The Knox County Board of Education being the county board of education to which the territory was annexed, made a distribution or rather a division of the funds and indebtedness between the districts involved.

The Glenmont Rural School District Board of Education and the Holmes County Board of Education think that the division of the funds and indebtedness was not equitably divided.

Question:

Is the division of the funds and indebtedness made by a county board of education when territory is transferred under G. C. 4696 subject to review or appeal and how? Or does the division made stand regardless of how unequitable and unjust?"

Section 4696, General Code, under which the division of school territory was made in the case about which you inquire provides, with reference to the division of funds and indebtedness between the districts involved in a transfer, as follows:

" * * * an equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, which in the case of territory transferred to a county school district shall mean the board of education of the county school district to which such territory is transferred, * * * ."

There is no statutory provision authorizing a review of the action of the county board taken in making an equitable division of funds by authority of said Section 4696, nor is there any method provided for an appeal from the decision of the county board of education with reference to matters acted upon in making a division of funds and indebtedness between two districts involved in such transfer.

Of course, the same rule applies to a county board of education under these circumstances as applies to any administrative board. That is, where discretion is vested in an administrative board, that discretion must not be abused. Where no method is provided by statute for review or appeal from an administrative board in matters where it exercises discretion the only method of questioning this discretion is in the courts.

I know of no case where the discretion of a board exercised in making a transfer of funds between two school districts upon a division of territory in which the districts are involved has been directly attacked by an action in court, but it is my opinion that the same may be done. The action would be an action in equity to enjoin carrying into effect the action of the county board of education because of the board's having abused its discretion.

Respectfully,
GILBERT BETTMAN,
Attorney General.

787.

SCHOOL DISTRICT—CONDITIONS FOR PARTICIPATION IN STATE EDUCATIONAL EQUALIZATION FUND DISCUSSED—HOW PAYMENTS MADE TO SUCH DISTRICT—JUDGMENTS CONSIDERED.

SYLLABUS:

1. *The determination of whether or not a school district may lawfully be permitted to participate in the State Educational Equalization Fund in any year, be-*

cause of its having or not having complied with the orders of the Director of Education as to salary schedule and so called teacher load, and with statutory provisions as to tax levies, depends on those conditions as they exist in the current year during which it is proposed to allow such participation in the fund, and not to any such conditions as may have existed in past years during which the district had drifted into such financial straits as to necessitate its participation in the State Educational Equalization Fund.

2. *The law does not require a school district to maintain any particular standard of tax levies during a series of years, or even for one year prior to its application for state aid, but for the current year only for which it applies, as a prerequisite to its participation in the State Educational Equalization Fund; nor is the Director of Education, under present laws, empowered to supervise the salary schedule maintained by the district or regulate the proportion of teachers to the pupils in the district or make any orders, or prescribe any rules with reference thereto except for the year for which it is proposed to extend state aid, as a condition to participation by the district in the State Educational Equalization Fund.*

3. *The Director of Education has no control over the payment of judgments against a school district, if the judgment has been procured in time to have an amount sufficient to provide for its payment placed in any annual budget or in any annual appropriation measure.*

4. *When a school district applies for state aid for any year, and it appears from the application or upon examination, that the district has indebtedness, other than indebtedness arising from bond issues or lawfully issued notes in anticipation of the sale of bonds or in anticipation of the collection of taxes, which has not been reduced to judgment, the Director of Education is empowered, by authority of Section 7596, General Code, to make such orders as seem proper as to what amount of such indebtedness shall be paid during the current year as a condition to participation by the district in the State Educational Equalization Fund.*

5. *When the revenue resources of any district are supplemented from the State Educational Equalization Fund, whether or not the need for such action arose by reason of the depletion of the revenue resources of the district by the payment of past due claims or judgments, payment to the district should be made as a part of its needs for current expense purposes, in accordance with formulas and regulations issued by the Director of Education with the advice and consent of the Controlling Board, as provided by Section 7596-2, General Code, and not from the "reserve fund," the creation of which is authorized by said statute.*

COLUMBUS, OHIO, August 23, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your inquiry, which reads as follows:

"Pursuant to our discussion at the Board of Control meeting this afternoon, I write herewith to request an opinion on the legality of paying from the deficiency fund, or any other fund at the disposal of the Department of Education, deficits which have been accumulated by a district when not operating under state aid.

