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1. MILEAGE—NO AUTHORITY TO PAY MILEAGE TO MEMBERS OF BOARDS OF EDUCATION OTHER THAN COUNTY BOARDS—SECTION 4832-11 G. C.
2. CONSOLIDATION—TWO OR MORE LOCAL SCHOOL DISTRICTS—MEMBERS OF CONSTITUENT DISTRICTS—PRIOR TO CONSOLIDATION, PROVIDED BY RESOLUTION FOR COMPENSATION—AMOUNT UNPAID—INDEBTEDNESS ASSUMED BY CONSOLIDATED DISTRICT AND PAYMENT SHOULD BE PROVIDED FOR BY BOARD OF CONSOLIDATED DISTRICT—WHERE MEMBERS, BOARDS OF EDUCATION, CONSTITUENT DISTRICTS, FAILED BY RESOLUTION TO PROVIDE FOR COMPENSATION—BOARD OF CONSOLIDATED DISTRICT WITHOUT LEGAL AUTHORITY TO MAKE PROVISION FOR PAYMENT.

SYLLABUS:

1. There is no authority under the provisions of Section 4832-11, General Code, for the payment of mileage to members of boards of education other than county boards of education.

2. Where two or more local school districts have been consolidated under the provisions of Section 4831-1, General Code, and the members of the boards of education of such constituent districts have, prior thereto, provided by resolution for their own compensation under the provisions of Section 4832-11, General Code, the amount of such compensation remaining unpaid at the date of such consolidation constitutes an indebtedness of such local district which is assumed by the consolidated district and payment thereof should be provided for by the board of such consolidated district. However, where the members of the boards of education of such constituent districts have failed, prior to the date of such consolidation, to provide by resolution for their own compensation, the board of such consolidated district is without legal authority to make provision therefor.

Columbus, Ohio, July 30, 1952

Hon. Creed Jopling Lester, Prosecuting Attorney
Knox County, Mount Vernon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Four of the local rural school districts in this county have recently been consolidated into a new school district, called the K. School District.

"The Board of Education of the newly consolidated K. School District has asked this office for an opinion on certain problems arising out of the construction of General Code Section 4832-11. I am submitting these questions to your office for your opinion, since the statute decisions and opinions under this section are not definite on this matter.

"The questions that I am submitting to your office for your opinion are as follows:

"1. Pursuant to the terms of General Code Section 4832-11, may the members of a rural school board, other than the county school board, receive mileage for the meetings that they attend?

"2. During prior years the members of the school board of the four school districts were not paid the compensation allowed under 4832-11. Such board members now ask that the K. Board of Education pay them their compensation. On that assumption that there are no current operating funds which have been carried over from prior years of operation, may the K. Board of Education pay the board members of the four rural school boards, which were combined, for their unpaid compensation for services rendered prior to January 1, 1952 or subsequent thereto up to the time of consolidation, out of current operating funds derived during our taxable year from the local tax as set forth in General Code Section 4832-11?

"3. May unpaid board members be compensated for services for prior years from current operating funds derived during the current taxable year?

"Your opinion on these questions will be greatly appreciated, since board members of the consolidated districts are making an earnest plea for payment at this time."

The only statutory provision for compensation and mileage for members of boards of education which I am able to find is that in Section 4832-11, General Code. This section reads:

"Each member of the county board of education shall be paid five dollars a day and mileage at the rate of twelve cents a mile one way to cover the actual and necessary expenses incurred during his attendance upon any meeting of the board not exceeding twelve meetings in any one year. Such expenses and the expenses of the county superintendent itemized and verified shall be paid from the county board of education fund upon vouchers signed by the president of the board.

"The board of education of any school district, other than a county school district, may provide by resolution for the compensation of its members, provided, first, that such compensation

shall be paid out of current operating funds derived from a local tax which is in excess of the tax levy required for participation in additional aid from the state public school fund; and second that such compensation shall not exceed three dollars (\$3.00) per member for regular meetings attended not exceeding twelve meetings in any one year."

Here it will be observed that the General Assembly has expressly provided for the payment of compensation *and mileage* in the case of members of county boards but has provided only for *compensation* in the case of members of boards of education of any other school districts. Because these different provisions are found in two contiguous paragraphs of the same section a strong inference arises that the General Assembly intended not to authorize mileage in the case of members of other than county boards. In the face of this inference it would appear to be of no avail to attempt to find by implication in the statute any power in such other boards to authorize mileage payment to their members.

In the study of your second question we may briefly note the general limitations on the powers of boards of education. In *State ex rel. Clarke v. Cook*, 103 Ohio St., 465, the second paragraph of the syllabus is as follows:

"Boards of education, and other similar governmental bodies, are limited in the exercise of their powers to such as are clearly and distinctly granted. (*State, ex rel. Locher, Pros. Atty., v. Menning*, 95 Ohio St., 97; approved and followed.)"

In *State ex rel. A. Bentley & Sons Co. v. Pierce, Aud.*, 96 Ohio St., 44, the third paragraph of the syllabus reads:

"In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power."

In this state of the law it is seriously to be doubted whether the members of a consolidated school district, under a statutory provision authorizing them to provide for *their own* compensation could provide for the compensation of the members of a board which no longer exists. Here it may be observed that under the provisions of Section 4831-1, General Code, a consolidated school district acquires all of the property and assumes all of the indebtedness of the several constituent districts. Are

the claims for compensation of members of boards of education of such constituent district a part of the indebtedness of such new district.

The answer to this question will depend in part on facts not supplied in your inquiry. If, prior to such consolidation, the members of such district boards acting under authority of Section 4832-11, *supra*, have provided by resolution for their own compensation but have not been paid the amount so provided, I should think it would be clear that the amounts thus owing would be a part of the indebtedness which the consolidated district is obliged to pay. However, in the absence of any such resolution I am unable to see that any obligation with respect to such compensation existed at the time of the consolidation so as either to justify or require payment by the consolidated board.

It is to be remembered that the provisions of the second paragraph of Section 4832-11, General Code, are *permissive only*, and it is fair to conclude that the General Assembly anticipated that many of the members of local school boards would be disinclined to vote themselves any compensation out of strictly local tax funds, and that economy in the expenditure of such public funds would thereby be promoted. If that salutary result was thus achieved up to the date of the consolidation of districts it would appear to be beyond the power of the consolidated board now to undo it.

Respectfully,

C. WILLIAM O'NEILL

Attorney General