

1749.

APPROVAL, COOPERATIVE CONTRACT FOR ROAD IMPROVEMENT IN  
CHAMPAIGN COUNTY.

COLUMBUS, OHIO, April 8, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1750.

COUNTY EDUCATIONAL EQUALIZATION FUND—HELD BY COUNTY  
TREASURER UNTIL APPORTIONED BY COUNTY BOARD OF EDU-  
CATION—HOW SAID FUND PAID TO SCHOOL DISTRICTS.

## SYLLABUS:

*The county educational equalization fund, created by amended Section 7600, General Code, should be retained by the county treasurer as established by the county auditor, and moneys due to the several school districts, in accordance with apportionment made thereto by the county board of education, should be paid upon warrants issued by the county auditor, payable to the treasurers of the several school districts entitled to the same.*

COLUMBUS, OHIO, April 9, 1930.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

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

“A question has arisen in this county in regard to the interpretation of Section 7600, General Code, as amended, as to whether or not the ‘county board of education fund’ or the ‘county educational equalization fund’ shall be retained as a fund by the county auditor and warrants issued from same to the respective school districts after the County Board of Education has determined the approximate amounts due each school district.

In other words, the county board of education seems to think that this equalization fund should be paid over to it in a lump sum and then said board of education distribute the amounts to each school district.

I would think that the intent of the section is that the money be retained as a county educational equalization fund by the county auditor, and the county board after certifying to the county auditor the amount each district is to receive, the county auditor should then issue warrants for the amounts so certified to each district.”

The portion of Section 7600, General Code, as amended in 1929 (113 O. L. 292), which gives rise to your question, reads as follows:

“After each semi-annual settlement with the county treasurer, each county auditor shall immediately apportion school funds for his county. Each city

school district and each exempted village school district shall receive the full amount of the proceeds of the levy of two and sixty-five hundredths mills provided in Section 7575, General Code, in the given school district. The proceeds of such levy upon property in the territory of the county outside of city and exempted village school districts shall be placed in the 'county board of education fund' and shall be known as a 'county educational equalization fund.'

\* \* \*

The proceeds of the county educational equalization fund shall be apportioned by the county board of education to each school district and part of district within the county outside of city and exempted village school districts on the basis of \* \* \* ", etc.

The "county board of education fund" is established by Section 4744-3, General Code, which reads as follows:

"The county auditor when making his semi-annual apportionment of the school funds to the various village and rural school districts, shall retain the amounts necessary to pay such portion of the salaries of the county and assistant county superintendents and for contingent expenses, as may be certified by the county board. Such amount shall be placed in a separate fund to be known as the 'county board of education fund.'

The county board of education shall certify under oath to the state auditor the amount due from the state as its share of the salaries of the county and assistant county superintendents of such county school district for the next six months. Upon receipt by the state auditor of of such certificate, he shall draw his warrant upon the state treasurer in favor of the county treasurer for the required amount, which shall be placed by the county auditor in the county board of education fund."

The status of the "county board of education fund" is somewhat unique, in that, while it is retained and held by the county officials, it is not a county fund, nor is it a fund in the treasury of the county board of education, for the reason that the county board of education does not have a treasurer. This fact is noted by Judge Allen in her opinion in the case of *State ex rel. Retirement Board vs. Kurtz, et al.*, 110 O. S. 332, at page 341, where she observes:

"It is true that a county board of education has not a treasurer \* \* \* ."

In the same opinion on page 340 Judge Allen notes the fact that the county board of education fund is not a county fund. The claim was made that payments from said fund to the state teachers retirement board were illegal, in that they constituted the taking of money from a county or township treasury without warrant of law, in violation of Section 5, Article X of the Constitution of Ohio. The suit was an action in mandamus asking for a writ against the county board of education of Stark County to compel the board to pay from the county board of education fund the normal contribution and the deficiency contribution required by law to be paid to the state teachers retirement board. In the course of the opinion Judge Allen says:

"But will money be drawn from a county or township treasury if this writ shall issue? Inasmuch as the funds deducted are derived from levies by various boards of education, how do they constitute a part of the money of any county or township treasury? It is true that the county officials collect

and hold these taxes, but they collect and hold them only on behalf of the various school districts. The 'county or township treasury' means not the physical place of deposit, but the funds deposited to the credit of the county or township. Therefore, if this writ issues, no money will be drawn from any county or township treasury. It will be drawn from a fund of the school districts placed for safe-keeping in the custody of the county officials."

The Legislature by the amendment of Section 7600, General Code, in 1929, recognized the existence of the county board of education fund and created as a subdivision of that fund the "county educational equalization fund," consisting of the moneys derived from the proceeds of the levy of two and sixty-five hundredths mills provided in Section 7575, General Code, in all school districts of the county school districts outside of city and exempted village school districts. It provided for the apportionment of this fund by the county board of education, but did not change the method of handling the fund or of paying out moneys from said fund.

It will be observed from the terms of Section 4744-3, General Code, that the county treasurer is the custodian of the fund, although the county auditor really has control of it. The said statute provides that after the county board of education certifies under oath to the state auditor the amount due from the State as its share of the salaries of the county and assistant county superintendents of each county school district for the next six months, the said state auditor shall draw his warrant upon the state treasurer in favor of the county treasurer for the required amount, which shall be placed by the county auditor in the county board of education fund.

It is, of course, true that Section 4744-3, General Code, was enacted prior to the enactment of the so-called budget law in 1927, as was also the decision of the case of *State ex rel. Retirement Board vs. Kurtz, et al.*, supra, but I find nothing in the budget law that changes the status of the county board of education fund or the method of holding or handling the same.

I am, therefore, of the opinion that the county educational equalization fund, created by amended Section 7600, General Code, should be retained by the county treasurer as established by the county auditor, and moneys due to the several school districts, in accordance with apportionment made thereto by the county board of education, should be paid upon warrants issued by the county auditor, payable to the treasurers of the several school districts entitled to the same, and inasmuch as the county board of education does not have a treasurer, and the statute makes no provision for the payment to the county board of education of the county educational equalization fund, the same should not be paid in a lump sum to said board.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1751.

OIL BOTTLE—USE OF SUCH BOTTLE FOR SELLING OIL IN FILLING STATIONS UPHELD.

SYLLABUS:

*Whether or not the use of certain oil bottles is in violation of law discussed.*

COLUMBUS, OHIO, April 9, 1930.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows: