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VOCATIONAL EDUCATION—HOW FEDERAL MONEY AND STATE MONEY PROVIDED UNDER SMITH-HUGHES LAW SHALL BE MATCHED—AUTHORITY OF CONTROLLING BOARD TO TRANSFER SUMS FROM LUMP SUM APPROPRIATION—WHAT RECOMMENDATIONS SHOULD BE MADE TO GENERAL ASSEMBLY BY STATE BOARD OF EDUCATION.

(1) *In matching the expenditure of federal money allotted to the state under the provisions of the Smith-Hughes law, the federal money expended in the state at large should be matched annually by combining the sums expended during the year by the local districts and the state board of education for vocational education.*

(2) *Where the general assembly has appropriated a lump sum for the purpose of co-operative work with the federal government in vocational education in accordance with the provisions of the Smith-Hughes law, such appropriation is not bound to be wholly spent for purposes for which the federal government will assume one-half of the expense.*

(3) *The controlling board provided for in section 4 of House Bill No. 536 (108 Ohio Laws) has authority to transfer certain sums from such lump appropriation for those purposes for which the appropriation is made, but such amounts that may be transferred by such controlling board should not aggregate in any year a sum that would deplete the remainder of such lump appropriation so that such remainder, plus the sums expended in local districts for vocational education, would be insufficient to match that amount of federal moneys expended for vocational education in the state which must be matched annually by the state and its local districts.*

(4) *Under section 367-6 G. C., the state board of education should recommend to each session of the general assembly the amount of money which will need to be appropriated by the state, which amount added to the local expenditure in districts for vocational education would equal the federal allotment, and such state board of education should recommend to the general assembly additional appropriation items for the proper administration and carrying on of vocational education in Ohio.*

COLUMBUS, OHIO, March 24, 1920.

HON. J. F. HARPER, *Budget Commissioner, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

“For the fiscal year 1919-1920, \$152,428.90 was appropriated to the state board of education for ‘Co-operative work with the federal government in vocational education in accordance with provisions of the Smith-Hughes law.’ This amount is exactly the same as the amount the federal government allotted Ohio as its share of the Smith-Hughes fund, with the provision that a similar amount be furnished for this work by the state or local communities, or both.

Can the state board of education expend any part of this money for any purpose which the federal government will not recognize to the extent of assuming one-half of the expense?

Can the state board of control legally transfer a portion of the aforesaid funds of the state board of education so that it may be available for purposes other than that which the federal government will share in the expense?”

Your first question is whether any portion of the \$152,428.90 appropriated by the general assembly to the state board of education for "co-operative work with the federal government in vocational education, in accordance with the provisions of the Smith-Hughes law," for the fiscal year 1919-1920, can be expended by the state board of education for any purpose which the federal government will not recognize in assuming one-half of any expense incurred for said purpose.

It will be noted that the language of the appropriation by the general assembly to the state board of education in this instance is rather broad, for it says it is for "co-operative work" in vocational education. The federal enactment, providing for assistance to the several states in the matter of vocational education in those states, provides that the amount of money allotted to the state in question must be used only for certain purposes which are limited to salaries of teachers and the cost of teacher training. There is no provision in the Smith-Hughes federal law for the overhead expenses which might occur in the proper administration of the functions of the state board of education. Even the supervisor or director of vocational education in the state must be provided, as far as salary is concerned, by the state. It is therefore apparent in the case at hand that if the \$152,428.90 appropriated by the general assembly of Ohio must be held apart throughout the entire year and not expended, because there is another \$152,428.90 of federal money granted to the state which must be matched, then no provision has been made by the general assembly of the state for any overhead expense in the matter of administration, even to the extent of providing a stenographer for the state board of education and its employees. But the state is not required to spend the entire amount of the federal appropriation, but can spend such portion of it through its state board of education as it sees fit. The exact amount of money taken from the \$152,428.90 appropriated by the federal government *and spent by the state board of education* for the purposes approved by the federal board for vocational education must be matched with an equal amount, dollar for dollar, from the state appropriation, the local district appropriation, or both.

Your attention is invited to the following language occurring in a letter addressed to this department by the chief of division for vocational education, Washington, D. C., under date of December 23, 1919:

"I would say that the federal government had no control whatever over the funds appropriated by the general assembly of Ohio to the Ohio state board for vocational education. The statute under which this appropriation, or these appropriations, were made would determine the purpose for which the moneys might be used. The federal law requires that *each dollar of federal money expended shall be matched by state or local dollar, or both*, for the same purpose. The conditions under which the federal money may be expended are set up in the law and the state plans. In my opinion the federal board has no jurisdiction beyond seeing to it that the federal money is expended as above provided and that such *expenditures are matched by state or local expenditures or both.*"

From the above holding of the federal board for vocational education it appears that while the state accepting the federal allotment for vocational education is always responsible for the amount which the federal board has remitted to the custodian of such funds in the state, yet *it is the expenditures that are made* from federal funds that are to be matched by state funds, or local funds, used for the same purpose, and even then this matching of the *federal money spent* can be made up on the state's side "by a state or local dollar, or both, for the same purpose."

