

of office space for ten years to the said county, in a city office building proposed to be erected by such city.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

4164.

APPROVAL, BONDS OF MASSILLON CITY SCHOOL DISTRICT, STARK COUNTY, OHIO, \$31,000.00.

COLUMBUS, OHIO, April 17, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4165.

APPROVAL, BONDS OF SOUTH-EUCLID-LYNDHURST VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$1,500.00.

COLUMBUS, OHIO, April 17, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4166.

APPROVAL, BONDS OF HUDSON TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$16,000.00.

COLUMBUS, OHIO, April 17, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4167.

SCHOOL DISTRICT—COUNTY AUDITOR UNAUTHORIZED TO REDISTRIBUTE BALANCE OF "COUNTY BOARD OF EDUCATION FUND" TO SCHOOL DISTRICT WHEN.

SYLLABUS:

1. *The law contemplates that no more shall be retained from the distributive*

share of the tax funds of the several school districts of a county school district for the payment of the salaries of the county superintendent and the assistant county superintendent of schools and the contingent expenses of the county board of education during a school year, than the amounts necessary for those purposes during the year.

2. No provision is made by statute for the return or redistribution to the several school districts of a county school district of a proportionate amount of the "county board of education fund" created by virtue of Section 4744-3, General Code, where through inadvertence or otherwise, a surplus or balance exists in said fund at the end of a school year. Any such surplus or balance should be taken into consideration during the ensuing school year in adjusting the proper amounts to be retained from the several school districts of the county school district for the needs of the county board of education fund during the next school year.

3. A county board of education in certifying to the county auditor the amounts necessary to be retained from the distributive share of tax funds of the several school districts of the county school district for "county board of education fund" purposes in pursuance of Section 4744-2, General Code, is limited to the certifying of such amounts only, as are necessary to pay the salaries of the county superintendent of schools and assistant county superintendents and a reasonable approximate amount necessary for contingent expenses of the county board of education during the next ensuing school year, and in so doing should take into consideration a surplus or balance if any, that may at the time exist in the said fund.

4. No authority exists for a county auditor to retain from the distributive share of tax funds of a school district of a county school district, for its "county board of education fund" purposes, as provided by Section 4744-3, General Code, more than the proportionate amount necessary therefor as certified by the county board of education.

5. When a village school district becomes an exempted village school district by authority of Sections 4688 or 4688-1, General Code, it is not entitled to a share of a balance or surplus if any, that may then exist in the "county board of education fund."

COLUMBUS, OHIO, April 18, 1935.

HON. ROY L. HENRY, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

"I request an opinion from you on a matter of procedure to be followed by myself and the County Auditor of Lawrence County in the handling of certain funds.

I call your attention to Sections 4744-2 and 4744-3 of the Ohio General Code. These sections provide briefly that the county auditor when making his semi-annual apportionment of school funds to the various village and rural school districts, shall retain the amounts necessary to pay the salaries of the county superintendent and assistant county superintendents and for contingent expenses as may be certified by the county board, and that such sum shall be placed in a separate fund to be known as the 'county board of education fund.'

In compliance with the provisions of these sections the county auditor of Lawrence County has, during the past several years, retained certain moneys out of the funds due the various village and rural school districts, and has placed them in a separate fund known as the 'County Board of Education Fund.'

On July 1, 1934, there was a balance in the 'County Board of Education Fund' of \$15,670.46. Previous to that time there was a school district in Lawrence County under the supervision of the County Board of Education and of the County Superintendent known as the 'Chesapeake Union Village School District.' Said school district had contributed its share of the amounts so retained by the county auditor and deposited in said fund. On July 1, 1934, Chesapeake Union Village School District became an exempted village school district under the provisions of Section 4688-1, of the Ohio General Code, and thereafter became exempt from contributing any portion of the cost of maintenance of the County Board of Education and of the County Superintendent of Schools and his assistants. The number of teachers under the supervision of the County Board of Education prior to July 1, 1934, was 295. The number employed in Chesapeake Union Village School District was 40.

With the above facts in mind, please let me have your opinion as to the proper method of procedure to be followed in determining the amount to which Chesapeake Union Exempted Village School District is entitled out of this fund and in transferring said sum from the County Board of Education Fund to the Chesapeake Union Exempted Village School District."

Provision is made by statute, for a village school district which had at the last federal census, a population of 3,000 or more, to become an exempted village school district and thus be exempt from the supervision of the county board of education. Section 4688, General Code, provides with reference thereto:

"The board of education of any village school district containing a village which according to the last census had a population of three thousand or more, may by a majority vote of the full membership thereof decide to be exempted from the supervision of the county board of education. Such village school district by notifying the county board of education of such decision before May first in any year, shall be exempt from the supervision of the county board of education for the following school year which begins September first thereafter. The village once so exempted shall be styled an exempted village school district and shall remain so until the board of education thereof by a majority vote of the full membership determines that it desires to be supervised by the county board of education and notifies the county board of education on or before May first in any year to that effect."

