

3043.

SCHOOLS—TEACHERS, DRIVERS AND JANITORS WHO HAVE LEGAL CONTRACTS MAY COLLECT SALARIES—CLAIMS MUST BE REDUCED TO JUDGMENT—SECTION 7610-1, G. C., CONSTRUED.

SYLLABUS:

1. *Teachers, drivers and janitors who have legal contracts may collect their salaries for which there are no funds available for this fiscal year, but such claims insofar as relates to this fiscal year, must be reduced to judgment and a levy for the payment of such judgments made according to law.*

2. *The county board of education under Section 7610-1 of the General Code, may meet the obligations of a school district which is without funds if there is a balance in the county general fund, which is unappropriated and unobligated. Such funds must be appropriated for that purpose by the county commissioners and certified by the county auditor before the same can be used.*

3. *Boards of education may borrow money under Section 5655 of the General Code after January 1, 1926, for the use of the school district during the fiscal year 1926, but such funds may not be used to pay obligations of the preceding fiscal years.*

COLUMBUS, OHIO, December 29, 1925.

HON. D. A. BAIRD, Prosecuting Attorney, 104 Lorain County Bank Building, Elyria Ohio.

DEAR SIR:—I am in receipt of your communication as follows:

“There are a few questions on school finance upon which I need your advice. There are some three or four schools in the county that will not have sufficient funds to meet their obligations to January 1, 1926.

“It is highly desirable that the schools be kept in continuous session. This can only be done by anticipating by some means the February distribution. The teachers, drivers and janitors have contracts for at least eight months of school as required by law.

“(1) Is it possible for the teachers, drivers and janitors to collect their salaries through the courts after they have rendered the service? If this is possible, will you please advise us the best method to pursue. We hope some such procedure could be adopted as is used by the office of the attorney general in collecting the teachers' retirement funds from the various school districts. I am not versed in legal terms but the attorney general secures through the courts a restraining order on the board of education forbidding it reducing the funds in the treasury or about to come into the treasury to an amount below the amount necessary to satisfy the State Teachers' Retirement Board, so that it was not necessary to wait until the money could be collected but it was available as soon as any money unappropriated came into the treasury of the district.

“(2) Is it possible for the County Board of Education, operating under Section 7610-1 of the General Code to meet these obligations as defined in the law? Last year the county board of education, operating under this section, paid the expenses of one or two districts for a considerable portion of the year, charging the amounts required against the funds of the district in the process of collection.

“(3) Is it possible for a board of education to borrow money after January 1, 1926, operating under Sections 5655 and 5656 of the General Code?”

Your first question is whether it is possible for teachers, drivers and janitors to collect their salaries through the courts after they have rendered the service.

Contracts entered into by teachers and other educational employes prior to the going into effect of the so-called Vorys Bill (Amended Substitute Senate Bill No. 94), would not require a certificate of the Auditor as to available funds to make such contract legal

Section 5660, as enacted in the so-called Vorys Bill, makes necessary such certificate in all cases but provides that for salaries of educational employes, such contracts may be entered into where the certificate of the chief fiscal officer is made that there are sufficient funds to cover the money required to meet such contract through the fiscal year in which such contract is made.

Due to the fact that Section 260-1 of the General Code, which is a part of the Vorys Bill, provides that all provisions of law heretofore or hereafter enacted and, relating to the levy of taxes, the collection, appropriation or expenditure of revenue shall be construed to refer and to apply to the fiscal year as defined in said act, Section 5660 would not be applicable to such contracts until after January 1, 1926.

Educational employes holding legal contracts can recover on same on performance of the services required but it is believed that the only way in which recovery could be made would be by proceeding to reduce the claim to judgment for the period for which no funds are available and that such judgment can only be paid by making a judgment levy on the next duplicate.

It is believed that by reason of Sections 5649-3a et seq., found in 111 Ohio Laws, page 371, that the tax collection available in February, 1926, could not be used to pay obligations incurred for the fiscal year ending December 31, 1925, unless included in the budget, unless there is a surplus over 1926 requirements.

Your second question is whether the County Board of Education operating under Section 7610-1 of the General Code, can meet these obligations, charging the amounts required against the county fund to be taken out of the next tax collection due the school district.

Section 7610-1 of the General Code, as enacted by the last legislature, 111 Ohio Laws 495, was effective July 24, 1925. The Vorys Bill, found in 111 Ohio Laws, page 371, became effective July 21, 1925. The principle of Section 7610-1 is in conflict with the underlying purpose of the Vorys Bill, which is to compel the different political subdivisions to operate on a pay as you go basis.

In studying the Vorys Bill and Section 7610-1, there appear several conflicts and apparent difficulty in making Section 7610-1 operative.

Section 7610-1 of the General Code, provides that:

"If the board of education * * * fails to provide sufficient school privileges * * *, or provide for the continuance of a school for at least thirty-two weeks of the year of any school, * * * or provide for each school an equitable share of school advantages * * *, or to provide suitable school houses for all schools * * *, or to elect a superintendent or teachers, or to pay their salaries, or to pay out any school money needed in school administration, * * * the county board of education to which such district belongs * * * shall perform any and all such duties or acts, in the same manner as the board of education * * *. All salaries and other money so paid by the county board of education * * * shall be paid out of the county treasury from the general fund on vouchers signed by the president of the county board of education * * *, but they shall be charged against the school district for which the money was paid. The amount so paid shall be retained by the county auditor from the proper funds due to such school district, at the time of making the semi-annual distribution of taxes."

