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LOCAL SCHOOL BOARD WHICH HAS NO MONEY IN THE COUNTY TREASURY TO ITS ACCOUNT CANNOT RECEIVE AN ADVANCE DISTRIBUTION OF TAX MONIES—NO AUTHORITY FOR COUNTY COMMISSIONER TO LOAN, GRANT, OR TRANSFER MONEY—§§321.34, 133.30., R.C.—O.A.G. No. 3596 FOR 1931, APPROVED AND FOLLOWED

SYLLABUS:

1. A local school board which has no money in the county treasury to its account cannot receive an advance distribution of tax moneys pursuant to Section 321.34, Revised Code.

2. Under the provisions of Section 133.30, Revised Code, a local school board may not borrow money in anticipation of the receipt of revenues payable in December prior to the following first day of January.

3. There is no authority for a board of county commissioners to loan, grant or transfer money from the county general fund to the board of education of a local school district.

4. It is impossible to lay down any comprehensive general rule for the guidance of boards of education in maintaining the schools of the district where there are insufficient funds to pay the cost thereof. Each district presents its own problem (paragraph 2 of the syllabus in Opinion No. 3596, Opinions of the Attorney General for 1931, approved and followed).

Columbus, Ohio, November 23, 1960

Hon. Donovan Lowe, Prosecuting Attorney  
Morgan County, McConnelsville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Morgan Local School Board of Morgan County, has proposed several question to be presented to your office for your

considered opinion. As background for these questions, the Morgan County Local School Board is faced with the exhaustion of their funds used for the operation and maintenance of Morgan County Schools, on or about October 17, 1960, unless new sources of funds are discovered. At present, a six mill levy for operating expenses is to be placed upon the ballot at the November Election in an effort to help the Schools.

"The Treasurer of Morgan County is planning on opening her tax books for the collection of the utility personal tax so as to have such tax collected by December, 1960. Such taxes collected will be for the first half of tax year, 1961.

"1. May the Morgan Local School Board receive an advance in 1960 from the County Auditor upon their proportionate share of moneys that would normally be distributed at the February settlement in 1961?

"2. Would it be possible for the Morgan Local School Board to borrow in October, 1960, from local Banks, using the first half of 1961 Utility Personal Tax as collateral?

"3. Is it possible for the Morgan Local School Board to obtain a loan, grant or transfer from the County General Fund in order to provide operating funds for the operation of the Schools in Morgan County?

"4. If funds are unavailable for the operation of Schools within a County, what further responsibility does the Local and County School Boards have to continue Public Schools?

"It is respectively requested that these matters be given your prompt attention as the possibility of the closing of Schools within Morgan County for lack of funds, is quite real."

In regard to your first question, advance disbursements by the county auditor to a local school district are provided for in Section 321.34, Revised Code, reading in part as follows:

"When the local authorities by resolution so request, the county auditor shall draw and the county treasurer shall pay on such draft to township clerks, treasurers of municipal corporations, the clerk of any board of education, and the treasurer of any other political subdivision or taxing district whose funds derived from taxes or other sources are payable by law to the county treasurer, *any money that may be in the county treasury to the account of such local authorities, respectively, and lawfully applicable to the purpose of the current fiscal year in which such request is made.* The auditor and county treasurer shall retain any amounts needed to make such payments of obligations of local political subdivisions or taxing districts as are required by law to be paid directly by the county authorities.

"\* \* \*"

(Emphasis added)

The provisions of Section 321.34, *supra*, are mandatory, and advance disbursements not in compliance therewith are unauthorized and illegal. *Arnold v. Board of Education of Smith Twp.*, 20 Ohio Law Abs., 220.

In answer to my telephone query, you informed me that there is no money currently in the county treasury to the account of the local school board. I note that the county treasurer hopes to have the utility personal tax collected by December 1960; however, as indicated in your request, such taxes will be for the first half of 1961. Because there is no money in the county treasury to the account of the local school board, and such money as may be collected in December, 1960, will not be applicable to the purpose of the current fiscal year 1960, it is my opinion that the local school board cannot receive an advance disbursement.

A local school district is a "subdivision" within the meaning of the uniform bond law. Section 133.01, Revised Code. In order to borrow money, therefore, the school district must comply with such law. Section 133.30, Revised Code, provides in part as follows:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one half of the amount estimated to be received from the next ensuing settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. \* \* \* No subdivision shall borrow money or issue certificates in anticipation of such taxes before the first day of January of the year of such tax receipts.

"\* \* \*"

Referring to Section 133.30, *supra*, a former Attorney General stated in Opinion No. 4754, Opinions of the Attorney General for 1955, page 48 at page 56, as follows:

"If the school board were permitted to borrow money in anticipation of the December, 1954, collection in December, 1954, and use that money for expenditures for the fiscal year 1954, it would have to use revenues included in its budget for the fiscal year 1955 to repay the amount of the loan. Its 1955 budget would be wrecked.

