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PARENT OF A NON-RESIDENT STUDENT PAYING TUITION IN A SCHOOL DISTRICT WHERE HE OWNS REAL PROPERTY CANNOT HAVE TUITION REDUCED BY REASON OF OWNING PROPERTY—§§3327.06, R.C., 3313.64, R.C., OPINION 2766, OAG, 1962.

SYLLABUS:

When a parent of a non-resident school pupil is required to pay tuition pursuant to Section 3327.06, Revised Code, and where such parent owns real property and pays taxes thereon in the school district in which he is obligated to pay such tuition, the obligation to pay such tuition may not be reduced by reason of such taxes and may not be considered as a set off against the amount of taxes payable in such school district.

Columbus, Ohio, October 9, 1962

Hon. John D. Sears, Jr., Prosecuting Attorney
Crawford County, Bucyrus, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“Your office issued an opinion earlier this year in which you held ‘A board of education is without authority, by rule or otherwise, to waive the payment of tuition by any student . . .’

“I respectfully request your opinion as to whether or not a taxpayer may receive credit on the tuition for a student for the tax money that he pays into the school district where his child will attend school.

“The facts are as follows: A taxpayer resides in the Wynford School District in Crawford County, Ohio and owns considerable amount of property in the Bucyrus City School District. The Wynford Board of Education released the taxpayer’s son to the Bucyrus City School District, however, according to your opinion above referred to, the taxpayer would have to pay a tuition to the Bucyrus City School District. This same taxpayer owns other property located within the Bucyrus City School District and their tax dollar on said property that goes to the Bucyrus City School District exceeds the amount of the tuition that they would have to pay.

“I respectfully request your opinion as to whether or not the said taxpayer may deduct from the tuition for having their

son go to the Bucyrus City School from the amount of their tax dollar that is paid to the Bucyrus City School District on their property owned within the said school district.”

Your request indicates that the board of education of the school district in which the pupil mentioned therein maintains school residence has released him to the Bucyrus City School District. If such release was in the form of an agreement, or can be construed as constituting a contract as authorized by Section 3327.04, Revised Code, then the board of education of the district of school residence of such pupil would be obligated, pursuant to Sections 3327.06 and 3317.08, Revised Code, to pay tuition for such student. Section 3327.06, Revised Code, reads as follows :

“When a pupil attends school, pursuant to section 3327.04 of the Revised Code, in a district other than the district in which he is a school resident, tuition for such attendance shall be credited and paid in the manner provided in section 3317.08 of the Revised Code.

“When the board of education of a city, exempted village, or local school district admits to the schools of its district any nonresident pupil for whose attendance tuition is not an obligation of the board of the district of the pupil’s residence, such board shall collect tuition, for the attendance of such pupil, from the parents or guardian of the pupil and the amount of tuition collected shall be not more nor less than the amount computed in the manner prescribed by section 3317.08 of the Revised Code.

“If a board admits to the schools of its district any nonresident pupil for whose attendance tuition is not an obligation of the board of the district of the pupil’s residence, and fails to collect tuition as required by this section from the pupil’s parents or guardian, the attendance of such pupil is unauthorized attendance. When a school district provides instruction for a nonresident pupil whose attendance is unauthorized attendance, the membership of such pupil shall not be included in the membership figure used in the calculation of approved teacher units as provided by section 3317.05 of the Revised Code. The membership of such pupil shall be credited to the school district in which such pupil is a legal school resident.”

For the purpose of this opinion, I shall assume that there is no obligation to pay tuition for the pupil in question upon the school district in which he is a school resident. It is, of course, apparent that if there is such an obligation, no further obligation to pay tuition rests upon any other party.

A public school education must, pursuant to Section 3313.64, Revised Code, be free to all school residents of the school districts. Said statute reads in pertinent part as follows :

“The schools of each city, exempted village, or local school district shall be free to all school residents between six and twenty-one years of age, but the time in the school year at which beginners may enter upon the first year’s work of the elementary school shall be subject to the rules and regulations of the board of education. School residents shall be all youth who are children or wards of actual residents of the school district. District of school residence shall be the school district in which a school resident is entitled to attend school free. * * *

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“The board of education of a city, exempted village, or local school district may admit other persons to the public schools of its respective district upon the payment of tuition within the limitation of law.”