This section if taken literally would seem to be an exception to the Vorys Bill and as it went into effect subsequent to the going into effect of the Vorys Bill, would repeal the Vorys Bill to the extent necessary, unless the two acts may be harmonized.

Section 5649-3g, a part of the Vorys Bill, provides in part as follows:

“At the beginning of each fiscal year, the county commissioners of every county, the board of education of every school district, including county school districts, * * * shall make appropriations classified for the several purposes for which expenditures are to be made for and during the said fiscal year, from the funds of such county school district * * *. The aggregate of all appropriations of or from the funds of any county, political sub-division or taxing district for any fiscal year shall not exceed the amount of the official estimate of revenues and balances of such county, subdivision or district as made by the budget commission * * *. No appropriation shall become effective until there be filed with the appropriating authority by the county auditor a certificate that the appropriation taken, together with all other outstanding appropriations, does not exceed said official estimate, and in every case in which the appropriation does not exceed said estimate, the county auditor shall give such certificate forthwith upon receiving from the appropriating authority a certified copy of the appropriation measure.”

Section 5649-3h of the General Code, in part provides as follows:

“Any appropriation ordinance or other appropriation measure may be amended or supplemented from time to time, or a transfer may be made from one appropriation item to another, provided that such amendment or supplement shall comply with all provisions of law governing the appropriating authority, including compliance with section 5 of this act (G. C. 5649-3g), and provided further that no appropriation for any purpose shall be reduced below an amount sufficient to cover all unliquidated and outstanding contracts or obligations certified from or against the appropriation for such purpose.”

Under Section 5649-3g the only method of expending any of the funds raised for the fiscal year of 1926, is by appropriation for the purposes for which expenditures are to be made for and during the said fiscal year. No appropriation becomes effective until the county auditor has filed a certificate that such appropriation, taken together with all other outstanding appropriations, does not exceed the official estimate certified under Section 5649-3f. Under this section appropriation of funds for the fiscal year of 1926 can only be made for the purposes necessary for such fiscal year.

If appropriation of the county funds for the fiscal year ending December 31, 1925, has been made under and by virtue of Section 5649-3d, as it existed prior to its amendment, and such funds have been obligated, the county board of education would be unable to draw upon such funds. If the county board is unable to draw upon the county general fund, Section 7610-1 of the General Code could not be made operative.

However, it is believed that Section 7610-1 and the Vorys Bill should be so construed as to give operation to Section 7610-1, if it is at all possible. If there is in the county general funds any funds against which appropriations or certifications have not been made and against which there are no outstanding obligations than Section 7610-1 can be made to operate on certain contingencies. This can be done by having the county commissioners pass an appropriation measure appropriating such unappropriated fund to the use of the county board of education for the purposes of Section 7610-1. This money can then be used upon appropriation by the county board for that purpose and the certification of the county auditor that such appropriation

does not exceed the amount of funds appropriated by the county commissioners for this purpose.

The local school board should then on the first of the fiscal year make their appropriations for the following fiscal year, taking into consideration the amount which will be deducted from their tax settlement by the county auditor to reimburse the county general fund.

The retaining of the amount of money paid out by the county board of education, by the county auditor, as authorized by Section 7610-1 of the General Code, is not in compliance with Section 5649-3g, but it is believed that this is an exception to that section. If there is no balance unappropriated and unobligated in the county general fund then the county board of education would not operate under Section 7610-1 of the General Code.

Your third question is whether it is possible for a board of education to borrow money after January 1, 1926, under Sections 5655 and 5656 of the General Code.

Section 5655 of the General Code, found in 111 Ohio Laws, page 379, provides as follows:

"In anticipation of the collection of current revenues in any fiscal year, the county commissioners of any county, the board of education of any school district or the township trustees of any township may borrow money and issue certificates of indebtedness therefor, but no loans shall be made to exceed the amount estimated to be actually received from taxes and other current revenues for such fiscal year, after deducting all advances. The sums so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than six per cent and shall not be sold for less than par with accrued interest. The proceeds of any such certificates shall be used only for the purposes for which the anticipated revenues or taxes were raised, collected or appropriated. No political subdivision or taxing district shall borrow money or issue certificates in anticipation of the February tax settlement before January 1 of the year of such settlement."

This section is part of the Vorys Act which contains Section 5649-3d, and is intended to prevent the borrowing of money and the use of the same, except in the fiscal year for which the tax was levied.

The tax distribution made in February of any year under the new budget bill is for the fiscal year beginning January 1st. Prior to such distribution due to the fiscal year commencing prior to the tax distribution some means has to be provided for the securing of funds necessary to start the fiscal year. This section will permit the borrowing of money in anticipation of the February collection, but does not permit the use of the same for the payment of obligations of the prior fiscal year.

Respectfully,

C. C. CRABBE,
Attorney General.

3044

APPLICATION OF SECTIONS 5660 AND 5661, G. C., AS ENACTED IN AMENDED SUBSTITUTE SENATE BILL No. 94, DISCUSSED.

SYLLABUS:

1. *Under Amended Substitute Senate Bill No. 94, tax collections and other sources of revenue for the year of 1926 may not be used to pay overdrafts or obligations incurred in preceding fiscal years.*