

1953.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND ADOLPH R. HENKE, OF GALLIPOLIS, OHIO, FOR CONSTRUCTION AND COMPLETION OF PORCH FOR COTTAGE NO. 3, OHIO HOSPITAL FOR EPILEPTICS, GALLIPOLIS, OHIO, AT A COST OF \$4,000.00—SURETY BOND EXECUTED BY THE FIDELITY AND CASUALTY COMPANY.

COLUMBUS, OHIO, November 12, 1924.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

Dear Sir:—

You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, and Adolph R. Henke, of Gallipolis, Ohio. This contract covers the construction and completion of porch for Cottage No. 3, Ohio Hospital for Epileptics, Gallipolis, Ohio, and calls for an expenditure of \$4,000.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Fidelity and Casualty Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

C. C. CRABBE,

Attorney General.

1954.

SCHOOLS—BOARDS OF EDUCATION—WHEN BOARDS ARE ENTITLED TO PARTICIPATE IN STATE EDUCATIONAL EQUALIZATION FUND—TERM "SCHOOL YEAR" CONSTRUED.

COLUMBUS, OHIO, November 12, 1924.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

Dear Sir:—

We are in receipt of your request for an opinion as follows:

"Section 7595-1, General Code of Ohio, provides that a school district participating in the state educational equalization fund must have a total school rate for the current year of at least 9½ mills and for all purposes

must be taxed at a rate within municipal limits of at least 20 mills and at a rate outside of municipal limits of at least 17 mills. A further condition for participation is that the district either vote the extra three mill levy or that such levy be placed through action of the county board as provided by statute.

"(1) District "A", at the time of making application (July 31) for participation in the state educational equalization fund for the school year 1924-25, has in force the three mill extra levy for current operating expenses. This levy expires at the close of the taxation year 1923, or, in other words, with the August distribution of school funds. Can District "A" participate in the state educational equalization fund even though the total school rate, without the three mill extra levy, may or may not be at least 9½ mills for the December collection and February distribution of taxes?"

"(2) District "B" at the present time does not have in force the three mill school levy outside of limitations for current operating expenses. In the event that this district authorizes the levy at the coming November election and the same is placed, becoming effective for the February distribution of taxes, and such district participate in the state educational equalization fund for the school year 1924-1925?"

"(3) School districts having total levies for all purposes less than 20 mills in municipal districts and less than 17 mills in rural districts but having a rate of 9½ mills or more for school purposes are applying for participation in the state educational equalization fund. Is there any provision in the law whereby such district may participate in the equalization fund?"

"Several applicant districts come under questions 1 and 2. Unless such districts receive state funds it is quite probable that the schools will be compelled to close soon. Question 3 affects many districts where the levies other than those for school purposes are so low that the total tax burden for all purposes seems to be below the minimum."

Your request involves a consideration of the act of the 85th General Assembly, generally known as the State Educational Equalization Fund Act (110 O. L. 315). The sections are lengthy and we shall not attempt to quote them in full.

Section 7595-1 provides that certain boards of education "may at any time prior to July 31st of any year apply to the director of education for participation in the state educational equalization fund for the *ensuing school year*." It is then provided that the application "shall not be granted unless the property of the given district is to be taxed for the *current year* for the current expense of school operation at a rate of at least eight mills, and is to be taxed for the *current year* for all school purposes at a rate of at least nine and one-half mills, ***." The section further provides:

"Such application shall not be granted unless the property of the given district is to be taxed for the *current year* for all purposes at a rate within municipal limits of at least twenty mills and at a rate outside of municipal limits of at least seventeen mills."

By section 7596 the director of education is given certain powers, compliance with which by the local board is required as a condition precedent to participation in the fund provided by Section 7595, known as the "State Educational Equalization Fund." Among such powers is the power to order "the additional levy necessary to meet the conditions set forth in Section 7595-1", which levy must be submitted to the electors for such number of years as the director may deem best. The section then provides:

"And if such submission is not made, or if the electors of the district do not approve the additional levy *for ensuing school years* so submitted, the district shall not participate in such fund, unless through the operation of section 7596-1."

By section 7596-1, if a board of education fails to submit the levy to the electors, or if the electors have disapproved the levy when submitted, the director of education may order the county board of education to levy the additional amount on the property of the district as a condition precedent to participating in the fund.