By Section 4688-1, General Code, provision is made for a village school district that did not have a population of 3,000 or more at the last decennial federal census, to take a census at any time and if, as a result of that census it appears that the district has a population of 3,000 or more, it may become exempt from county supervision in the same manner and to the same extent as though it had had a population of 3,000 or more at the last preceding decennial federal census and had thus become qualified to become an exempted village district by virtue of Section 4688, General Code. Said Section 4688-1 General Code, provides:

" * * If the census shows a population of three thousand or more in the village school district, and such census is approved by the superintendent of public instruction, such district shall be exempted from the supervision of the county board of education after due notice is given as is provided in section 4688."

The law contemplates that any school district which is a part of a county school district and is therefore subject to the supervision of the county board of education and the county superintendent of schools, should share in the expenses of that supervision. To that end Sections 4744-2 and 4744-3, General Code, provide:

"Sec. 4744-2. On or before the first day of August of each year the county board of education shall certify to the county auditor the number of teachers to be employed for the ensuing year in the various rural and village school districts within the county school district, and also the number of assistant county superintendents employed and their compensation and the compensation of the county superintendent for the time appointed; and such board of education shall also certify to the county auditor the amounts to be apportioned to each district for the payment of its share of the salaries of the county superintendent and assistant county superintendents and of the local expense of the normal school in each county, and the contingent expenses of the county board of education."

"Sec. 4744-3. The county auditor when making his semi-annual apportionment of the school funds to the various village and rural school districts shall retain the amounts necessary to pay the salaries of the county and assistant county superintendents and for contingent expenses as may be certified by the county board. Such amounts shall be placed in a separate fund to be known as the 'county board of education fund.' The provisions of this section shall be in full force and effect on and after January 1, 1934."

It will be observed from the provisions of the sections last above quoted that the amounts necessary for county board of education purposes during a school year are fixed by Section 4744-2, supra, and the retention of the proper proportionate amounts from the several districts of the county school district to make up the necessary amount as fixed by authority of Section 4744-2, General Code, is provided for by Section 4744-3, General Code. No authority exists for retaining any more from the local districts of a county school district than the amount necessary for the ensuing year as certified by Section 4744-2, General Code. If this procedure is followed as the law contemplates, according to the letter of these statutes there should be no balances or practically no balances at all in a "county board of education fund" at the end of a school year. The salaries of the county superintendent of schools and his assistants are definitely fixed prior to August first of any year and the contingent expenses of the county board of education, while they probably cannot be estimated with strict mathematical certainty, can be estimated approximately, so that there is no reason for there being any substantial balances in a county board of education fund at the end of a school year. It will be observed that the statute directs the county auditor to retain such amounts "as may be certified by the county board of education." There is no justification for his retaining more than the statute authorizes. If by reason of inadvertance or otherwise, the county board of education certifies more than is necessary or the auditor retains more than the certification warrants, there is no means provided by law for the return of any surplus to the districts from which it was retained. The matter may be adjusted by retaining less from the several school districts during the next school year that is, by deducting from the needs of the ensuing school year, as certified in accordance with Section 4744-2, General Code, the amount of any balances that may be in the county board of education fund at the beginning of this year and adjusting the amounts to be retained from the school districts comprising the county school district during the next school year accordingly.

This entire procedure is statutory and inasmuch as the law makes no provision for the return of any proportionate amount of a surplus existing at the end of a school year in the county board of education fund to the districts from which any portion of the fund was retained, neither the auditor nor any other officer has any authority to do so.

Any school district which is qualified, and which desires to become an exempted district must, under the statutes, notify the county board of education to that effect on or before May first of any year. Any such district that had so notified the county board of education would, of course, not be taken into consideration when the certification spoken of in Section 4744-2, General Code, would later be made, and nothing would be retained by the auditor from the funds distributable to that district at semi-annual settlements made after August first of that year by virtue of Section 4744-3, General Code, but I find no provision of law authorizing or directing the county auditor or anyone else to return to such district any proportionate share of a county board of education fund existing at the time the district became an exempted village school district.

I am therefore of the opinion in specific answer to your question that no authority exists for the return to the Chesapeake Union Village School District of any portion of the county board of education fund existing on July 1, 1934, under the circumstances mentioned in your letter.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4168.

APPROVAL, PETITION TO AMEND SECTION 2 OF ARTICLE XII OF THE
CONSTITUTION OF OHIO.

COLUMBUS, OHIO, April 18, 1935.

MR. MARVIN C. HARRISON, *Attorney-at-Law, Guardian Building, Cleveland, Ohio.*

DEAR SIR:—You have submitted for my examination a written petition signed by one hundred qualified electors of this state, containing a measure to be referred and a summary of the same, under the provisions of Section 4735-175, General Code.

It is proposed to amend section 2 of Article XII of the Constitution of Ohio, which amendment shall read as follows:

“BE IT RESOLVED by the people of the State of Ohio; that the Constitution of the State of Ohio be amended by repealing Section 2 of Article XII, and by adopting in its place a new section so that Article XII, Section 2 shall read as follows:

Section 2. No sales tax, so-called, or excise tax upon the sale, purchase, distribution or exchange of personal property or merchandise, shall ever be levied in this state upon the sale, purchase, distribution or exchange of such personal property or articles of merchandise as may properly be termed necessities of life; and specifically, and without intending to enumerate all personal property or articles of merchandise so exempted, no such sales tax shall ever be levied upon the sale, purchase, distribution or exchange of personal prop-