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GARNISHMENT—SALARY OF TEACHER IN HANDS OF BOARD OF
EDUCATION MAY BE ATTACHED.

SYLLABUS:

Money in the hands of a board of education, due and payable to a teacher employed by it, is subject to garnishment.

COLUMBUS, OHIO, August 4, 1932.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

“Can the salary of a school teacher be attached in the hands of a district school board when it is paid by means of state aid, and can the money be attached after it is distributed to the school board?”

Section 11819, General Code, reads in part as follows:

“In a civil action for the recovery of money, at or after its commencement, the plaintiff may have an attachment against the property of the defendant upon any one of the grounds herein stated:

* * * * *

Section 11829, General Code, contained in the chapter on attachment, reads as follows:

“The service of process of garnishment upon the sheriff, coroner, clerk, constable, master commissioner, marshal of a municipal corporation, or other officers having in his possession any money, claim, or other property of the defendant, or in which the defendant has an interest, shall bind it from the time of service, and be a legal excuse to such officers, for not paying such money or delivering such claim or property to the defendant, as by law, or the terms of the process in his hands, he would otherwise be bound to do.”

The question presented by your inquiry is whether or not money in the hands of a school board is embraced within the scope of the above section.

In Opinion No. 4228, under date of April 2, 1932, I held that money in the hands of a board of education due and payable to the employes of such board, may be attached in proceedings in aid of execution. In such opinion I pointed out that Section 11760, General Code, relative to proceedings in aid of execution provides that when a judgment debtor has not personal or real property subject to levy on execution sufficient to satisfy the judgment, any equitable interest which he has in real estate, etc., in the possession of any person or body politic or corporate shall be subject to the payment of the judgment by action. I further pointed out that under Section 4749, General Code, the board of education of each school district organized under the provisions of the title of the act is constituted a body politic and corporate, and as such capable of suing and being sued.

The general rule as to attachment or garnishment of governmental bodies in Ohio is found in 4 O. Jur. 145, as follows:

"There is no statutory provision in Ohio expressly allowing garnishment against governmental bodies. As shown in the immediately succeeding sections there are some limitations upon the right to garnish officers having funds owing to a debtor. This refusal to allow garnishment is based upon public policy."

See also *National Radiator Co. vs. Hobday*, 17 O. N. P. (N. S.) 489; 28 C. J. 59.

On the other hand, in the case of *City of Newark vs. Funk Bros.*, 15 O. S. 462, the court allowed salaries of incorporated cities due and unpaid to be subjected by the judgment creditors of such officers to the payment of their judgments under the provisions of Section 11760, which section was at that time in substantially the same form as at present. In that case, the counsel for plaintiff in error insisted that it was against public policy to permit the garnishment of the salaries or pay of such officers under the provisions of such section. The court, however, stated that it saw nothing in the requirements of public good and in the justice of the case requiring a departure from the plain reading of the statute.

Then again in 17 O. Jur. 1023, it is stated:

"The general rule is that public policy is generally held to prevent garnishment of public bodies. That public policy does not so operate in Ohio would seem to be settled. And this would seem to be true in proceedings in aid of execution."

In 39 Weekly Law Bulletin, p. 140, the court of common pleas of Franklin County in the case of *Belknap, Carpenter and Co. vs. Pearson*, applied the doctrine of *Newark vs. Funk*, supra, to the case of an attachment of the salary due to Pearson for his services as a teacher from a board of education.

From the foregoing, it would seem that since a board of education is a body politic capable of suing and being sued, and since the doctrine of exemption on the ground of public policy of a school board from attachment proceedings would seem to be denied in Ohio, such money would be subject to attachment.

The fact that such money represents proceeds of distribution from the State Educational Equalization Fund would have no bearing upon the instant situation, since it appears from your communication that the same has already been paid to the board of education and therefore properly constitutes money belonging to said board.

I am not unmindful of the provisions of Section 4759, General Code, which reads as follows:

"Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution."

This section has been cited as authority for prohibiting the attachment of property belonging to a school board in an action against such board. See Opinions of the Attorney General for 1927, p. 1747. It should be noted that the legislature has provided for the satisfaction of judgments against a school board by including within the general levy amounts certified to be necessary for the payment of final judgment (Section 5625-5); as to a bond issue where no

money is available for the payment of final judgments rendered in an action for personal injuries or other non-contractual obligations, see Section 2293-3, General Code.

I do not think that the provisions of Section 4759, General Code, apply to the situation presented by your communication, namely, the attachment of money due to a third person in the hands of the board of education of which the board has possession for one purpose only, namely, delivery to the teacher. The evident purpose of Section 4759 is to prevent the seizure of property used in the administration of the schools and consequent interference with such governmental function and it is apparent that the allowing of the attachment in the instant situation will not do violence to the provisions of such section.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that money in the hands of a board of education, due and payable to a teacher employed by it, is subject to garnishment.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4546.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN GUERNSEY COUNTY.

COLUMBUS, OHIO, August 5, 1932.

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

4547.

APPROVAL, LEASE TO STATE RESERVOIR LANDS AT BUCKEYE LAKE, OHIO, TO FRANK J. MILLAY, SECRETARY AND TREASURER OF OHIO FISHING CLUB, FOR RIGHT TO USE FOR COTTAGE SITE AND DOCKLANDING PURPOSES.

COLUMBUS, OHIO, August 5, 1932.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a recent communication from the Conservation Commissioner submitting for my examination and approval a certain reservoir land lease executed by the Conservation Commissioner, by the terms of which instrument there is leased and demised to one Frank J. Millay, Secretary and Treasurer of the Ohio Fishing Club, the right to use and occupy for cottage site and dock land purposes, for a term of fifteen years, the inner slope and waterfront and state land in the rear thereof, that is included in Embankment Lot No. 1 west of the waste-gates at Buckeye Lake, as laid out by the Ohio Canal Commission in 1905, and being that part of the Southeast Quarter of Section 14, Township 17, Range 18, Licking County, Ohio, that was leased by the State of Ohio to D. M. Lasley and Harry S. Calkins by lease dated September 9, 1902.