

State on March 26, 1937, effective as of June 25, 1937. Amended Senate Bill No. 253 repeals Sections 486-32 and 486-69 of the General Code, as enacted in Amended Senate Bill No. 81, effective March 25, 1937, as of June 25, 1937.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

544.

RURAL SCHOOL DISTRICT — CONSOLIDATION — JURISDICTION OF BOARDS OF EDUCATION—OPERATING EXPENSE APPORTIONMENT—AVERAGE DAILY ATTENDANCE.

SYLLABUS:

Where a rural school district within the jurisdiction of a county board of education unites for high school purposes with an adjoining school district that is not within the jurisdiction of the said county board of education, the Department of Education in apportioning the total amount of the budget of operating expenses for the county board of education among the several school districts in the county should count the average daily attendance of each and every pupil residing in the rural school district and enrolled in the joint-union high school in computing the total number of pupils in average daily attendance in the rural school district under the supervision of the county board of education.

COLUMBUS, OHIO, April 30, 1937.

HON. LESTER W. DONALDSON, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“You are respectfully requested to give an opinion upon the following:

The Willoughby Village School District and the Willoughby Rural School District of this county are maintaining a joint high school under the provisions of Sections 7669 to 7671-2, inclusive, of the General Code of Ohio.

Each of these districts is at the present time under the supervision of the county board of education. The board of education of the Willoughby Village School District is considering the question of exemption from the supervision of the County Board of Education in accordance with the provisions of Section 4688 of the General Code of the State of Ohio.

Each of said boards of education desires to continue to operate the joint high school, even though the Willoughby Village District should become an exempted school district under the provisions of said Section 4688 of the General Code.

Since the Willoughby Rural School District is a part of the County School District the Board feels that the joint high school should continue to participate in the support of the County School District in accordance with the provisions of Section 7995-11 of the General Code of the State of Ohio.

May the Department of Education, in the allocation of funds from the several school districts composing the County School District to the budget of the County Board of Education, count the average daily attendance of the joint high school in whole, or in that proportion of the students who are enrolled in the joint high school from the Willoughby Rural School District?"

In answer to your question it will be assumed: that, Willoughby Village School District, pursuant to the provisions of Sections 4688 et seq. General Code, will follow the necessary procedure to be exempted from the supervision of the county board of education and become an exempted village school district; that, the Willoughby Exempted Village School District and the Willoughby Rural School District will continue to operate the joint high school; and that each school district will retain its identity for elementary school purposes.

Several months ago, your office submitted the question, to the effect of whether or not the joint union high school existing between the Willoughby Village School District and the Willoughby Rural School District could continue to be operated if Willoughby Village School District became exempt from county supervision. In the opinion rendered by my predecessor, in Opinions of the Attorney General for the year 1936, dated November 28th, and numbered 6441, it was held:

"In pursuance of Sections 7669 et seq. of the General Code of Ohio, two or more adjoining school districts may unite for high school purposes whether or not one or more of such districts be outside the jurisdiction of the county board of educa-

tion of the county in which the proposed union of districts is to be made.”

The above opinion decided nothing more than that a school district within the jurisdiction of a county board of education may unite for high school purposes with an adjoining school district that is not within the jurisdiction of the said county board of education. Said opinion did not discuss the statute of the rural school district after its union, for high school purposes, with the exempted village school district.

Joint union schools are established by virtue of the provisions of Sections 7669 to 7672, inclusive, General Code, which, in brief, provide as follows:

Section 7669, *supra*: That the boards of education of two or more adjoining school districts, by a majority vote of the full membership of each board, may unite for high school purposes.

Section 7670, *supra*, that any high school so established shall be under the management of a high school committee, consisting of two members of each of the boards creating such joint district, elected by a majority vote of such boards.

Section 7671, *supra*, that the maintenance and support of such high school is provided for by appropriations from the tuition or contingent funds, or both, of each district, in proportion to the total valuation of property in the respective districts.

Section 7671-1, *supra*, that the county superintendent of schools is charged with the duty of certifying on or before the first day of August of each year the teachers' payroll, etc.

