

the legislature is repealed without a saving clause, it is considered, except as to transactions past and closed, as though it never had existed."  
*Friend vs. Levy*, 76 O. S. 26.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4352.

EDUCATIONAL EQUALIZATION FUND—PARTICIPATION IN SUCH FUND WHERE SCHOOL DISTRICT TAX RATE LESS THAN NINE AND ONE-HALF MILL—MUST COMPLY WITH SECTIONS 5625-18a AND 5625-18c, G. C.

*SYLLABUS:*

*A school district wherein the property of the district is taxed for the current year for all school purposes, at a rate less than nine and one-half mills, which rate is calculated without any reduction as authorized under some circumstances by the terms of Section 5548-2, of the General Code, is not permitted under the law to participate in the state educational equalization fund unless the electors of the district have voted affirmatively on the proposition required to be submitted to them by Sections 5625-18a to 5625-18c, inclusive, of the General Code, and the board of education of the district has levied for the current year all taxes permitted by law and under such vote of the electors.*

COLUMBUS, OHIO, May 23, 1932.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

“A school district has 8 mills for operating expenses but has only 1.35 mills for bonded interest. Is it possible for this district to participate in the Educational Equalization Fund of the State?”

Pertinent to your inquiry are the provisions of Section 7595-1, General Code, which reads in part:

“The board of education of any school district may at any time prior to July 31 of any year apply to the director of education for participation in the state educational equalization fund for the ensuing school year. Such application shall be in such form as the director of education prescribes. Such application shall not be granted unless the property of the given district is to be taxed for the current year for the current expense of school operation at a rate of at least eight mills, and is to be taxed for the current year for all school purposes at a rate of at least nine and one-half mills, provided that in a school district having a valuation of property for the preceding year of less than twenty-five hundred dollars per child enumerated the preceding year and having a sinking fund, interest and bond retirement levy in excess of three mills, the director of education may authorize the inclusion within the foregoing rate of eight mills of all or any part of the sinking fund, interest and

retirement levy in excess of three mills. Provided, however, that no such application shall be refused if the electors of such school district have voted affirmatively on the proposition required to be submitted to them by sections 5625-18a to 5625-18c, inclusive, of the General Code, and if the board of education in making the application has levied all taxes permitted by law and under such vote of the electors.

In calculating the aforesaid amounts of eight mills and nine and one-half mills any levy voted by the people and reduced under the provisions of section 5548-2 shall be included at the full amount voted by the people without considering the reduction effected by the provisions of said section. \* \*"

The statute, a portion of which is quoted above, is clear, and explicit, to the effect that no application for participation in the state educational equalization fund made by a board of education for a school district shall be granted unless the property of the given district is to be taxed for the current year for all school purposes at a rate of at least nine and one-half mills calculated as provided by the statute, except to those districts wherein the electors have voted affirmatively on the proposition required to be submitted by Sections 5625-18a to 5625-18c, inclusive, of the General Code, and have, after so voting, levied all taxes for school purposes permitted by law and under such vote.

The language of the statute with reference to the rate of taxation that shall be levied in a school district for all school purposes before the district is permitted to participate in the state educational equalization fund is plain and definite and admits of no interpretation or construction. This rate is positively and definitely fixed by the terms of the statute at nine and one-half mills. A district wherein this rate of taxation is only nine and thirty-five hundredths mills does not meet the terms of the statute and the Director of Education is therefore not authorized to grant an application for participation from such district. Unless the Director of Education grants an application of a board of education for participation in the state educational equalization fund the district in question of course could not participate.

I assume, of course, that the rate mentioned in your inquiry has been calculated in accordance with the statute, that is to say, that it has not been reduced as is permitted under some circumstances by force of Section 5548-2, of the General Code.

Specifically answering your question, I am of the opinion that a school district wherein the property of the district is taxed for the current year for all school purposes at a rate of nine and thirty-five hundredths mills only, which rate is calculated without any reduction as authorized under some circumstances by the terms of Section 5548-2, of the General Code, is not permitted under the law to participate in the state educational equalization fund unless the electors of the district have voted affirmatively on the proposition required to be submitted to them by Sections 5625-18a to 5625-18c, inclusive, of the General Code, and the board of education of the district has levied for the current year all taxes permitted by law and under such vote of the electors.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*