A personal conference with the president of the state board of education reveals the fact that where a school district in the state is to be assisted in accord-

ance with the federal Smith-Hughes law, the state board of education now requires that the local school district in many instances shall pay twenty per cent or one-fifth of the expense attendant to such vocational education in that school district. Thus while one can find out to the cent the amount of money that the state has appropriated by its general assembly, as above indicated, no such exact figures can be ascertained as to what this twenty per cent supplied in a number of school districts in the state to the state board of education may amount to in a year until the annual settlement is made, and yet from the standpoint of matching money or expenditure of the part of the federal appropriation that is used, the dollar which comes from the local district can be used to match a federal dollar for the same purpose, with the result that to the extent that the local districts in Ohio pay this twenty per cent as their part to the state board of education, just to that extent will the appropriation made by the general assembly of the state of Ohio to the state board of education for the purpose of vocational education *be unused*, for a purpose in which the federal government assumes one-half of the cost.

In examining this situation from a practical standpoint, we find it is the policy of the state board of education, in the encouragement of vocational education, to allow the full one-hundred per cent of cost of such vocational teaching for the first year, that is, during the inauguration of vocational education in that district. After it has been inaugurated, and for the following year, the state board of education then demands that the local board of education accepting the assistance of the state board of education in vocational training, shall pay twenty per cent of the cost of such vocational teaching in that district. Thus we find that as the agents of the state board of education are establishing this activity in the various districts of the state, some districts will be paying the twenty per cent required by the state board of education, because they have had their first year of inaugurating the service, while in another district in which vocational education has just been established, the assistance of the state board of education will be one hundred per cent, that is, during the first year such district will not be required to pay the twenty per cent that obtains in the second and succeeding years. This twenty per cent is established by the state board of education as a regulation of its own and it has full authority to make such regulation, and if the state board of education cares to do so, it could require that the local district should pay fifty or only ten per cent of the cost of vocational education in that district.

As a concrete illustration, to show that the money which the local district pays to the state board of education relieves just that amount of the state appropriation in the matching of federal funds, consider a case in which the vocational teacher, in a certain district, received the maximum pay of three dollars for two hours teaching in that district in evening classes. In that district, if vocational education has been established beyond one year, the local board of education pays twenty per cent of such three dollars, or sixty cents, leaving \$2.40 to be paid jointly by the federal government, and the state of Ohio, through their joint agency in this matter, that is, the state board of education. Here, as indicated, the federal government spends \$1.20 and the local district matches this \$1.20 to the extent of sixty cents, and the state appropriation furnishes the other sixty cents, making a total of \$1.20 from the state of Ohio and districts therein to match the \$1.20 spent in this district by the federal government for vocational education. It is apparent, therefore, that if the local district steps forward and pays a portion of the half that must be furnished by the state at large, then to the extent that the local district steps forward in amount, the state appropriation is relieved.

The arrangement between the state board of education and the district board of education carrying on vocational education as a part of its educational activity, is an arrangement made between these two entities as regards the amount to be paid toward the expense of vocational education in that district by the local board of

education. In practice, the local board of education pays the teacher his salary in the first instance, knowing it will be reimbursed at settlement time by the state board of education to the extent of eighty per cent of the amount paid to such teacher. It is apparent, therefore, that as long as the local board of education is the paymaster of the teacher in the first instance, the state board of education runs very little risk of not receiving (or rather holding back) the twenty per cent which had been agreed upon as being paid by the local district. These figures from the various districts of the state active in vocational education close with the fiscal year, that is, June 30, under the provisions of the Smith-Hughes law, and the report from the state board of education to the federal board for vocational education is made as of July first. At that time the exact figures could be ascertained as to what was received from the local districts by the state board of education as to the amount to be paid by such districts as their part of vocational training in their districts.

We are advised by those in authority to speak for the state board of education that for the current fiscal year the sum of possibly \$40,000 will be received from local districts as their part of the cost of vocational education in their districts, such \$40,000 to match a certain \$40,000 expended from the federal funds. It is plain, then, that since the federal expenditure is to be matched but *once*, a similar \$40,000 is not required from the state appropriation to match the same federal \$40,000 which the districts have matched in their total.

