

3608.

EDUCATIONAL EQUALIZATION FUND — WHEN ALLOTTED TO SCHOOL DISTRICT, SUCH IS IN "PROCESS OF COLLECTION" WITHIN MEANING OF SECTION 5625-33, GENERAL CODE.

SYLLABUS:

*When, after application by a school district for participation in the State educational equalization fund as provided by section 7595-1, General Code, and the granting of the same by the director of education, the funds allotted to the said district in pursuance of said application may lawfully be considered by the school district officials as being in "process of collection", as the term is used in section 5625-33, General Code.*

COLUMBUS, OHIO, September 28, 1931.

HON. HARRY M. MILLER, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—I am in receipt of the following communication from you:

"Your opinion is respectfully requested on the following proposition which has been submitted to me by a number of local boards of education:

Can the fiscal officer of a board of education lawfully attach a certificate as required by Section 5625-33 to a contract for the transportation of school children when there are insufficient funds in the treasury of said sub-division and the levies for school purposes will not provide adequate revenue to pay the indebtedness of said sub-division for the current year and where for several years previous, the local revenue has been supplemented by the Director of Education under the so-called 'State Aid' disposition. In other words can a board of education in a 'State Aid' school district consider the anticipated aid from the educational equalization fund as money 'In the process of collection' either before the Director of Education certifies that such aid will be available for school purposes in said district or after the receipt of such certificates."

Section 5625-33, General Code, to which you refer, provides in part as follows:

"No subdivision or taxing unit shall:

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(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. \* \* \*

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Taxes and other revenue in process of collection, or the proceeds to be derived from lawfully authorized bonds, notes or certificates of indebtedness sold and in process of delivery shall for the purpose of this section be deemed in the treasury or in process of collection and in the appropriate fund. \* \* \*"

The law relating to what is commonly termed "State aid" for weak school districts, technically, participation by certain school districts in the State educational equalization fund, will be found in sections 7595, et seq., of the General Code of Ohio. Provision is there made for the establishment of a State educational equalization fund for the equalization of educational advantages throughout the State. Before any school district may participate in this fund, an application must be made by the school district authorities for participation in the fund as directed by section 7595-1, General Code. This application is directed to the director of education. After the application is made, the director of education conducts an investigation to determine the requirements of the district and whether or not under the law the application may be granted, and if so granted, the amount which will be given from the educational equalization fund to the particular district.

Unless the district applying for participation in this fund is entitled to participate in the fund in accordance with the provisions of the statutes named, the director of education is not authorized or permitted to grant the application. Even if the district is entitled under the law to participate in the educational equalization fund, and the director so finds, the extent of such participation must be determined by the director with a view to the granting of all other requests for participation in the fund from districts equally entitled to participate therein. The director is limited in granting these requests in the aggregate to the amount available for the purposes. There are a great many such applications and the amount of the fund from which all allotments made by the director of education must be paid is limited by the amount appropriated by the General Assembly.

No complete and satisfactory definition has ever been given of the expression "in process of collection" as used in section 5625-33, supra. It seems clear, however, that upon the mere application of a school district to participate in the State educational equalization fund it cannot be said that the district's participation in the fund is then in process of collection. Until the director of education determines that the district is entitled to participate in the fund and the amount of such participation that may be granted to the district, it is not known by the district officials or any one else whether or not any funds will be made available by reason of the participation.

After the application is granted and the amount fixed by the director of education, it may properly be said, in my opinion, that those funds are then in process of collection and it is proper for the fiscal officer of the district to so consider them when making certifications as provided by said section 5625-33, General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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3609.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN HOLMES COUNTY, OHIO.

COLUMBUS, OHIO, September 28, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*