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JOINT HIGH SCHOOL—DISTRICT CAN MAKE CONTRIBUTION FOR MAINTENANCE FROM CONTINGENT OR TUITION FUND—HOW FOREIGN TUITION APPORTIONED—WHEN CONTRIBUTING DISTRICT JOINED IN MAINTAINING JOINT HIGH SCHOOL AND IS A WEAK SCHOOL DISTRICT APPLYING FOR STATE AID—AMOUNT OF STATE AID SAID DISTRICT ENTITLED TO RECEIVE.

1. *Where a school district has joined in the establishment and maintenance of a joint high school, such school district, under the provisions of section 7671 G. C. can make its whole contribution for such maintenance from the contingent fund, or from the tuition fund, or from both funds, as such board may decide.*

2. *Foreign tuition received by the high school committee controlling a joint high school, should be deducted from the operating fund needed as a whole, after which the remainder needed for operation should be requested from the contributing boards in proportion to the total tax valuation in each district.*

3. *Where a contributing district joined in maintaining a joint high school, is a weak school district applying for state aid, such weak district is entitled (under the law prior to August, 1919) to the amount of state aid for tuition purposes which is equal to the amount it appropriates from its own tuition fund, toward the maintenance of the joint high school, in addition to the amount of state aid due such district because of a deficiency in the tuition fund necessary for operating its district elementary schools.*

COLUMBUS, OHIO, April 16, 1920.

HON. A. V. DONAHEY, Auditor of State, Columbus, Ohio.

DEAR SIR:—Acknowledgment is made of the receipt of your letter in which you request the opinion of this department upon the following statement of facts:

“Two school districts have joined under section 7669 G. C. for the purpose of erecting and conducting a high school. The two districts so joined are both within the class of weak school districts and have both made application for state aid as such for some years last past. The high school receives tuition fees from pupils attending from adjoining districts.

Being a weak school district applying for state aid under sections 7595 et seq. G. C., must the high school committee in making its calculations for contributions from the two contracting districts deduct from its requirements for the purposes of the tuition fund that part of its tuition receipts calculated for tuition fund expenses. or

May the high school committee deduct the entire sum of these tuition receipts from the requirements for contingent fund purposes?

In approaching this question, we desire to call your attention to the fact that we have heretofore construed the weak school district act giving it a practical construction, and it is our desire that in approaching this question you assume that sections 7595 et seq. G. C. can be given a practical operative construction. In other words, we desire that all extraneous questions be eliminated and the opinion directed to this one matter.

The opinion desired is as of the law as it was prior to the enactment of the Freeman law; in other words as of 1918-1919.”

In the above request you indicate that the condition obtaining in the district in

question should be viewed from the standpoint of the statutes as they existed during 1918-1919, and the section of the statutes under which joint high schools are authorized is section 7669 G. C., which reads as follows as amended in 107 O. L., p. 621:

"The boards of education of two or more adjoining rural or village school districts, or of a rural and village school district by a majority vote of the full membership of each board, may unite such districts for high school purposes. Each board also may submit the question of levying a tax on the property in their respective districts, for the purpose of purchasing a site and erecting a building, and issue bonds, as is provided by law in case of erecting or repairing school houses; but such question of tax levy must carry in each district before it shall become operative in either. If such boards have sufficient money in the treasury to purchase a site and erect such building, or if there is a suitable building in either district owned by the board of education that can be used for a high school building it will not be necessary to submit the proposition to vote, and the board may appropriate money from their funds for this purpose."

In construing the above section, the attorney-general, on May 5, 1916, issued opinion 1541, wherein the second branch of the syllabus reads as follows:

"With the exception of the power reserved by provision of section 7672 G. C., to the board of education of each of the school districts comprising the union for high school purposes, to levy a tax and set aside the proceeds of such levy as a separate fund for the maintenance of said high school, the joint high school committee when properly elected under authority and in compliance with the requirement of section 7670 G. C., exercises the same powers and performs the same duties in connection with said high school as are exercised and performed by the board of education of a school district which maintains its own high school." Vol. 1, Opinions of the Attorney-General, 1916, p. 772.