The federal government has appropriated \$152,428.90 to the state of Ohio for vocational education purposes and any portion of such \$152,428.90 that is used by the state board of education for the salary of teachers and teacher training must be exactly matched dollar for dollar by state or local funds to the same amount. If the local districts of the state active in vocational education furnish \$40,000 for the current fiscal year and the general assembly has appropriated \$152,428.90, then the whole amount available in Ohio for matching the \$152,428.90 from the federal government is \$192,428.90, brought about because of the money received from the local communities.

No such narrow construction can be put upon the law as would tie up this \$192,428.90 to match the sum of \$152,428.90 allotted by the federal government for vocational education. If the whole federal appropriation were used, that is, expended, there would still be the \$40,000 excess paid in by the local districts, but which amount is not wholly apparent until the time of settlement at the end of the fiscal year, that is, June 30.

Your second question is as to whether the state board of control can legally transfer a portion of the \$152,428.90 appropriated by the general assembly for "co-operative work with the federal government for vocational education, in accordance with the provisions of the Smith-Hughes law," so that such portion may be available for purposes other than that which the federal government will share in the expense. Technically the general assembly possibly should have provided for detailed expenses of the state board of education by specific appropriations, which would take care of overhead expenses such as equipment and clerical help. But the general assembly did not do so, seeing fit only to appropriate an amount as a whole for "co-operative work with the federal government" and co-operative work does not necessarily mean that such work or the expense of such work shall be equally divided half and half between those performing such work. One can co-operate with another in the performing of a certain function without assuming the doing of an exact half of such work. It must be remembered that the work of vocational education is being inaugurated in the state of Ohio and therefore a liberal construction should be placed upon the language of the general assembly in its appropriation act, for the legislative intent must have been to assist in the

best manner possible in bringing vocational education into the various districts of this state where such districts desired it.

A careful comparison of the provisions appearing in the act "to create a state board of education and to accept the provisions of the act of congress providing for national aid for vocational education, and to provide for carrying the same into effect" shows that section 367-1 provides for the matching of funds with the federal government, while section 367-6 of said act provides for matching state and federal funds in a district. The act to create a state board of education which was to function with the federal board for vocational education was filed in the office of the secretary of state on April 2, 1917, and in such act the state of Ohio accepted in full the provisions of the Smith-Hughes law as is indicated in the opening section of Senate Bill No. 139 (107 Ohio Laws, p. 579), which reads:

"Section 367-1. The provisions of an act of congress entitled, 'An act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure,' are hereby accepted by the state of Ohio."

By enacting the above provision as one of the statutes, the state of Ohio thereby accepted all of the provisions of the Smith-Hughes law, a federal enactment, one of which provisions as construed by the federal authorities is that "each dollar of federal money expended shall be matched by state or local dollar, or both." Thus, the state has the privilege of calculating all the money spent in the state by the local boards and by the state board of education in its annual aggregate matching of federal moneys which have been expended in the whole state up to July 1. The federal board for vocational education has indicated by official rulings that it is immaterial to the federal government as to how or by whom *the federal moneys expended must be matched*, the point being that they must be matched to a cent by either state money or local money, *or both*. So we find in Ohio in practice under the administration of the state board of education that the state board of education expends state funds and the local board of education expends its funds, both of which should be aggregated to offset any federal moneys expended, and to the extent that local funds are expended just to that extent there is a corresponding relief on the liability of the state moneys in the annual aggregate matching of federal moneys *expended*.

After accepting the federal rule as to the matching of federal funds expended in the state as a whole each year, such acceptance appearing in section 367-1, supra, the following language, however, occurs in section 367-6 of the same act, relative to matching funds in a district, and was passed at the same time (1917):

Section 367-6. "Any school, * * * which receives the benefit of federal moneys as herein provided, shall be entitled also to receive for the salaries of teachers of said subjects an allotment of state money equal in amount to the amount of federal money which it receives, as herein provided, for the same year. * * *"

This section means that if a certain school district which has inaugurated vocational education receives one hundred dollars as federal aid, there must also be paid such district, by the state board of education, the sum of one hundred dollars as state aid, while on the other hand the local district may have added fifty dollars as its own contribution in each two hundred and fifty dollars to be com-

puted. So while the state under section 367-6 G. C. must match in the district the same amount of money that the district receives from the federal funds, when it comes to *the matching of the whole amount of federal money expended in a state* in a year for vocational education in all districts, the sum of the state aid furnished must be added to the local money furnished, and this amount from both will offset or match an equal amount of federal money expended in the state at large. Such is the intent of the Smith-Hughes federal enactment, the provisions of which were accepted in full by the state of Ohio under section 367-1 G. C. The terms of section 367-1 G. C. must govern, since it accepted the whole of the provisions of the federal law, which would take precedence over any subsequent state enactment. Under the provisions of section 367-1 G. C. a contract relation is established between the state of Ohio and the federal government, that is, both put in their moneys for a common purpose, to be expended by joint control. Any legislation later materially changing the method which was accepted in section 367-1 would in a sense be an impairment of the contract obligation assumed by the state of Ohio with the United States government in accepting the provisions of the Smith-Hughes act of congress.

