

4633.

APPROVAL, NOTES OF SPRINGFIELD TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$12,500.00.

COLUMBUS, OHIO, September 21, 1932.

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

4634.

TUITION—NON-RESIDENT HIGH SCHOOL PUPILS—METHOD OF DETERMINING SUCH DISCUSSED.

SYLLABUS:

The amount of tuition to be charged non-resident high school pupils attending high school in a city or exempted village school district, in the absence of a specific agreement therefor, should be no more per capita than an amount ascertained by dividing the total expenses of conducting the high school attended, exclusive of permanent improvements and repairs, including not more than a five percent interest charge and a five percent depreciation charge as provided by Section 7747, General Code, after deducting therefrom the amount of the 2.65 mills state school levy authorized by Section 7575, General Code, which is allotted to the districts on account of teachers and other employes in the high school, high school employment costs and proportionate aggregate attendance of pupils in the high school in accordance with said Section 7747, General Code, by the net annual enrollment in the high school.

COLUMBUS, OHIO, September 21, 1932.

HON. CHAS. T. STAHL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, as follows:

“In computing tuition for pupils from townships having no high school should the 2.65 mills be deducted from the total expenses plus 5% depreciation and 5% interest charged by exempted villages, the said villages getting no part from the said levy of 2.65 mills from any township sending students to the high school of said villages.

The said 2.65 mills is distributed by the board of county education and the said exempted villages do not obtain any portion thereof, as the said exempted villages are no part of the county system.”

Provision is made for the distribution of the proceeds of the tax levy authorized and directed to be made by Section 7575, General Code, commonly referred to as the 2.65 mills tax levy for school purposes by Section 7600, General Code. Said Section 7600, General Code, reads in part, as follows:

“After each semi-annual settlement with the county treasurer each county auditor shall immediately apportion school funds for his county.

Each city school district and each exempted village school district shall receive the full amount of the proceeds of the levy of two and sixty-five hundredths mills provided in section 7575, General Code, in the given school district. The proceeds of such levy upon property in the territory of the county outside of city and exempted village school districts shall be placed in the 'county board of education fund' and shall be known as a 'county educational equalization fund.' * * *

The proceeds of the county educational equalization fund shall be apportioned by the county board of education to each school district and part of district within the county outside of city and exempted village school districts on the basis of the number of teachers and other educational employes employed therein, and the expense of transporting pupils as determined by the above educational survey, and the balance according to the ratio which the aggregate days of attendance of pupils in such districts, respectively, bears to the aggregate days of attendance of pupils in the entire county outside of exempted village and city school districts."

From the terms of the foregoing statute it appears that city and exempted village school districts are to be allotted the entire proceeds of the 2.65 mills levy collected on account of taxable property in those districts. That portion of the proceeds of this levy upon property of a county outside of city and exempted village districts constitutes what is known as a "county educational equalization fund." The county educational equalization fund is to be allotted to school districts of the county outside of city and exempted districts on the basis of (1) number of teachers and educational employes in the district (2) expense of transporting pupils and (3) ratio of aggregate attendance of pupils as provided by the statute.

All teachers and educational employes in a district, whether in high schools or other schools, all expense of transportation of pupils whether of elementary or high school pupils in all classes of schools in a district are to be considered in making this allotment. The statute makes no distinction as between elementary schools, high schools, trade schools or any other class of schools in providing for this allotment.

There is no way of determining how much of the county educational equalization fund is allotted to a district on account of teachers and school employes, transportation costs and aggregate days of attendance incident to the elementary schools or the high schools or any other class of schools in the district except by taking the entire amount allotted to the district and dividing it between the several classes of schools in the district in the proportion that the number of teachers and educational employes and transportation costs and aggregate days of attendance in each of these schools bear to each other. It is simply a matter of computation to determine the amount allotted to the district on account of the maintenance of each of the classes of schools maintained in the district.

The computation of the amount of tuition to be charged high school pupils who reside in districts in which no high school is maintained and attend school in another district in the absence of a specific agreement with respect to the matter, is controlled by Section 7747, General Code, the pertinent part of which reads as follows:

"The tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained, shall be paid by the board of education of the school district in which they

have legal school residence, such tuition to be computed by the school month. * * * * No more shall be charged per capita than the amount ascertained by dividing the total expense of conducting the high school attended, exclusive of permanent improvements and repair, said total expenses to include interest charges not exceeding five percent per annum and depreciation charges not exceeding five percent per annum, based upon the actual value of all property used in conducting such high school, by the net annual enrollment in the high school.