Section 7671-2, *supra*, that such a union of districts may be dissolved upon failure of any one or more of the said boards of education to pay their proportion of the maintenance of the joint high school, provided that during the continuance of such union the obligations, financial and otherwise, involved in the acts of the joint high school committee shall be binding on each and all of the participating districts.

Section 7672, *supra*, that the boards of education of each of the school districts comprising the union for high school purposes, is charged with the duty of levying a tax for the maintenance of said high school.

A reading of the above quoted provisions contained in Sections 7669 to 7672, inclusive, *supra*, clearly shows that the only effect of the union of those two school districts for high school purposes, was the placing of the high school so established under the management of a "high school committee"; that, the Willoughby Rural School District and Willoughby Exempted Village School District have each retained their same identity as school districts; that, the board of education of each of said school districts is charged with the duty of levying a tax

for the maintenance of said joint-union high school; that, upon failure of the board of education of either school district to pay its proportion of the maintenance of said joint-union high school, such union of the districts for high school purposes may be dissolved; that, during the continuation of such joint-union high school the obligations, financial and otherwise, involved in the acts of the joint high school committee is binding on the Willoughby Rural School District and Willoughby Exempted Village School District; and that the Superintendent of Lake County School District is charged with the duty of certifying on or before the first day of August of each year the teachers' payroll of the joint-union high school, the aggregate days of attendance and other information that Section 7671-1, supra, requires him to certify to the County Auditor.

That the Willoughby Rural School District and the Willoughby Exempted Village School District remain separate and distinct school districts and the funds for maintenance and support of the joint-union high school depend upon independent action by each of these school boards, is borne out by the language in Opinions of the Attorney General for the year 1916, Volume I, page 772, wherein at page 774 it was stated:

'Under the above provision of Section 7672, G. C., each of the boards of education referred to in your inquiry is required to estimate the amount of money necessary to pay its proportionate part of the cost of maintaining such high school, and certify said amount in its annual budget, thus making separate levies for said purpose, subject to the action of the county budget commission under Section 5649-30, General Code, and the fund derived from said levies must be kept separate, the same as the fund formerly appropriated from the contingent and tuition funds of the district, and set apart as a separate fund under provision of Section 7671, G. C.

You will further observe, however, that each board of education makes its own levy and maintains its own separate fund; that the two school districts in question are separate and distinct taxing districts, and that while the joint high school committee has the management of the high school under authority of Section 7670, G. C., and administers the funds derived from the levies made by said boards of education for the maintenance and support of the high school, and kept separate and apart for said purpose in the respective treasuries of said school districts, under authority of the provisions of Section 7672, G. C., said

committee has no tax levying authority, and has nothing whatever to do with the elementary schools of said district."

Section 7690, General Code, provides, in part, as follows:

"Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools." * * *

By virtue of the provisions of Section 7690, *supra*, a rural board of education is vested with the *management* and *control* of all of the public schools in the district. Therefore, by virtue of the provisions of Sections 7670 and 7690, *supra*, when a rural school district unites with an adjoining school district for high school purposes, the rural school district loses the authority to manage said high school but retains control of said entire rural school district; and the duty is imposed upon the rural school district to control the public schools in its district in such a manner as to provide adequate school advantages for each pupil enrolled in the public schools in the district under its supervision.

Section 4684, General Code, provides, in part, as follows:

"Each county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the supervision of the county board of education by the provisions of Sections 4688 and 4688-1, and including the territory attached to it for school purposes, shall constitute a county school district. * *"

Section 4728, General Code, provides as follows:

"Each county school district shall be under the supervision and control of a county board of education composed of five members, who shall be electors residing in the territory composing the county school district and who may or may not be members of local boards of education. The members of such county board in office when this act goes into effect shall continue in office until their successors are elected and qualified."

A reading of Sections 4684 and 4728, *supra*, shows that any school territory in a county not a part of the school territory embraced in a city or exempted village school district is part of the county school district and therefore under the supervision and control of a county board of education.

