

2884.

BOARD OF EDUCATION—EXPENSE OF MEMBER ATTENDING UPON
THE TAX COMMISSION OF OHIO—WHEN PAYABLE FROM SCHOOL
FUNDS.

SYLLABUS:

The expenses of the members of a board of education or of its clerk, when duly authorized in the premises, incurred by reason of attending upon the Tax Commission of Ohio for the purpose of procuring the consent of the Tax Commission to the submission of the question of the issue of bonds by a school district may legally be paid from the school funds of the district, whether such attendance is by request of the Tax Commission or whether it is made upon the determination of the board of education that it will be for the best interests of the district to do so.

COLUMBUS, OHIO, November 14, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for my opinion which reads as follows:

“Section 2293-15 G. C. (112 O. L. 370), requires boards of education in certain cases to procure the consent of the Tax Commission of Ohio before submitting bond issues to a vote of the people.

Question: May the expenses of board members and clerks of boards of education be legally paid from the school funds when such expenses are incurred in attendance upon the Tax Commission at Columbus for the purpose of procuring the consent referred to, whether such attendance is voluntary on the part of the members and clerk or whether they are requested to attend by the Tax Commission?”

Section 2293-15, General Code (112 O. L. 370), referred to in your inquiry, reads, in part, as follows:

Section 2293-15. * * * “The net indebtedness created or incurred by any school district shall never exceed six per cent of the total value of all property in any such school district as listed and assessed for taxation, provided that bonds shall not be submitted to popular vote in an amount which will make the net indebtedness after the issuance of such bonds exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, unless the tax commission of Ohio consents thereto.

In ascertaining the limits of this section, the bonds specified in Section 2293-13 and the following bonds shall not be considered: * * *”

Then follows an enumeration of certain classes of bonds not to be considered in ascertaining the limits of the section. This is the only direction to the Tax Commission found in the statute as to what shall be considered in determining whether or not consent is to be given for a school district to submit to the electors the question of issuing bonds which when issued will cause the net indebtedness of the district to exceed four per cent of the total value of all the property in the district.

There is no doubt but that the Tax Commission has the right to, and undoubtedly does, when determining whether or not consent should be given to a school district to submit the question of the issuance of bonds which will cause the net indebtedness of the district to exceed four per cent of its tax valuation, consider many things

bearing on the financial condition of the district and the necessity for the said issue of bonds. In order intelligently to pass upon the question the Commission would necessarily have to consult with the members of the board of education of the district or its clerk. The clerk would no doubt be most able to give said Commission the proper information upon which to base its determination.

Under these circumstances, the board of education in some cases might deem it to be for the best interests of the district to consult with the Tax Commission or send its clerk for that purpose, and in many cases the Tax Commission might send for the clerk or the members of the board for an interview. In either case, the going to the Tax Commission would be within the scope of the duties of the members of the board of education as public officials, or of its clerk as a public employe, when duly authorized and directed by the board to go or when requested by the Commission to come.

It is stated in 23 American and English Encyclopaedia of Law, Second Edition, Volume 23, page 389:

“Where the law requires an officer to do what necessitates an expenditure of money for which no provision is made he may pay therefor and have the amount allowed him.”

Throop, on Public Offices, Section 495, states:

“A public officer is entitled to receive from the public authority which he represents, reimbursement for extraordinary expenses necessarily incurred by him, in the course of, or in consequence of the discharge of his official duties, and not intended to be covered by the compensation allowed to him, the rule in this respect being the same as in cases of private agency.”

When the members of the board of education or the clerk of the board attend the Tax Commission there are necessarily incurred certain expenses which, in my opinion, are not intended to be covered by the regular compensation allowed to them and for that reason these expenses should be borne by the school district which they represent.

In reaching this conclusion, I am not unmindful of the opinion of a former Attorney General, published in the Opinions of the Attorney General for 1926, at page 553, in which it is held:

“The board of education of a rural or village school district is without authority to pay items of traveling expense incurred by the clerk of said board.”

I am unable to agree with this holding.

Necessary traveling expenses incurred by a public official in the performance of his duties are clearly not a part of his regular compensation. The case of *Cleveland vs. Featherstone*, 110 O. S. 669, which the Attorney General cites in support of his conclusion in the aforesaid opinion, clearly does not preclude the board of education from making allowances for traveling expenses. In fact, to my mind, said case tends to support the conclusion herein reached.

I am therefore of the opinion in answer to your specific question that the expenses of the members of a board of education or of its clerk, when duly authorized in the premises, incurred by reason of attending upon the Tax Commission of Ohio for the purpose of procuring the consent of the Tax Commission to the submission of the question of the issue of bonds by a school district, may legally be paid from the school funds of the district, whether such attendance is by request of the Tax Commission or whether it is made upon the determination of the board of education that it will be for the best interests of the district to do so.

Respectfully,

EDWARD C. TURNER,
Attorney General.