Section 7596-2 gives power to the state director of education to fix the salary schedules of districts participating in the fund. It provides:

"If it appears that the tentative schedules so fixed are so high that the appropriation for the state educational equalization fund *for the current year* will not meet all applications, then the director of education shall lower his schedules and shall order such other changes in the plans of the schools as will enable them to be operated *the ensuing year* within the limits of the appropriation for the equalization fund for that year."

Section 7597-1 provides:

"The receipts from taxation for a *given school year* of a school district which is considered for aid from the state educational equalization fund *** shall be deemed those receipts which do not include the proceeds of any levy voted at the November election of the *school year in question*, and which levy was not otherwise in force before that date as applying on the duplicate of the given *calendar year*."

The schedule contained in Section 3 of the Act makes specific provision for the participation of the district in the fund for the school year 1923-1924 in the event the board of education had failed to take "the necessary action on or before the 15th day of August, 1923."

The apparent misuse of the words "ensuing school year", "current year", "calendar year" and "school year", is the cause of the difficulty which has been encountered in giving a satisfactory answer to your inquiry.

The Supreme Court in the case of *State ex rel vs. Ross*, 109 O. S., page 179, held that the making of the application prior to July 31st of any year was directory and not mandatory. It will further be noted that no time is fixed in the act within which the director shall act upon the application and within which he must fix the amount to be paid to any district. Nevertheless the legislature must have had some systematic course of procedure in mind and it is our duty to ascertain and determine from all provisions of this and related acts what that system was.

The scheme as provided was put into operation by the filing of the application by the local board of education with the director of education. What do the words, "ensuing school year," as used in section 7595-1, refer to? The school year is defined in section 7689 as beginning on September 1st and closing on the 31st day of August of the succeeding year. If that is the year referred to by the phrase "ensuing school year," then a district not having the additional levy from which collections are to be made in both tax collections succeeding September 1st, is manifestly deprived of participating in the fund; that is, the additional levy must have been authorized at or prior to the November election preceding the date of application on July 31st of any year. To so construe it would require a board of education to submit the additional levy to a vote at least a year in advance, whether or not it is known that such levy will be necessary. For this and other reasons we are of

the opinion that the phrase "ensuing school year" does not mean the so-called school year beginning September 1st and ending August 31st of the succeeding year. Rather we are of the opinion that the words are used in the sense of the school fiscal year.

There is no express provision for a school fiscal year, but it is found by virtue of a consideration of the so-called Smith one per cent. act, Section 5649-3a provides that a board of education, as well as all other boards and officers authorized by law to levy taxes, shall prepare and submit to the county auditor an annual budget setting forth in itemized form an estimate stating the amount of money needed for its wants for the *incoming year*, and for each month thereof. The budget commission meets in August annually to consider the budgets and make the annual adjustment of rates of taxation and for the purpose of fixing the amount of taxes to be levied. The amounts which they fix to be levied (see section 5649-3b) are fixed with reference to the auditor's tax list for the current year, and thereafter the amounts of taxes determined upon are levied and the rates applied. The taxes are thereupon computed by the auditor and certified to the treasurer for collection, the first half of which are collected in December. By section 2596 the treasurer must make settlement with the auditor for the taxes collected "on or before the 15th day of February and on or before the 10th day of August of each year", and by section 2689, *immediately after* each semi-annual settlement, the county treasurer must upon demand and upon presentation of the warrant of the county auditor therefor, pay to the proper officer all moneys in the county treasury belonging to the school district.

Section 5649-3d provides as follows:

"At the beginning of each fiscal half year the various boards mentioned in Section 5649-3a of this act shall make appropriations for each of the several objects for which money has to be provided, from the moneys known to be in the treasury from the collection of taxes and all other sources of revenue and all expenditures within the following six months shall be made from and within such appropriations and balances thereof, but no appropriations shall be made for any purpose not set forth in the annual budget nor for a greater amount fixed by the budget commissioners exclusive of receipts and balances."

Inasmuch as a board of education is required at the beginning of each fiscal half year to make appropriations "from the moneys *known to be in the treasury* from the collection of taxes," etc., it is quite apparent that the fiscal half year cannot begin prior to the time of the semi-annual settlement and inasmuch as the time of the beginning of the fiscal half year is not otherwise fixed, it is apparent that the date of the semi-annual settlement of the auditor and treasurer marks the beginning thereof.