The specific case in question is that of Ironton, which has made claim officially for $19,500 for deficits prior to 1929, and has unofficially mentioned an amount much in excess of that. Ironton has never been a state aid district, and prior to January 1st, 1929, had never applied for state aid.

Would it be material to the question whether they would have been eligible for state aid had they applied? It appears probable that Ironton was eligible

as to tax levy, though probably not eligible as to salary schedule and teacher load."

Laws have been in force for a number of years, authorizing the extension of state aid to weak school districts.

The present law is found in Sections 7595, et seq., of the General Code of Ohio. Without reviewing these sections, it is sufficient to say, for the purposes of this opinion, that a school district which complies with certain requirements fixed by the statutes authorizing the extension of state aid, and such orders of the Director of Education as he is authorized to make as conditions of participation in the State Educational Equalization Fund, and is in need of such participation to maintain its schools and pay the obligations incident to such maintenance, and makes proper application therefor, is entitled to participate in the State Educational Equalization Fund created by Section 7595 of the General Code.

The apparent intent of the law is that such districts are entitled, as a matter of right, to participate in the fund to the extent needed to maintain their schools. The right of any particular district to such participation is, however, necessarily limited, to some extent. The entire fund itself, is limited to the amount appropriated by the Legislature and considerable latitude is given to the Director of Education and the Board of Control, in the administration of the fund, to the end that its distribution may be equitable and so that the limited amount available will reach to the places where it is most needed. The discretion of the Director of Education, however, in making estimates for the educational needs of any district, and his authority to issue orders as a prerequisite to the participation of any district in the fund, or formulas and regulations for determining the educational needs of a district, as well as the authority of the Controlling Board to approve or modify the estimates made by the Director of Education or consent to the payments of any allotments to a district, should all be in conformity to law, and within the limits allowed by law.

The purpose for which any part of the State Educational Equalization Fund is allotted to a school district is to supplement the revenues of the district so as to enable it to maintain its schools according to law, and pay the obligations incident to such maintenance.

When the revenues of a district are depleted or cut down by the necessary payments of past due obligations, it of course takes that much more to supplement them. The question is, how much, if at all, is it necessary to deplete the revenues of the district in paying past due obligations, and to what extent, if any, may the payments of such obligations be controlled by orders of the Director of Education.

In Opinion No. 65 rendered by me under date of February 5, 1929, and addressed to the Prosecuting Attorney of Richland County, it is held:

"All legal and enforcible claims against a school district must eventually be paid from the then current appropriations, even though the liability for such claims had been incurred in prior years."

In a later opinion, No. 674 rendered under date of July 28, 1929, and addressed to the Prosecuting Attorney of Knox County, it is said:

"Judgment creditors of a school district may not lawfully levy execution for the payment of their judgments against the property, real or personal of such school district. Such creditors do, however, have the right, and may enforce that right by an action in mandamus, to have the amount necessary to provide for the payment of their final judgments certified to the board of education of the school district by its fiscal officer, and the further right to

have that amount placed in the next annual appropriation measure for the full amount certified, regardless of the requirements of the district for other current expenses. Creditors of a school district who have not reduced their claims to judgment cannot enforce the payment of such claims from the current funds of the school district, if said funds are needed for the payment of current operating expenses in the maintenance of the schools, according to law."

Neither judgment creditors nor other creditors of a school district can enforce collection of their claims by the subjection thereto of funds in the treasury of the district. Judgment creditors may require a levy for the payment of their judgments to be included within the general levy for current expenses, and thereafter enforce the payment of the judgment from the proceeds of the levy, Sections 5625-5 to 5625-8, General Code. Creditors, other than holders of bonds, who have not reduced their claims to judgment cannot enforce collection in any manner until the claims are reduced to judgment. (In this connection, your attention is directed to Opinion No. 674 referred to above). This does not mean, however, that a board of education has no authority to pay a claim that has not been reduced to judgment. If the claim is legal and just, and such as might be reduced to judgment, it may be paid from current funds and should be so paid if it may be done without reducing the available current funds below what is necessary for current needs in maintaining the schools.

