

2896

EDUCATION; TEXTBOOKS, REPLACEMENT OF—USE OF REPLACEMENT FUND UNDER §3315.11 R.C.—USE OF INTEREST FROM SUCH FUND §3515.14 R.C.—TRANSFER OF MONIES FROM SUCH FUND UNDER §§5705.15, 5705.16 R.C.

SYLLABUS:

1. A board of education is without authority to use a replacement fund established pursuant to Section 3315.11, Revised Code, to replace textbooks which have become unfit for further use; but under the provision of Section 3515.14, Revised Code, the interest received from investment of such fund may be so used.

2. Under the provision of Section 5705.15, Revised Code, and by the procedure set forth in Section 5705.16, Revised Code, moneys from the replacement fund established by a board of education pursuant to Section 3315.11, Revised Code, may be transferred to the general fund and when so transferred may be used for any authorized school purpose, including repair or replacement of textbooks.

Columbus, Ohio, October 15, 1958

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“May a School District which has a Replacement Fund, as provided for by Section 3315.11 of the Revised Code, utilize such fund to replace textboks which have become unfit for further use?”

Section 3315.11, Revised Code, provides:

“The board of education of any city, exempted village, or local school district may establish and maintain a replacement fund, and for that purpose, set aside annually out of its revenue such sum as is necessary for said purpose. In case of total or partial destruction of any of the property of said board from any cause or in case, because of the unfitness of such property, it becomes necessary at any time to demolish the same in whole or in part, such replacement fund may be used to *rebuild, on the original site or elsewhere, or to restore, repair, or improve the property so damaged, demolished, or destroyed* and for said purposes the board may sell or use any of the securities or moneys of such replacement fund.” (Emphasis added)

Although it might be possible to construe "property" so as to include textbooks in certain other cases, here it would be a clear perversion of the legislative intent to do so in view of the wording of the statute. In the construction of statutes the purpose in every instance is to ascertain and give effect to the legislative intent. *Carter v. Youngstown*, 146 Ohio St., 203. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. *State ex rel. Shaker Heights Public Library v. Main*, 83 Ohio App., 415; *In re Izwinski*, 83 Ohio App., 463. An unambiguous statute is to be applied, not interpreted. *Sears v. Weimer*, 143 Ohio St., 312. Clearly the words of this statute, "such replacement fund may be used to rebuild, on the original site or elsewhere, or to restore, repair, or improve the property so damaged, demolished, or destroyed," are not ambiguous. They clearly relate to buildings. Therefore, money cannot be expended directly from this fund for the purchase of textbooks.

However, there are certain exceptions to this proposition, as provided by Section 3315.14, Revised Code, as follows :

"The replacement fund shall not be reduced, disposed of, or expended for purposes other than those specified in section 3315.11 of the Revised Code, except by a strict compliance with sections 5705.15 and 5705.16 of the Revised Code. Whenever the replacement fund reaches the maximum amount deemed necessary by the board of education for the purposes specified in section 3315.11 of the Revised Code, the interest received from investments of said fund may be used by the board for any authorized school purposes." (Emphasis added)

The statute is very clear in stating that when the replacement fund reaches the maximum amount deemed necessary by the board of education, the board may use the interest received from the fund for any authorized school purpose.

The second exception, by which the funds may be used, is provided for by Sections 5705.15 and 5705.16, Revised Code.

Section 5705.15, Revised Code, reads as follows :

"In addition to the transfers authorized in section 5705.14 of the Revised Code, the taxing authority of any political subdivision may, in the manner provided in this section and section 5705.16 of the Revised Code, transfer from one fund to another any public funds under its supervision, except the proceeds or balances, of loans, bond issues, special levies for the payment of loans

or bond issues, the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose, and the proceeds or balances of any license fees imposed by law for a specified purpose.” (Emphasis added)

In view of the fact the present case does not fall within any of the exceptions listed by Section 5705.15, Revised Code, funds may be transferred from it to the general fund for the purchase of textbooks. The manner in which this transfer is to be done is prescribed by Section 5705.16, Revised Code, which reads in part:

“A resolution of the taxing authority of any political subdivision shall be passed by a majority of all the members thereof, declaring the necessity for the transfer of funds authorized by section 5705.15 of the Revised Code, and such taxing authority shall prepare a petition addressed to the court of common pleas of the county in which the funds are held. The petition shall set forth the name and amount of the fund, the fund to which it is desired to be transferred, a copy of such resolution with a full statement of the proceedings pertaining to its passage, and the reason or necessity for the transfer. A duplicate copy of said petition shall be forwarded to the board of tax appeals for its examination and approval.

“If the petition is disapproved by the board, it shall be returned within ten days of its receipt to the officers who submitted it, with a memorandum of the board’s objections. This disapproval shall not prejudice a later application for approval. If the petition is approved by the board, it shall be forwarded within ten days of its receipt to the clerk of the court of common pleas of the county to whose court of common pleas the petition is addressed, marked with the approval of the board. If it approves the petition, the board shall notify immediately the officers who submitted the petition, who then may file the petition in the court to which it is addressed.

“If, upon the hearing, the court finds that the notice has been given as required by this section, that the petition states sufficient facts, that there are good reasons, or that a necessity exists, for the transfer, and that no injury will result therefrom, it shall grant the prayer of the petition and order the petitioners to make such transfer.”

It is therefore clear that in order to transfer these funds the approval of the taxing authority, the board of tax appeals, and of the common pleas court, in that order are required.

Opinion No. 4342, Opinions of the Attorney General for 1954, p. 508, dealt with a somewhat similar problem, and an opposite ruling was given.

However, it is not difficult to distinguish these two situations. Opinion No. 4342, *supra*, dealt with a lunchroom rotary fund established as provided by Section 3313.81, Revised Code. Neither that statute nor any other specifically limits transfers from that fund to action under Sections 5705.15 and 5705.16, Revised Code, as does Section 3315.14, Revised Code, with regard to the replacement fund.

Accordingly, it is my opinion and you are hereby advised:

1. A board of education is without authority to use a replacement fund established pursuant to Section 3315.11, Revised Code, to replace textbooks which have become unfit for further use; but under the provision of Section 3515.14, Revised Code, the interest received from investment of such fund may be so used.

2. Under the provision of Section 5705.15, Revised Code, and by the procedure set forth in Section 5705.16, Revised Code, moneys from the replacement fund established by a board of education pursuant to Section 3315.11, Revised Code, may be transferred to the general fund and when so transferred may be used for any authorized school purposes, including repair or replacement of textbooks.

Respectfully,

WILLIAM SAXBE

Attorney General