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EDUCATION, BOARD OF — BORROWED MONEY — TO PAY SALARIES OF TEACHERS DUE AND PAYABLE ON OR PRIOR TO JULY 1, 1943 — PROMISSORY NOTES ISSUED MAY NOT BE CONSIDERED "DUE AND UNPAID SALARIES OF TEACHERS AS OF JULY 1, 1943" — DISTRIBUTION OF MONEYS APPROPRIATED TO DEPARTMENT OF EDUCATION, DIVISION OF SCHOOL FINANCES, HOUSE BILL 227, 95 GENERAL ASSEMBLY, AS ITEM H-8c.

SYLLABUS:

Where a board of education has borrowed money for the purpose of paying salaries of teachers which were due and payable on or prior to July 1, 1943, and has evidenced such borrowing by the issuance of promissory notes, such notes may not be considered as "due and unpaid salaries of teachers as of July 1, 1943" for the purposes of distribution of moneys appropriated to the Department of Education, Division of School Finances, in House Bill No. 227, 95th General Assembly, as Item H-8c.

Columbus, Ohio, September 13, 1943.

Hon. Kenneth C. Ray, Director of Education,
Columbus, Ohio.

Dear Sir:

Your request for my opinion reads:

"Section 2 of Amended Substitute Senate Bill No. 171 enacted by the 95th General Assembly, authorizes the Superintendent of Public Instruction to apportion state funds for the payment of teachers' salaries due and unpaid as of July 1, 1943 to certain school districts.

In a number of the districts which qualify for participation under the provisions of Amended Substitute Senate Bill No. 171, the teachers have actually received all salary due them but such salary payments were made with money borrowed, in accordance with the provisions of Section 2293-4 of the General Code, either in anticipation of the collection of local tax revenue or in anticipation of the receipts in 1943 of state funds due under the provisions of the Foundation Program Law.

Examination reveals that if money had not been borrowed, teachers' salaries would be due and unpaid as of July 1, 1943. In other words, the procedure did not alter the amount of the indebtedness of the Board of Education; it merely made the bank

from which the money was borrowed the creditor instead of the teachers. Since the obvious intent of the Legislature in the enactment of Amended Substitute Senate Bill No. 171 was to provide assistance for financially weak school districts, do we have the authority to look upon indebtedness in the form of a note issued to borrow money to pay teachers' salaries the same as if such amount were still due the teachers?"

Section 2 of Amended Substitute Senate Bill No. 171, enacted by the recent General Assembly reads:

"Not later than August 1, 1943, the board of education of any school district qualifying under the provisions of section 1 of this act may file with the superintendent of public instruction, on the form prescribed by such superintendent, an application *setting forth the amounts due and unpaid for salaries of teachers as of July 1, 1943.*

If such application shows that the revenue resources of the district are insufficient to enable the applicant board *to pay such due and unpaid salaries of teachers,* the superintendent of public instruction shall cause to be made such examination of the financial accounts of the applicant board as he deems necessary. Pursuant to such examination the superintendent of public instruction shall make such apportionment of funds to the districts *for the payment of due and unpaid salaries* of teachers as he deems necessary, and shall certify to the auditor of state the amount of such payment, whereupon the auditor of state shall forthwith issue his warrant on the treasurer of state in favor of each such district for the amount so certified." (Emphasis mine.)

From the section above quoted, you will observe that the application authorized to be filed for a preference in obtaining moneys with which to pay due and unpaid salaries of teachers as of July 1, 1943 must be filed "not later than August 1, 1943." In view of such requirement the question arises as to when such bill became effective. Such bill was approved by the Governor on June 28, 1943 and filed in the office of Secretary of State on June 29, 1943 and does not contain an emergency clause.

Section 1d of Article II of the Ohio Constitution provides that all laws other than those specifically excepted therein shall not become effective until ninety days after enactment, but that "Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect."