That it was the intention of the general assembly that the state board of education should have an appropriation for administration purposes is apparent upon reading the provisions of section 367-6, as amended in 108 Ohio Laws, p. 357 (filed in the office of the secretary of state May 17, 1919), which amendment repeats the provisions heretofore given in section 367-6, supra, and then says:

"The state board of education shall recommend to each session of the general assembly the amount of money which will need to be appropriated by the state for such allotments and for *such other expenditures as may be necessary for the administration of this act*, during the succeeding biennial period. The state board shall also recommend such additional legislation as may be necessary for the promotion and administration of vocational education in the state."

This language was placed in the statute by the same general assembly which appropriated the following item:

"F 9. General Plant—

Co-operative work with federal government in vocational education
in accordance with provisions of the Smith-Hughes law—\$152,428.90."

Here the state board of education is given the authority to recommend the amount of money to be appropriated by the state to match federal money expended for vocational education in Ohio, and in making such recommendations the state board of education shall have in mind the certain sums are to be expended by local boards of education, and therefore the amount appropriated by the state board of education should have in mind that certain sums are to be expended by local boards of education, and therefore the amount appropriated by the general assembly of Ohio would not necessarily need to be exactly the same, but rather less than the amount of money allotted to the state of Ohio by the federal government for the purpose of vocational education. This has been illustrated before in this opinion where there is seemingly available approximately \$192,000 of funds arising in Ohio to match *that portion of \$152,000 of federal money allotted to the state of Ohio, which is spent.*

Relative to the matter of transferring any portion of this \$152,428.90 appropriated by the general assembly for the year 1919-20 for co-operative work with the federal government in vocational education, attention is invited to the language of the appropriation act itself, which says:

Section 4, House Bill 536:

"* * * Authority to expend the monies appropriated in sections 2 and 3 of this act otherwise than in accordance with such classifications of detailed purposes, *but within the purpose for which appropriation is made*, may be granted to any department, institution, board or commission for which appropriations are made in said sections, by a board to be known as the 'Controlling Board,' consisting of the governor, or the budget commissioner, if appointed by the governor for such purpose, the chairman of the finance committee of house of representatives and of the senate, respectively, the attorney general and the auditor of state. * * *

Said board may authorize the expenditure of monies appropriated in said sections 2 and 3 of this act within the purpose for which the appropriation is made, whether included in the detailed purposes for which such appropriations are distributed by 'items' in said section, or not.* * *."

What, then, was the purpose of this appropriation of \$152,428.90 by the general assembly? The answer is that the purpose was the work of co-operating with the federal government in the inauguration and carrying on of vocational education in Ohio; and that from such sum indicated should be taken the amount necessary for matching purposes with federal money under the Smith-Hughes act, but all of which appropriation is not required to match federal moneys expended because, as heretofore pointed out, the local districts are paying in a considerable fraction, which under the Smith-Hughes law itself must in the first instance be used in computing the amount to be furnished by the state along with the local expenditure, so that the sum of the two may equal the amount of federal money expended.

The conclusion therefore must be reached and the opinion of this department is

(1) In matching the expenditure of federal money allotted to the state under the provisions of the Smith-Hughes law, the federal money expended in the state at large should be matched annually by combining the sums expended during the year by the local districts and the state board of education for vocational education.

(2) Where the general assembly has appropriated a lump sum for the purpose of co-operative work with the federal government in vocational education in accordance with the provisions of the Smith-Hughes law, such appropriation is not bound to be wholly spent for purposes for which the federal government will assume one-half of the expense.

(3) The controlling board provided for in section 4 of House Bill No. 536 (108 Ohio Laws) has authority to transfer certain sums from such lump appropriation for those purposes for which the appropriation is made, but such amounts that may be transferred by such controlling board should not aggregate in any year a sum that would deplete the remainder of such lump appropriation so that such remainder, plus the sums expended in local districts for vocational education, would be insufficient to match that amount of federal moneys expended for vocational education in the state which must be matched annually by the state and its local districts.

(4) Under section 367-6 G. C. the state board of education should recommend to each session of the general assembly the amount of money which will need to be appropriated by the state, which amount added to the local expenditure in districts for vocational education would equal the federal allotment, and such state board of education should recommend to the general assembly additional appropriation items for the proper administration and carrying on of vocational education in Ohio.

Respectfully,

JOHN G. PRICE,
Attorney-General.