Thus it is to be observed that the existence of the joint-union high school of the Willoughby Exempted Village School District and Willoughby Rural School District depends upon continuing action and supervision by the boards of education of the Willoughby Exempted Village School District, Willoughby Rural School District and Lake County School District; and that, although Section 7672, *supra*, vests the management of the high school in the "high school committee" such committee is powerless to act without the action and supervision of the three above mentioned boards of education.

It is significant to note that mandatory action and supervision on part of boards of education have increased since the enactment of House Bill No. 466, in 1935.

The purpose of House Bill No. 466, or what is better known as the "School Foundation Program Law" was to establish, as set forth in Section 7595, General Code, "a state public school fund in the state treasury, for the support and maintenance of the public school system and for the equalization of education advantages throughout the state."

In order to make an equal statewide apportionment of the state public school fund, there is imposed upon each school district the performance of certain statutory duties. The following are imposed upon each county board of education:

1. Section 7595-11, General Code, provides as follows:

"On or before the first day of December, 1935, and each year thereafter, each county board of education shall prepare a budget of operating expenses for the ensuing year for the county school district and shall certify the same to the director of education who shall apportion the cost represented by such budget among the various districts of the county school district on the basis of pupils in average daily attendance. The amounts so apportioned shall be certified to the clerks of the various school districts and in the case of each district such amount shall be deducted by the director of education from the share of the district in the state public school fund.

The director of education shall certify to the auditor of state the total of such deductions of the districts of the county school district; whereupon the auditor of state shall issue his warrant in such amount on the treasurer of state in favor of the county board of education of each county, to be deposited to the credit of a separate fund, hereby created, to be known as the county board of education fund."

2. Section 7600, General Code, provides that on or before the first day of April in each year, the county board of education shall make a survey of the county school district to determine the number of teachers and other educational employees and the number of transportation routes necessary to maintain the schools of the county school district.

3. Sections 7600-1 to 7600-9, inclusive, General Code, provide that the county board of education prepare a diagram or map of the county showing the location and position of all school districts therein, and among other things a statement of the size and condition of each building and the number and ages of children attending the same. Upon completion of the surveys each county board of education shall prepare a new diagram or map of the school districts in the county school district prescribing the transfers of territory, elimination of school districts which will provide a more economical and efficient system of county schools and shall according to procedure provided for in Section 7600-3, General Code, adopt the same as the plan of school district organization.

The statutory duties to be performed by each city, exempted village, village and rural school district are as follows:

1. Section 7595-1, General Code, provides that each of said boards of education must certify to the director of education the number of days the schools of such district were in session during the school year next preceding such apportionment.

2. Sections 7595-1b and 7595-1c, General Code, provide for certain information to be submitted by each of said school districts in order that additional aid, minimum operating costs, transportation costs, etc., can be computed and the proper distribution of the state public school fund be made.

3. Section 7595-1d, General Code, provides for the computation of tuition costs and the certification of the same by the clerk of the board of education of the district of attendance, to the board of education of the district in which the pupil resides, and to the director of education.

4. Section 7600-1, General Code, provides that the board of education of each district shall upon request of the county board of education furnish such information as it may require in preparation of any diagram or maps which the county board is required to furnish in regard to the reorganization of school districts.

5. Section 7600-9, General Code, provides that not later than the fifteenth day of August in any year, the board of education of each school district transmit to the director of education a copy of the budget of expenditures adopted by the board for the next succeeding school year.

Section 7595-1e, General Code, makes the performance of the statutory duties by each board of education, as above set forth, a condition precedent before any board of education may participate in the state

public school fund. Section 7595-1e, General Code, provides in part, as follows:

“A school district, the board of education of which has not conformed with all the requirements of the law and the rules and regulations pursuant thereto, including the annual plans of reorganization, in or of the county school district (as they apply to such school district) adopted by the county board of education and approved by the director of education as provided in Sections 7600-1 to 7600-5 and Section 7600-9, shall not participate in any portion of the state public school fund, except for good and sufficient reason established to the satisfaction of the director of education and state controlling board. * *”

It is to be observed:—that, the above mandatory provisions must be performed by the board of education of each school district and county board of education; that, it cannot be inferred or even suggested that the “managing committee” of the high school can perform any of said duties, since the “managing committee” is no board of education but consists of two members of each of the boards.

The pupils attending the joint-union high school and residing in the territory of the Willoughby Rural School District are for the computation of the apportionment of the state public school fund pupils of the Willoughby Rural School District. Section 7595-1a, provides in part, as follows:

“The ‘average daily attendance’ certified by the reporting official for any school district as the basis of apportioning the state public school fund shall, in addition to all resident pupils, include the actual attendance of each pupil attending the schools of the district in the capacity of a ‘tuition pupil’ as fixed by law. * *”

The joint-union high school is not a school district. It is no more a part of the Willoughby Exempted Village School District than of the Willoughby Rural School District. The certification as provided for in Section 7595-1a, *supra*, must be made for the high school pupils residing in Willoughby Exempted Village School District by the board of education of Willoughby Exempted Village School District; for the high school pupils residing in Willoughby Rural School District by the board of education of Willoughby Rural School District. No other conclusion can be reached in face of the language “There shall be apportioned and paid from the public school fund to each school district (Sec. 7595-1)” and

the "average daily attendance certified by the reporting official for any school district (Sec. 7595-1a)."

It is therefore significant that under the provisions of the "School Foundation Program Law" mandatory individual action is required by the Willoughby, Exempted Village School District, The Willoughby Rural School District and the Lake County Board of Education in order for the joint-union high school to receive an apportionment of the state public school fund.

By the provisions of Section 7595-1i, supra, the total amount of operating expenses necessary for the Lake County Board of Education must be apportioned among the several districts in the county on the basis of the total number of pupils in average daily attendance in each of the districts under the supervision of the Lake County Board of Education. This would include the average daily attendance of all pupils residing in the Willoughby Rural School District and enrolled in the joint-union high school. The items included in the budget are for salaries, printing, office supplies, postage and for other expenditures that are necessary to incur in the exercise of the duties performed by the county board of education. As stated above, the statutes place each county school district under the supervision of the county board of education and the public schools of each rural district under the control of the rural board of education. Without the performance in a supervisory capacity by the county board of education and the board of education of the rural school district of certain mandatory duties, it would be impossible for the joint-union high school to operate. The pupils residing in the territory of the Willoughby Rural School District and attending the joint-union high school receive the benefits from the action and supervision of both the county and rural boards of education. It is therefore my opinion that the average daily attendance of each and every pupil residing in the Willoughby Rural School District and attending the joint-union high school should be counted in computing the total number of pupils in average daily attendance in the Willoughby Rural School District under the supervision of the Lake County Board of Education. I take it that the Willoughby Village School District has not become exempted from the supervision of the County Board of Education. I therefore desire to make this further observation, that until the Willoughby Village School District becomes "exempt," the average daily attendance of each and every pupil enrolled in the joint-union high school and residing either in the Willoughby Village School District or Willoughby Rural School District must be counted in computing the total number of pupils in average daily attendance in Lake County School District.

Specifically answering your question, it is my opinion that when the Department of Education apportions the total amount of the budget

of operating expenses for the Lake County Board of Education among the several school districts in the county it should count the average daily attendance of each and every pupil residing in the Willoughby Rural School District and enrolled in the joint-union high school in computing the total number of pupils in average daily attendance in the Willoughby Rural School District under the supervision of the Lake County Board of Education.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

545.

APPROVAL—BONDS OF EUCLID CITY SCHOOL DISTRICT,
CUYAHOGA COUNTY, OHIO, \$27,000.00 (Unlimited).

COLUMBUS, OHIO, April 30, 1937.

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

GENTLEMEN :

RE : Bonds of Euclid City School Dist., Cuyahoga County,
Ohio, \$27,000.00. (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of re-funding bonds dated October 1, 1936, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.