You will observe in Section 1 of such Amended Substitute Senate Bill

No. 171 that the act does not purport to either levy a tax or to make an appropriation. Such Section 1 limits the effect of the act to "funds appropriated to the department of education, division of school finances, in House Bill No. 227, 95th General Assembly, as item H-8c". If the act or the section under consideration was one appropriating money for the current expenses of the state government and state institutions, it would go into immediate effect or if it were a section levying a tax, it would likewise go into immediate effect.

In State, ex rel. Donahey v. Roose, Auditor, 90 O. S. 345, the Supreme Court held that if a section of law provided for a tax levy it went into effect immediately upon its enactment.

In State, ex rel. Davies Manufacturing Company v. Donahey, Auditor, 94 O. S. 382, the Supreme Court had before it the question of when Section 6 of the Appropriation Act, passed May 27, 1915 became effective. Such section provided the method of expending moneys appropriated in Sections 2 and 3 of such act. Such court held that not only Sections 2 and 3 became effective immediately, but that Section 6 as well was immediately effective.

In the case of State, ex rel. Keller v. Forney, 108 O. S. 463, the court had before it a question of whether all sections of an act became effective immediately or whether just those sections which levied the tax became immediately effective under the restrictions contained in Section 1d of Article II of the Constitution. The court therein held that only the sections which levied the tax became effective immediately and that the remaining sections which were concerning, relating to or pertaining to tax levies did not become effective until ninety days after their enactment. The third paragraph of the syllabus of such opinion reads:

> "The express language, 'laws providing for tax levies,' is limited to an actual self-executing levy of taxes, and is not synonomous with laws 'relating' to tax levies, or 'pertaining' to tax levies or 'concerning' tax levies, or any agency or method provided for a tax levy of any local subdivision or authority."

If we would apply the reasoning of the last mentioned court decision to the language of such Section 1d of Article II: "Laws providing for * * * appropriations for current expenses of the state government and state institutions * * * shall go into immediate effect", we would necessarily come to the conclusion that it was only when the act or statute made an appropriation that it went into immediate effect.

If, therefore, Section 2 of such Amended Substitute Senate Bill No.

171 does not become effective until ninety days after June 29, 1943, the question would arise as to whether an application could ever be filed under authority of such Section 2 inasmuch as it provides that the application shall be filed "not later than August 1, 1943," which would be prior to the effective date of the act. The question would further arise by reason of the fact that the superintendent of public instruction is not authorized to make the preferred allocation except upon "such application." However, in view of the conclusion hereinafter set forth, it is unnecessary to decide such question.

Your inquiry is limited to the question as to whether, assuming such Section 2 to be effective, you may consider moneys borrowed for the purpose of paying teachers' salaries which would have been past due and unpaid as of July 1, 1943 were it not for such payment, can be considered as "amounts due and unpaid for salaries of teachers as of July 1, 1943."

You will observe from the language of such Section 2 which I have emphasized that the application required to be filed with the superintendent of public instruction must set forth specifically the amounts due and unpaid for "salaries" of teachers and that it is only when such application shows that the revenue sources of the district are insufficient to pay such due and unpaid salaries that the director is authorized to make his examination of the financial accounts of the district. After such examination he is authorized by such section to make an apportionment of funds "for the payment of due and unpaid salaries of teachers" as of July 1, 1943. Section 3 of the same act provides for the distribution of all funds remaining in such Item H-8c of such appropriation account so appropriated to the Department of Education and sets forth the base or formula for the allocation of such excess remaining after payment past due and unpaid salaries of teachers. It further provides that when such excess funds are distributed in accordance with such formula the school districts receiving them shall use the funds for the following purposes:

> "All money received under the provisions of this section shall first be applied to the payment of any accounts payable other than bonded debts of the school districts, and all money received under the provisions of this section not required for such purpose or in excess of such requirements shall be expended for rehabilitation of existing school buildings and for no other purpose."