In computing such total expenses of conducting such high school the amount of the state school levy retained in the county apportioned to such district on account of teachers and other persons employed in such high school, the amount of said common school fund apportioned thereto on account of transportation of high school pupils and the amount of such funds apportioned thereto on account of aggregate days of attendance of high school pupils shall be deducted from the gross expenses of conducting such school."

It will be observed from the terms of the foregoing statute that in ascertaining the total amount of maintaining a high school for the purpose of fixing tuition charges there shall be included in that expense five percent for interest charges and five percent for depreciation and there is to be deducted from the *gross* expense of conducting such high school the amount of the *state school levy retained in the county* apportioned to such district on account of teachers and other employes employed *in such high school* the amount of said common school fund apportioned thereto on account of transportation of high school pupils and the amount of such funds apportioned thereto on account of aggregate days of attendance of *high school* pupils.

Inasmuch as the statute fixes the *total* expense of conducting the high school for the purposes mentioned to include five percent for depreciation and later speaks of the *gross* expense of maintaining the schools I am of the opinion that the words "total" and "gross" are meant to be used synonymously and that after this gross or total expense is determined the deductions should be made as provided by statute. To arrive at the amount of deduction to be made as provided by the statute resort must be had to the computation spoken of above, to determine the proportionate amount of the proceeds of the levy spoken of which has been allotted to the district on account of teachers and other employes in the high school, the transportation of high school pupils and the aggregate days of attendance of high school pupils. The statute, Section 7747, General Code, makes no distinction as between city, exempted village, village and rural school districts. The language of the statute is general in terms and in its present form obviously applies to all districts.

Prior to 1921, no discrimination was made as between school districts in a county in the apportionment of the proceeds of the school levy required by Section 7575, General Code, to be retained in the county. City, village and rural districts all stood on the same basis with respect to the distribution of this fund. The allotments were then made on the basis of the number of teachers and educational employes, transportation costs and proportionate days of attendance very much the same as is now provided for the distribution of the proceeds of this tax to school districts outside of city and exempted village districts in a county. See Section 7600, General Code, as amended in 1920 (108 O. L., Part 2, 1308) and previous enactments of the statute (104 O. L., 159, Section 3964, Revised Statutes.)

In 1921, Section 7600, General Code, was amended to provide that each city and exempted village district in a county should receive the full amount of the tax collected in the district. (109 O. L., 149). The statute has since been amended in some respects (113 O. L., 292) but the above mentioned provision has not been changed.

Prior to the amendment of Section 7600, General Code, in 1921, Section 7747, General Code, as it existed upon amendment in 1920 (108 O. L., Part 2, 1310), provided with reference to computing high school tuition charges that there should be deducted from the total expenses of conducting the high school the amount of the school levy authorized by Section 7575, General Code, which was apportioned to the district on account of teachers and employes in the high school, high school transportation costs and proportionate aggregate days of attendance of high school pupils substantially as the present statute provides.

Upon the amendment of Section 7747, General Code, in 1920, as stated above, and in the same act of the legislature, Section 7600, General Code, was amended providing for the distribution of this levy. As then amended, Section 7600, General Code, did not provide that city and exempted village districts should fare any differently in the distribution of this levy than other districts. The distribution as there directed was to be made to all districts on the basis of teachers and other employes, transportation costs and aggregate days of attendance.

It is clear that at that time the determination of high school tuition charges as directed by Section 7747, General Code, was no different in one class of districts than in another, and in my opinion changes made in the statute subsequent to 1920 do not manifest any different legislative intent with reference to this matter.

In any case, resort must be had to the method of computation referred to above allocating the amount of the levy distributed to a district among the classes of schools in the district to determine the amount attributable to the maintenance of a high school as a basis for fixing the proper tuition charge and it is no more difficult to do this in city and exempted village districts than in those districts that are part of a county school district.

I am therefore of the opinion in specific answer to your question that the amount of tuition to be charged non-resident high school pupils attending high school in a city or exempted village school district in the absence of a specific agreement therefor, should be no more per capita than an amount ascertained by dividing the total expenses of conducting the high school attended exclusive of permanent improvements and repairs including not more than a five percent interest charge and a five percent depreciation charge as provided by Section 7747, General Code, after deducting therefrom the amount of the 2.65 mills state school levy authorized by Section 7575, General Code, which is allotted to the districts on account of teachers and other employes in the high school, high school transportation costs and proportionate aggregate attendance of pupils in the high school in accordance with said Section 7747, General Code, by the net annual enrollment in the high school.

Respectfully,

GILBERT BETTMAN,
Attorney General.