section 3963. No charge shall be made by a city or village, or by the waterworks department thereof, for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, the cleaning of market houses, the use of any public building belonging to the corporation, or any hospital, asylum, or other charitable institutions, devoted to the relief of the poor, aged, infirm, or destitute persons, or orphan or delinquent children; or for the use of the public school buildings in such city or village.

But in any case where the school district, or districts, include territory not within the boundaries of the city or village, a proportionate charge for water service shall be made in the ratio which such tax valuation of the property outside the city or village bears to the tax valuation of all the property within such school district, subject to the rules and regulations of the waterworks department of the municipality governing, controlling, and regulating the use of water consumed."

It is clear under the provisions of said amended section that the board of education of a city or village school district which contains territory outside the corporate limits of the city or village will only be required to pay its proportionate share for water service furnished said district in the ratio to which the tax valuation of the property of that part of the district which lies outside of the corporate limits bears to the tax valuation of the property of the entire district. This amendment will become effective May 12, 1920, if as above stated a referendum is not instituted.

It is believed that this amended section will definitely settle the question in such cases as presented by you when it becomes effective. It will be observed that it is the intent of this statute to apply to all cities of the state. Therefore it will apply to chartered cities, unless of course the said statute should be declared by the courts to be unconstitutional. However, it is not the policy of this department to construe the constitutionality of a law. Therefore that question has not been considered.

Respectfully,

JOHN G. PRICE,

Attorney-General.