Your inquiry is then as to whether, in making your preferential distribution under Section 2 of such act, you may consider indebtedness of a school district incurred for the purpose of paying the salaries of school teachers, evidenced by notes, as "amounts due and unpaid for salaries of teachers as of July 1, 1943."

In the interpretation of statutes we must give the ordinary words contained therein their ordinary meaning unless the context clearly shows that such meaning could not have been intended by the General Assembly. Eastman v. State, 131 O. S., 1; Woolford Realty Co., Inc. v. Rose, 268 U. S. 568.

The ordinary meaning of the term "salary" includes fixed periodical allowances made as compensation to a person for his official or professional services or for his regular employment.

Board of County Commissioners of Teller County v. Trowbridge, 42 Colo. 449

People, ex rel. Smythe v. Lynch, 254 N. Y. 427

Cowdin v. Huff, 10 Ind. 83, 85

Conn. v. Bailey, 3 Ky. L. R. 110, 114

In re Chancellor, 1 Bland. (Md.) 595, 596

Blaine Co. v. Pyral, 32 Idaho 111

Brandon v. Askew, 172 Ala. 160

Henderson v. Koenig, 168 Mo. 356

Castle v. Lawler, 47 Conn. 340, 344

King v. Western Union Telegraph Co., 84 S. C. 73

Information to Discipline Certain Attorneys, 351 Ill. 206

Spalding v. Thornbury, 128 Ky. 533

Thompson v. Phillips, 12 O. S. 617

In the case of Southern Coal Company v. Martin's Fork Coal Co., et al., 286 Ky. 679, the court had occasion to construe the meaning of the term "unpaid wages" as appearing in a statute granting the right to claim a lien to unpaid wages. The court there held that where two employes left a portion of their wages with their employer with the apparent intent of lending such moneys to the employer during a depressing period of the business, such unpaid items did not constitute "unpaid wages", but were rather "unpaid loans" for which a lien could not be obtained under the act.

In the same case the court held that if a person loaned money for the express purpose of paying the unpaid wages of employes of a manufacturer, he was not entitled to a lien as for "unpaid wages". Such court similarly held that if the employes received scrip from the employer for their wages which was redeemable in merchandise at the employer's store upon receipt of such scrip they could no longer claim a lien for unpaid

wages, even though the scrip was not yet redeemed since the unpaid wages were extinguished by the issuance and acceptance of the scrip.

Under the federal Bankruptcy Act, which grants preference to claims for unpaid wages which have been earned within the three month period prior to the bankruptcy, the courts hold that the preference does not extend to a creditor who has advanced moneys for payment of such wages. Such decisions hold that the claim for such advances is not wages within the meaning of the Bankruptcy Act.

In re North Carolina Car Co., 127 Fed. 178
In re St. Louis Ice Manufacturing & S. Co., 147 Fed. 752
Fuller v. Burnett, 157 Fed. 673.

It would, therefore, appear that neither under the ordinary meaning of the terms "unpaid salary" or "due and unpaid salaries of teachers" nor under the judicial decisions construing such terms can the claim of a money lender, evidenced by note, the proceeds of which were used to pay or extinguish unpaid salaries, be included; they would rather constitute accounts payable, other than bonded debts. It would seem to be the intent of the Legislature that such claims were to be paid in the manner provided in Section 3 of the act under consideration rather than under assumed authority of Section 2 of such act.

Specifically answering your inquiry, it is my opinion that where a board of education has borrowed money for the purpose of paying salaries of teachers which were due and payable on or prior to July 1, 1943 and has evidenced such borrowing by the issuance of promissory notes, such notes may not be considered as "due and unpaid salaries of teachers as of July 1, 1943" for the purposes of distribution of moneys appropriated to the Department of Education, Division of School Finances, in House Bill No. 227, 95th General Assembly, as Item H-8c.

Respectfully,

THOMAS J. HERBERT,
Attorney General.