Under the above opinion of the attorney-general it is made clear that the high school committee, composed of representatives from the several boards of education conducting the high school, has power to do the things pertaining to the management of such high school as a board of education might have in the management of its high school, and one of these is the right to collect tuition from any and all foreign pupils who might attend such joint high school conducted by the committee herein stated.

Your inquiry indicates that the district in question is one of those which fall within the provisions of section 7595 G. C., which reads in part as follows:

"* * * When a school district has not sufficient money to pay its teachers such salaries as are provided in section 7595-1 of the General Code, for eight months of the year, after the board of education of such district has made the maximum legal school levy, at least two-thirds of which shall be for the tuition fund, then such school district may receive from the state treasurer sufficient money to make up the deficit."

Provision for the state auditor to furnish to the district in question the state aid indicated, appears in section 7596 G. C., which reads as follows:

"Whenever any board of education finds that it will have such a

deficit for the current school year, such board shall * * * make affidavit to the county auditor, who shall send a certified statement of the facts to the state auditor. The state auditor shall issue a voucher on the state treasurer in favor of the treasurer of such school district for the amount of such deficit in the tuition fund."

It is clear from the language used in the two sections here quoted that the aid which is to be rendered by the state to what are known as weak school districts, is to be furnished for the purpose of taking care of deficits in the tuition fund and in no other fund. Provision for the maintenance of a joint high school established under section 7669 G. C. is authorized by section 7671, which reads as follows:

"The funds for the maintenance and support of such high school shall be provided by appropriations from the tuition or contingent funds, or both, of each district, in proportion to the total valuation of property in the respective districts, which must be placed in a separate fund in the treasury of the board of education of the district in which the school house is located, and paid out by action of the high school committee for the maintenance of the school."

The above section provides for a separate fund in the treasury of the board of education of the district, in which the school house is located, and this fund (kept separate from the other funds of either of the boards of education in question) is in a sense the treasury of the joint high school district and disbursements are made therefrom only by action of the high school committee representing both boards. Into this fund there is paid from time to time all moneys from the contributing boards of education for the support of the joint high school and, as indicated in the opinion of the attorney-general heretofore cited, into such fund should be paid the foreign tuition charges which are received by the high school committee of the joint high school district in its conduct of such high school. In practice the high school committee, in order to have the funds which under the law should be at the disposal of the committee, must make its calculation for contributions from the contracting parties who have united under the provisions of section 7669 G. C. for the conduct of a joint high school. The funds for such high school can be contributed from either of two funds by the contributing board of education, that is, from the tuition fund or the contingent fund, or both, the whole contributed fund to be used in the payment of salaries of superintendents and teachers, and the other current expenses necessary in the maintenance of the joint high school. In addition to the whole amount contributed by the contracting boards of education to the high school committee conducting the joint high school, the high school committee receives the foreign tuition paid into such joint high school and seemingly your question is as to the exact purposes for which this foreign tuition, paid into a joint high school, could be used; and whether such tuition received from foreign pupils should be deducted from the tuition fund asked of the contracting parties maintaining the high school, or whether the entire sum of these tuition receipts from foreign pupils should be considered as a portion of the contingent fund in such joint high school district. The answer to this question as to where foreign tuition should be placed by the receiving board of education, or the authorities maintaining the school, is found in section 7603 G. C..

After enumerating various funds received by the board of education, or the boards maintaining the school, the section closes as follows:

"* * * Moneys coming from sources not enumerated herein shall be placed in the contingent fund." (97 v. 350).

Thus the money which comes from foreign tuition charges is a sum which does not come "from sources enumerated herein," for nowhere in section 7603, or in any other section of the school laws existing in 1918-1919, other than this language appearing in 7603, is there found any authority as to what fund should receive moneys received from foreign tuition paid to a joint high school.

"Under the provisions of section 7603 G. C., the contingent fund of said district will be entitled to receive in addition to the one-third of the amount realized from the maximum legal school levy, all moneys coming from sources not enumerated in that section." (Opinions of the Attorney-General, Vol. II, 1916, p. 1301).