This was in substance the opinion of my predecessor, to be found in Annual Reports of the Attorney General for 1912, Vol. 2, p. 1127. Likewise, see also Reports of the Attorney General for 1913, Vol. 1, p. 365.

Therefore, it is my conclusion that the fiscal school year referred to begins with the occasion of the semi-annual settlement between the treasurer and auditor in February of each year, for not until then does the board of education know the amount of taxes in the treasury to its credit, and these amounts are not subject to the payment of any claims until so paid into the treasury and duly appropriated by action of the board.

Inasmuch as the school district must be taxed for the current year for current expenses of school operation at a rate of at least eight mills, it cannot participate in the fund unless it has the additional levy, for the reason that all other levies,

for current operating expense are limited to amounts less than eight mills. If the application is to be considered fixed as of the date of July 31st of any year and any levy thereafter voted or otherwise placed on the duplicate could not be taken into consideration, then manifestly no district could be entitled to participate in the fund unless it had voted on the levy at or prior to the November election preceding. In view of the beneficent purpose of the act, to wit, the equalization of educational advantages throughout the state, it is not thought that the legislature intended to impose any such conditions. As we see it, the application is made July 31st, applying for aid and setting forth the information required by the director of education. The board may then submit the additional levy to the electors at the November election; if the electors vote unfavorably, then the county board may order the additional levy to be placed on the duplicate and having been so placed upon the duplicate the district becomes eligible to receive state aid; the tax is then collected and paid into the treasury and becomes a fund from which the schools may be conducted for the succeeding six months period, augmented and supplemented by the funds received from the State Educational Equalization Fund.

Attention is directed to the powers vested in the director under Section 7596-2. If the fiscal year begins in February, the director of education has ample time within which to investigate the financial conditions of the district and determine the aggregate amount which will be necessary to be expended in assisting all the districts. If the tentative salary schedules fixed are so high that the appropriation for the current year will not meet all obligations, then the director may lower his schedules. This gives the director of education time within which to make such investigations.

After all of his investigations are concluded and the director, under Section 7597, has ascertained the probable amount required to supplement the revenue of the district, he certifies the same to the auditor of state. This construction gives the director ample opportunity to perform the duty imposed upon him by this section.

The fiscal year for the state is specifically fixed by section 260-1 to begin on June 1st of each year, and the legislature makes its appropriations for the fiscal year beginning on said date. Section 3796 makes specific provision for the termination of the fiscal year of each office, board and department of municipal corporations, adopting the calendar year as such fiscal year. By section 3797 council must make appropriations at the beginning of each fiscal half year, but the language of section 3797 is substantially different from section 5649-3d, in that the former provides that such appropriations are to be made from the moneys known to be in the treasury, or *estimated* to come into it during the six months next ensuing from the collection of taxes and other sources of revenue, while the latter provides for appropriations "from moneys *known* to be in the treasury from the collection of taxes and all other sources of revenue." Whether the council is a "board" and thus included within the provisions of section 5649-3d, need not be determined. It will be seen by a consideration of sections 3796 et seq., and especially section 3800, that the legislature intended to and did provide a different arrangement for the fiscal years of municipalities than it has provided for boards of education and other taxing districts.

In arriving at our conclusion, we have not overlooked the provision for an "annual appropriation resolution" authorized by Sections 4752, 4752-1 and 7690. If such provisions are in conflict with section 5649-3d (they being later enactments), it is apparent that they apply only to city school districts.

The opinion of my predecessor herein above referred to (1912, p. 1127), was rendered when the act became effective and was therefore uninfluenced by the later amendments. That opinion outlined the procedure under the Smith act and adopts March 1st and October 1st as the semi-annual appropriation periods (p. 1134). These dates were apparently adopted as marking the beginning of the fiscal half years

since, as a practical matter, it must take some little time for the auditor to prepare and deliver his warrants to the various tax districts after his settlement with the county treasurer. Since that opinion was rendered there have been attempts on the part of the legislature to give relief to various taxing districts from time to time and the original procedure outlined in the Smith one per cent. act has been departed from in some instances. However, a consideration of the several acts passed by the last General Assembly which were intended to co-ordinate with the Taft act, justifies the conclusion that the legislature had determined to cease temporizing in the matter of relief and to grant effectual permanent relief. One of these acts was that containing Section 5655, General Code, which prohibits boards of education from borrowing money for the payment of current operating expense, thereby evidencing an intent to return to the original provision of the act.