There is nothing to prevent a board of education from paying lawful past due claims, whether reduced to judgment or not, and even though it will cause them to be embarrassed for necessary funds for the payment of current expenses in the maintenance of the schools. If this is done and the result is to reduce the funds of the district available in any year below what is needed to maintain the schools, the district is entitled to state aid if proper application is made therefor, and present conditions as prerequisites to the extension of state aid are met. Such aid cannot be refused on the grounds that the district would not have been eligible to state aid during the year or years in which the past due claims had accrued, and when the district was not a participant in or an applicant for state aid, because of indequate tax levies or non-conformity to department orders as to salary schedules and number of teachers.

To determine whether or not authority exists to extend state aid to a district because of the districts having or not having complied with the orders of the Director of Education as to salary schedules and so called teacher load, and with the statutes as to tax levies, it is necessary to look to these conditions as they exist in the current year during which it is proposed to extend the state aid, and not to past years during which the district may have drifted into such financial straits as to necessitate its participation in the State Educational Equalization Fund.

I appreciate the fact that the temptation may exist for a board of education to drift along with a lower tax rate and perhaps greater expenses than it should, and by so doing, accumulate a load of debts with the idea that when they became too pressing they will be assisted by the extension of state aid. While I believe, in most instances, school districts get into financial straits as a result of carelessness rather than design, it is possible that some of them may intentionally take advantage of the situation.

No statute requires a school district to maintain any particular standard of tax levies during a series of years, or even for one year, prior to its application for state aid, but only for the current year for which it applies, as a prerequisite to its participation in the State Educational Equalization Fund; nor is the Director of Education, under present laws, empowered to supervise the salary schedules maintained by the district, or regulate the proportion of teachers to the pupils in the district, or make any orders or prescribe any rules with reference thereto, except for the year which it is proposed to extend state aid, as a condition to participation by the district in the State Educational Equalization Fund.

If, however, a district applies for state aid for any year, and it appears from the application, or upon examination, that the district has indebtedness which has not been reduced to judgment the Director of Education is empowered by authority of Section 7596, General Code, to make such orders as seem proper as to what amount of such indebtedness shall be paid during the current year, as a condition to participation by the district in the State Educational Equalization Fund.

As to claims that are in the form of judgments, however, the judgment creditors are entitled to have an amount sufficient to provide for the payment of their judgments, except in condemnation of property cases, placed in the next succeeding annual budget and in the next succeeding annual appropriation measure for the full amount thereof. Section 5625-8, General Code.

The Director of Education has no control over the payment of judgments against a school district if the judgment has been procured in time to have an amount sufficient to provide for its payment placed in any annual budget or in any annual appropriation measure. If the judgments are procured after the annual budget and the annual appropriation measure is made up and adopted, the payment of the judgment or any part thereof may be postponed until the next succeeding fiscal year, and in the interim, the Director of Education is empowered to make similar orders with reference thereto as he is with reference to the payment of claims not reduced to judgment.

With reference to the specific case about which you inquire, it does not appear what part, if any, of the so-called "deficits" are in the form of a judgment or judgments. The Director of Education has some control over how much of such claims as are not in the form of judgments shall be paid from the revenue resources of the district for the next school year, as a condition to participation by the district in the State Educational Equalization Fund during said year. Although in good conscience they should perhaps all be paid whether in the form of judgments or not, it is not absolutely necessary that this be done, and payment cannot be enforced unless the claims are reduced to judgment before the adoption of the next annual budget and the next annual appropriation measure. If the claims are legal and enforcible, the creditors may reduce them to judgment and it then becomes the mandatory duty of the officials to provide for their payment in accordance with Section 5625-8, supra.

If any part of these claims are paid, or must necessarily be paid from the revenue resources of the district available for the year for which state aid is to be extended, the revenues available for current expenses will be reduced, to that extent, and it will take that much more state aid funds to supplement the revenues of the district to enable it to maintain its schools, and the question of whether or not the district had been eligible for state aid in the year or years during which the claims accumulated has nothing whatever to do with the matter. The amount that the revenue resources of any district are supplemented from the State Educational Equalization Fund, whatever it may be, should be paid to the district as a part of its needs for current expense purposes, in accordance with formulas and regulations issued by the Director of Education, with the advice and consent of the Controlling Board, as provided by Section 7596-2, General Code, and not from the "reserve fund" the creation of which is authorized by said statute.

Where reference is made in the foregoing opinion to claims which have not been reduced to judgment, general claims are meant, and not claims for bonded indebtedness or interest thereon. The payment of such claims may be enforced in a similar manner to that of judgments.

Respectfully,
GILBERT BETTMAN,
Attorney General.