"The manifest purpose of Section 133.30, Revised Code, is to permit a subdivision to borrow money in a fiscal year in anticipation of the receipt of tax revenues in the same fiscal year. Thus, by borrowing it may obtain money to pay its budgeted ex-

penses even though it has not received the tax revenues from the collecting officer. *The purpose is not to permit a subdivision to borrow money to pay expenses in one fiscal year in anticipation of the receipt of tax revenues listed in its tax budget as available for the following fiscal year.*" (Emphasis added)

The fiscal year of a school district begins at the opening of the first day of January of each calendar year and ends at the close of the succeeding 31st day of December. Section 115.08, Revised Code.

It is my opinion, therefore, that the local school board may not borrow money in October, 1960, in anticipation of the receipt of tax revenues payable in December prior to the following first day of January, 1961.

In regard to your third question, your attention is directed to Section 321.23, Revised Code, reading as follows:

"A county treasurer who loans money belonging to the county, with or without interest, or uses such money for his own individual purpose, shall forfeit and pay, for each such offense, not less than one hundred nor more than five hundred dollars, to be recovered in an action in the name of the state, for the use of the county."

In opinion No. 91, Opinions of the Attorney General for 1933, page 85, the question was whether the board of county commissioners could make a loan or deposit of money with the county recorder so that he could keep a supply of revenue stamps on hand. The then Attorney General ruled that the board of county commissioners could not make such a loan or deposit holding in paragraphs one and two of the syllabus, reading as follows:

"1. The authority of a county commissioner or a board of county commissioners to act in financial transactions must be clear and distinctly granted by statute.

"2. Where such authority is doubtful, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

I can find no authority making it possible for the local school board to obtain a loan, grant or transfer from the county general fund. It is my opinion, therefore, that such school board may not obtain such a loan, grant, or transfer.

If the local school district fails to provide schooling for the youth of the district because of a lack of funds, then it is the duty of the county board of education in which such district is located to provide such schooling until funds thereafter become available. Section 3313.85, Revised Code; Opinion No. 4369, Opinions of the Attorney General for 1935, page 736. I assume from your last question that county board of education funds are also unavailable, and your question is what further responsibility do such boards have to continue operating the schools.

Your question concerning the duty of the school boards to continue operating the schools where funds are unavailable was the subject of Opinion No. 3596, Opinions of the Attorney General for 1931, page 1191, the syllabus of which reads as follows:

“1. It is the duty of a board of education to use every possible lawful effort to maintain the schools of its district for a period of not less than 32 weeks in each school year.

“2. It is impossible to lay down any comprehensive general rule for the guidance of boards of education in maintaining the schools of the district where there are insufficient funds to pay the cost thereof. Each district presents its own problem.

“3. Lawful contracts may be entered into with school teachers, school janitors, school bus drivers and other employees whose compensation is provided for by regular payrolls even though moneys are not immediately available at the time of entering into the contract to meet the obligation thereof.

“4. Even though there are no public funds immediately available to meet the cost thereof, the members of a board of education are not personally liable for the cost that may accumulate in connection with the operation of the public schools of its district, provided they act in good faith and within the law in directing the operation of the schools, unless they specifically assume personal responsibility for said expense.”

On pages 1192 and 1193 of Opinion No. 3596, *supra*, is found the following comment by the then Attorney General:

“Notwithstanding the positive commands of the Constitution and the laws of this state, instances arise, such as you mention, where the way to open the schools may not seem clear, and where considerable difficulty is experienced in doing so. In spite of this difficulty, however, every effort should be made, within the range of human possibility, to open the schools and maintain them as provided by law. Courts have frequently expressed themselves as enjoining the keeping open of the public schools at any cost. The

providing of means whereby the youth of the state may receive the advantages of the public schools is regarded as the one most essential element of government. No court has ever sanctioned a letting down of efforts in this direction and no court will, in my opinion, sanction the closing of the schools in any school district for an appreciable time, even though the situation be such that administrative officials are required to take emergency measures not strictly sanctioned by positive law, so long as these measures are carried out in good faith and in the interests of the public schools."

Finding myself in agreement with the views of my predecessor, as expressed in Opinion No. 3596, *supra*, I therefore, approve and follow such opinion.

Accordingly, it is my opinion and you are advised:

1. A local school board which has no money in the county treasury to its account cannot receive an advance distribution of tax moneys pursuant to Section 321.34, Revised Code.

2. Under the provisions of Section 133.30, Revised Code, a local school board may not borrow money in anticipation of the receipt of revenues payable in December prior to the following first day of January.

3. There is no authority for a board of county commissioners to loan, grant or transfer money from the county general fund to the board of education of a local school district.

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Respectfully,

MARK McELROY

Attorney General