

1228.

BOARD OF EDUCATION—CAN NOT LEGALLY TRANSFER FUNDS FROM ITS TREASURY TO LIBRARY FUND.

A city board of education can not legally transfer funds from its treasury to the library fund, notwithstanding the budget commission failed to certify to the county auditor the proper levy for library purposes.

COLUMBUS, OHIO, May 8, 1920.

HON. C. A. STUBBS, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—In your communications of recent date you request an opinion upon a statement of facts which I understand to be substantially as follows:

In 1919 the Celina library board, created under sections 7631 to 7643 inclusive of the General Code, certified to the Celina board of education a seven-tenths mill levy for the library fund. This levy was certified to the county auditor. The budget commission changed the levy certified to the board of education for library purposes by striking out the whole levy of seven-tenths mill as certified. The county auditor placed upon the duplicate for collection the sums certified to him by the budget commission.

Your question is whether or not the library board can obtain money from the board of education equal to the amount which would have been raised by the seven-tenths mill levy.

Undoubtedly under the provisions of section 7639 G. C. the library board and the board of education had ample authority to certify the levy to the county auditor. The action taken by them seems in all respects regular.

Under the provisions of section 5649-3c the county auditor must present the budget submitted to him, as certified by the board of education, to the budget commission. If the budget commission finds said budget to be within the limitations of law, it must certify same to the auditor. If the commission finds that the budget as certified to it is not within the limitations of law, then the commission shall adjust the various amounts to be raised so that the total amount thereof shall not exceed the sum authorized to be levied. In making such adjustments, the budget commission may revise and change the estimates submitted and may reduce any or all the items, but shall not increase the total of the budget or any item. In the final analysis it becomes the mandatory duty of the county auditor to place upon the tax duplicate the amount certified to him by the budget commission. It therefore will be observed that the auditor complied with the law in so far as making this levy was concerned. While the budget commission is empowered to use its discretion in the reduction of the items, this power exists only when the levy as made by the officials of the taxing district exceeds the limitations provided by law. Your letters do not disclose whether or not it was necessary for any of the items to be reduced. However, it is not believed to be necessary to have these facts to determine your question. But it should be stated that it is not believed that the budget commission was authorized to reduce any of the items if they were within the proper limitations. In such a case undoubtedly the commission could have been enjoined from taking such action at the proper time. Furthermore, if it was necessary for the budget commission to reduce the budget it is not believed that the law confers the power to completely eliminate any items, but rather the power is given to reduce any or all items to bring the total within the limitations of law.

While it is not clear, the information you give indicates that the budget commission not only struck out the item relative to the levy for the library fund, but per-

haps increased the other items of the budget for said school district. Clearly this commission had no authority to increase any of said items. In view of all the circumstances it is very apparent that the action taken by the budget commission in connection with this levy was an abuse of its discretion and as above indicated could have properly been enjoined from taking the action it did by the board of education or the library board at the proper time. However, it is believed that due to the time that has elapsed there is no remedy available at this time. The amounts that were levied were made for specific purposes and must be applied to the purposes for which said levies were made.

In specific answer to your inquiry you are advised that it is the opinion of this department that notwithstanding the wrongful action taken by the budget commission, the levies as made must be applied to the purposes for which they were levied and that the treasury of the school district cannot legally be diminished by the payment of funds to the library board to make up what it has lost by reason of the action of the budget commission.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1229.

TEACHERS—WHEN STATE LIFE ELEMENTARY CERTIFICATE MAY
 BE ISSUED WITHOUT EXAMINATION SUBSEQUENT TO 1920.

Under the provisions of section 7807-8 G. C., the superintendent of public instruction is authorized to prescribe a course of professional reading and study, upon the completion of which and compliance with other conditions imposed by law, a state life elementary certificate may be issued without examination subsequent to 1920.

COLUMBUS, OHIO, May 8, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of recent date, which is as follows:

“Section 7807-8 in its latter sentences provides that a state life elementary certificate shall be issued to a person who has completed a ‘one-year normal course * * * or who has done such professional reading and study as the superintendent of public instruction may require * * *’; and ‘* * * that no life certificate authorized by this sub-section to be issued to graduates of a one-year normal course shall be issued unless application be made prior to the year 1920.’ You will observe that this wording does not say that a certificate may not be granted even if application is made after the date named to a person who has done such professional reading and study as the superintendent of public instruction may require and who has of course fulfilled the other conditions of high school training and experience.

We ask whether this section is to be construed as giving the superintendent of public instruction authority at this time to prescribe professional reading and study, upon the completion of which a life elementary certificate may be issued subsequent to this date.”