It is obvious that the pupil referred to in your request is not a school resident of the Bucyrus City School District as defined by Section 3313.64, *supra*, nor do I find any other provision of law which would entitle him to free schooling in said district. Since his school attendance in such district is not, for the purpose of this opinion, deemed to be covered by a contract between his district of school residence and the Bucyrus City School District, the board of education of said latter district must charge tuition for his attendance. As you note in your request, I reached the same conclusion in Opinion No. 2766, Opinions of the Attorney General for 1962, issued January 19, 1962, wherein the syllabus reads as follows :

“A board of education is without authority, by rule or otherwise, to waive the payment of tuition by any students in the schools of the district where under Section 3313.64, Revised Code, such students may be admitted to the schools only upon the payment of tuition ; and this is true whether or not the students concerned are from foreign countries.”

As to whether the obligation of the parent of the pupil involved to pay tuition can be diminished by the amount of taxes paid by him in the Bucyrus City School District, your attention is called to 51 Ohio Jurisprudence 2d, 19, Taxation, Section 3, which deals generally with the purpose and effect of taxation and reads, in part, as follows :

“Although the right of taxation consists in the right of taking private property for public use, and arises in each case from public necessity, the exercise of the high prerogative being limited only by the exigencies of government, technically, the taxation of property is in no proper sense an appropriation of it to any purpose; in a general sense it is nothing more than the exercise of the attribute of sovereignty by which the state provides the means of self-preservation, *every owner of property holding his title subject to the right of taxation*. It also has been said that taxes upon land are in effect a rental charged the owner, as a subject of the government, for the privilege of enjoying such land; that is, *they are burdens which are imposed upon property as an equivalent for the protection given to the owner in his enjoyment of such property*.

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(Emphasis added)

As can be seen from Opinion No. 2766, *supra*, the board of education of the Bucyrus City School District must charge the tuition in question. Any compromise of such tuition based upon taxes payable must, therefore, rest upon the ability of the school district or taxing authority to compromise the taxes in question.

With regard to the power to compromise a tax, attention is directed to *The State, ex rel. Dansante, v. Pethtel, et al.*, 158 Ohio St., 35, wherein the first paragraph of the syllabus states:

“Where taxes are legally assessed, the taxing authority is without power to compromise, release or abate them except as specifically authorized by statute.”

At page 39 of the opinion of the court in the *Dansante* case, *supra*, the following language appears:

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“The general rule is that the power to tax does not include the power to remit or compromise taxes. A tax is not predicated on contract and cannot be discharged by reason of contractual considerations. Where taxes are legally assessed, the taxing authority is without power to compromise, release or abate them except as specifically authorized by statute, and this is for the reason that, if such contracts can be made and performed on the part of a municipality, uniformity and equality are destroyed, and the burden of obligation so remitted is inequitably cast upon the payers of general taxes in the taxing district. * * *”

I know of no statute which would permit the tuition required to be paid by a parent in a school district under Section 3327.06, Revised Code, to be set off against the taxes payable in that school district. In making this statement, I am not unaware of Section 3313.19, Revised Code, which permits a board of education to release any part of a debt, but as I pointed out in Opinion No. 2766, *supra*, such authority must be limited to debts due from a bank in the process of liquidation or operating under a conservatorship. Furthermore, such statutory authority could not authorize the compromise of a tax, since taxes are not as a general rule considered a debt. 51 Ohio Jurisprudence 2d, 21, Taxation, Section 5, and the cases cited thereunder.

I should also point out that the taxes levied for school purposes clearly do not depend for lawfulness upon the taxpayer's receipt of a direct benefit from such school system. While at first it may appear that the taxpayer in question is paying heavily for the public school education of his child, the surcharge imposed by the tuition is a result of the taxpayer's voluntary rejection of the free public schooling which his child, in common with all others of school age be they children of taxpayers or not, is entitled to receive.

In accordance with the above, I am of the opinion and you are advised that when a parent of a non-resident school pupil is required to pay tuition pursuant to Section 3327.06, Revised Code, and where such parent owns real property and pays taxes thereon in the school district in which he is obligated to pay such tuition, the obligation to pay such tuition may not be reduced by reason of such taxes and may not be considered as a set off against the amount of taxes payable in such school district.

Respectfully,

MARK MCELROY
Attorney General