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1. LUNCHROOM ROTARY FUND—MONEY APPROPRIATED FROM GENERAL FUND OF SCHOOL DISTRICT TO LUNCHROOM ROTARY FUND—CLEARLY LABELED OR INTENDED AS ADVANCEMENT—MAY BE PAID FROM LUNCHROOM FUND TO GENERAL FUND.
2. BOARD OF EDUCATION CAN NOT TRANSFER MONEY FROM LUNCHROOM FUND TO GENERAL FUND UNDER SECTION 5705.16 RC—SECTION 5705.15 ET SEQ., RC, DOES NOT AFFECT PROVISIONS OF SECTION 3313.81 RC.

SYLLABUS:

1. Money appropriated from the general fund of a school district to a lunchroom rotary fund, pursuant to Section 3313.81, Revised Code, and clearly labeled or intended as an advancement, may be repaid from the lunchroom fund to the general fund.
2. Section 5705.15, et seq., Revised Code, does not affect the specific provisions of the special lunchroom statute, Section 3313.81, Revised Code, and a board of education cannot, therefore, transfer money from the lunchroom fund to the general fund under the provisions of Section 5705.16, Revised Code.

Columbus, Ohio, September 20, 1954

Hon. Harold D. Roth, Prosecuting Attorney
Wyandot County, Upper Sandusky, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

"Approximately two and one-half years ago the Board of Education advanced the sum of \$375.00 to the Cafeteria Fund of the school in order to get the cafeteria started. Since that time, the cafeteria has accrued a surplus of approximately \$1,000.00 and the board proceeded by resolution to repay to the general fund the \$375.00 previously advanced.

"The Board felt that this original transfer was merely an advancement of funds in order to start the cafeteria and that it should be transferable back to the General Fund without proceeding under Section 5705.16 of the Revised Code. The school auditor in auditing the accounts would not allow the transfer and retransferred the amount back to the Cafeteria Fund.

"Based upon the above facts, is it necessary for the Board of Education to proceed under Section 5705.16 of the Revised Code in order to transfer the money back to the General Fund."

Section 3313.81, Revised Code, authorizing the establishment and operation of lunchrooms by boards of education, reads in part as follows:

"The board of education of any city, exempted village, or local school district may provide facilities in the schools under its control for the preparation and serving of lunches, and other meals or refreshments to the pupils, the teachers, and to other employees therein, and to other persons taking part in or patronizing any activity in connection with the schools, and may provide the management of such lunchrooms, which facilities shall not be operated for profit; provided that such privileges and facilities shall apply to all pupils and teachers and no restrictions or limitations shall operate against any such pupil or teacher in the use of such facilities except for reasons applicable to all alike.

" * * * The board shall provide rotary funds for the operation of lunchrooms * * * either by appropriations from the general fund or accumulation from sales or receipts. Each such fund shall be kept separate from other transactions of the board."

This section sets forth two means by which school lunchrooms may be financed, i.e., by appropriations from the general fund, by the usage of

receipts from sales, or by a combination of these two. The *establishing* of school lunchrooms is not specifically provided for but statutory authority to operate such a project necessarily includes the authority to establish it. Since this cannot be done without funds we must conclude that funds from either of these two sources or both can be utilized for this purpose if such funds are available or can be made available. Obviously, the only method by which a lunchroom can be established on an accumulation from sales or receipts is by the method of borrowing the initial preliminary funds needed, and repaying the loan by means of sales or receipts.

In my Opinion No. 859, Opinions of the Attorney General for 1951, page 648, I dealt with a similar problem. There the question presented was whether funds might be advanced from the general fund of the county for the purpose of paying the preliminary costs and expenses involved in the construction of improvements in a garbage disposal district pending the sale of revenue bonds, and then, after such bonds had been issued, whether the county could use such bond proceeds to reimburse the general fund for money so advanced. The special statutes relative to garbage and waste disposal, Section 6600 et seq., General Code, authorized all or part of the cost of any improvements in a garbage disposal district to be paid from the proceeds of a revenue bond issue. Quite clearly the money to finance the initial proceedings in such improvements had to come from some source other than the proceeds of a special bond issue, for under the statute it was not possible to issue such bonds until certain initial proceedings, surveys, etc., had been accomplished; and such initial proceedings were such as to involve a considerable expense. One source where statutory provisions were broad enough to embrace expenditures such as this was the general fund. Accordingly, I concluded that since the special statutes provided that a part or *the whole cost* relative to the erection and maintenance of a garbage and waste disposal district might be paid from the proceeds of a bond issue, such funds advanced from another source to meet such preliminary expenses as were necessary, might be repaid to such sources in order to make it possible for the authorities concerned to put into effect a decision to meet *all* of such expenses from the proceeds of bond sales.

While the statute here under consideration is worded somewhat differently from the garbage and waste disposal statutes, it creates in the matter of this problem distinctions rather than differences. Authority exists in both statutes to finance particular projects (1) at least partly through

use of general funds or (2) *wholly* through the use of a specially created fund. The provisions are analogous in that authority exists for the payment of all expenses through the use of the special funds involved. The question in the instant case thus is basically the same as it was in Opinion No. 859, *supra*: Can there be an advancement from the general fund to a special fund and a later repayment to such general fund? I stated there, and I repeat now, that I see no reason why this cannot be done. It is, as I said there, a sound private business policy applied to public business.

It should be pointed out, of course, that such an appropriation must be clearly labeled an advancement, or a clear indication that an advancement was intended must be shown at the time of the appropriation. I infer from your letter that this particular appropriation was clearly labeled an advancement at the time of the appropriation. If money is thus *advanced* from the general fund to meet the expenses of getting a cafeteria started, rather than appropriated *generally* for such a project, the repayment to that fund of the proceeds is not a transfer but is an application of funds from sales or receipts to the operation of the school cafeteria.

The board cannot, in any event, *transfer* back this money under Section 5705.15, et seq., Revised Code, authorizing the transfer of "public funds" by a taxing authority from one fund to another upon approval by the Common Pleas Court. I believe that the later special lunchroom statute with its express provisions covering the acquisition and disposition of funds, would prevail over the earlier general statutes and would prevent such action. In *City of Niles v. Union Ice Corp.*, 133 Ohio St., 169, the court held that Section 5625-13a, General Code, Section 5705.15, Revised Code, did not apply to the waterworks funds provided for in Section 3959, General Code, which special statute specifically described the uses to be made of waterworks funds. Here the lunchroom statute also specifically describes the uses to be made of lunchroom funds.

In *City of Lakewood v. Rees*, 132 Ohio St., 399, at page 403, the court said:

"Under well-established and universally recognized canons of statutory construction, the general provisions of Section 5625-13a et seq., General Code, cannot control or affect the specific provisions of Section 3959, General Code, which are clearly applicable to the situation under consideration."

I see no substantial difference in the intent expressed by the legislature pertaining to the usage of funds from these operations in the two special

statutes, i.e., the waterworks statute under scrutiny in the Niles and Lakewood cases, and the lunchroom statute being considered here.

Accordingly, in specific answer to your inquiry, I conclude that :

1. Money appropriated from the general fund of a school district to a lunchroom rotary fund, pursuant to Section 3313.81, Revised Code, and clearly labeled or intended as an advancement, may be repaid from the lunchroom fund to the general fund.

2. Section 5705.15, et seq., Revised Code, does not affect the specific provisions of the special lunchroom statute, Section 3313.81, Revised Code, and a board of education cannot, therefore, transfer money from the lunchroom fund to the general fund under the provisions of Section 5705.16, Revised Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General