The syllabus of the opinion from which the above excerpt is taken, reads in part as follows:

"That a board of education may be able to apply income from the district levy for contingent fund upon the payment of teachers' salaries, or may actually contemplate such application, does not affect the amount which the district is entitled to receive under the weak school district aid law, which is in all cases measured by the deficiency in the estimated income of the tuition fund as compared with the amount required to pay the minimum salaries of elementary teachers, mentioned in section 7595-1 G. C., the actual salaries of high school teachers, and the other charges made by law against the fund."

Thus we find that under section 7603, supra, the board of education, or the committee authorized to conduct a joint high school, must place the moneys received from foreign tuition in the contingent fund, and as a further indication that this must have been the intent of the General Assembly, attention is invited to the fact that section 7603 was re-enacted in House Bill 615, filed in the office of the secretary of state February 24, 1920, and the closing sentence of section 7603 again reads:

"Moneys coming from sources not enumerated herein shall be placed in the contingent fund."

Necessarily, therefore, the high school committee conducting the joint high school must make some showing to the contracting boards of education maintaining the high school as to what has become of the foreign tuition received and under section 7603, supra, such foreign tuition having been placed in the contingent fund, then the whole amount needed by the high school committee for operation as regards the parts that are to be furnished by the contracting boards of education would be lessened to the extent of the amount of foreign tuition that would appear in the operating fund of the joint high school district maintained by the high school committee. In making its calculation for contributions from the two contracting districts maintaining a joint high school under the provisions of section 7669 G. C., the joint high school committee should deduct from the requirements for all operating purposes the entire sum of the tuition receipts from foreign pupils and request the remainder necessary to operate the joint high school from the contributing boards on the basis named in section 7671 G. C., that is, "in proportion to the valuation of property in the respective districts."

You indicate that one of the contributing districts receiving the request for maintenance of the joint high school is a weak school district applying for state aid.

Under section 7671 of the General Code the boards of education of the districts supporting a joint high school have the right to take their contributions either from the tuition fund or from the contingent fund. In other words, so far as school districts generally are concerned there is no requirement that separate account be taken by the joint high school committee of expenditures for contingent purposes and expenditures for tuition purposes; nor indeed of receipts applicable to tuition as such nor applicable to contingent uses as such so far as the determination of the amount of the contribution from each district necessary to maintain the joint high school is concerned. Applications for state aid under sections 7595 et seq. of the General Code are made in advance of the occurrence of the actual deficiency. The law down to the time the Freeman law was enacted was absolutely silent as to the details of the statement which a district would have to make up in order to show the amount of its anticipated deficiency.

As the auditor of state in his letter says, it was absolutely necessary as a matter of administration to put a practical construction upon the law so that it would operate with uniformity throughout the state. There are several different kinds of expenditures which as a matter of law are payable either from the contingent or tuition fund. The support of a joint high school is one of them. Payment of foreign tuition is another (see statutes applicable), but the state aid would not work with uniformity unless these expenses were classified in whole or in part as tuition fund charges so that the amount of tuition money actually needed from the state could be arrived at for each weak district on a uniform basis. The auditor therefore inquires whether in administering the state aid law the amount of foreign tuition paid to a joint high school committee is to be credited in whole or in part to the tuition account so as to cut down the amount of tuition contribution proper (still speaking for purposes of the state aid law) which the constituent districts would have to contribute in order to maintain the joint school. This is more of an administrative question than it is one of law, but for the future the question has disappeared, being taken care of by the Freeman act for the year 1919-20 and by H. B. 615 for future years. As an administrative question it may be granted that the auditor of state has implied authority to lay down uniform rules consistent with the law so that state aid will be administered with fairness and justness, and for this purpose he may inquire into the essential character of a contribution of this kind as creditable to contingent or tuition fund or partly creditable to each. Nevertheless, for reasons referred to in this opinion, the foreign tuition received is a receipt, the amount of which is to be credited to the contingent fund; and it must be held that the fact that such a receipt has been credited to the contingent fund as a matter of bookkeeping, following which a contribution from the tuition fund of a member district has been made on the basis of the total tuition cost of the joint high school without any deduction on account of such foreign tuition, does not in any wise impair the right of the district to receive state aid nor cut down from the actual anticipated deficiency in the tuition fund the amount of the conventional deficiency in that fund for purposes of administering state aid.

Respectfully,
JOHN G. PRICE,
Attorney-General.