The entire act is ambiguous and the conclusions arrived at herein have been arrived at only after a careful consideration of the entire act and an attempt to harmonize all its provisions.

Section 7597-1 is so unambiguous that I am not able to harmonize it with other provisions of the act. It seems to be conflicting in its own provisions. It will be seen that the receipts of a particular fiscal year could not include "the proceeds of any levy voted at the November election of the school year in question." For example, a levy voted at the November election for 1923 does not produce any revenue for the fiscal year ending in February, 1923, the receipts therefrom being entirely for the conduct of the schools from and after February, 1924. It seems impossible to give any meaning to the words in that section "applying on the duplicate of a given calendar year", as there is no duplicate for a so-called calendar year.

Section 2692 provides as follows:

"When the local authorities so request the county auditor may draw, and the county treasurer shall pay on such draft to township, city and village treasurers, and the treasurer of any board of education, from June twentieth and December twentieth to the date of the semi-annual distribution, each year, any sum not exceeding two-thirds of the current collection of taxes for such local authorities, respectively, including *as to boards of education, the estimated distribution of the state common school fund* and the levy for school purposes retained in the county, to become due to the school district, in advance of the semi-annual settlements."

This section was amended in 108 O. L., p. 1303, the amendment consisting of words above underscored. It will be noted that no provision in section 2692 authorizes the expenditure of any moneys advanced to the board of education pursuant to that section. On the contrary, section 5649-3d forbids the expenditure of any money except that appropriated from "the moneys known to be in the treasury from the collection of taxes," etc. This section unquestionably authorizes the expenditure of money after it has been collected and placed in the treasury after the appropriation resolution has been passed at the beginning of the fiscal half year, and it is therefore clear that moneys received in advance of the beginning of the fiscal half year are not deemed to be in the treasury for the payment of expenses incurred prior to the beginning of such fiscal half year.

The amendment of section 2692 referred to above came into the statutes in connection with an act (108 O. L., p. 1303) designed for relief to boards of education and other taxing districts. Section 5649-3d was not amended by that act and has remained the same since its enactment, 102 O. L. 266. It will be borne in mind that the section is entirely out of harmony with the action of the last legislature which, by section 5655, denied to any board of education the right to borrow money (see State ex rel. vs. Ross, 109 O. S. 119).

Answering specifically your first question, the answer must be in the negative since there will be no additional levy for the fiscal year for which application for participation is made.

Your second question we answer in the affirmative, since the district will have the additional levy in full force and effect for the fiscal year for which application for participation is made.

Answering your third question, no district is eligible to participate in the fund unless "the property of the given district is to be taxed for the current year for all purposes at a rate within municipal limits of at least twenty mills and at a rate outside of municipal limits of at least seventeen mills." The specific limitation herein provided seems definite and clear.

An examination of the act shows that it was designed to co-ordinate with an act providing for a county equalization fund, which failed to pass, and with the Taft act, which was defeated on referendum. The limitations of 17 and 20 mills, respectively, were undoubtedly obtained by adding the "additional levy", popularly referred to as the "three mill levy", to the maximum limitations prescribed in the Taft act. The intent of the legislature was that no aid from the state fund should be granted until the property of the local district was taxed at the maximum rate provided by law, and the failure of the Taft act is apparently responsible for the condition noted in the last paragraph of your letter. Whatever may be the cause of the condition, it can be remedied by no authority save the general assembly.

Respectfully,

C. C. CRABBE,

Attorney General.

1955.

BURIAL OF INDIGENT SOLDIER—ITEMS UNDERTAKER MUST FURNISH—SECTIONS 2950 AND 2951 G. C. CONSTRUED.

SYLLABUS:

The amendments of section 2950 and 2951 (109 O. L., 211) do not relieve an undertaker with whom the committee referred to in Sections 2950 et seq. may contract from furnishing all of the items specified in the contract, the form and contents of which are prescribed by Section 2954, General Code; and this is true whether or not the contract price is less or more than one hundred dollars.

COLUMBUS, OHIO, November 12, 1924.

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

Gentlemen:—

I am in receipt of your communication as follows:

"Section 2954, General Code, sets out in detail the items which an undertaker is required to furnish in connection with the burial of an indigent soldier.

"*QUESTION*: In the event that the undertaker does not furnish all of the items specified in this section, may he receive the full compensation of one hundred dollars from the county treasury?"