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EDUCATION: STATE BOARD—FOUNDATION FUND, §3317.01 *et seq.* R.C.—ALLOCATION FROM SUCH FUND MAY BE RECALCULATED BY REASON OF TRANSFERS OF TERRITORY.

SYLLABUS:

Under the provisions of Section 3317.01, *et seq.*, Revised Code, providing for the distribution of the foundation fund, the state board of education, having allotted to a school district for a given year a certain amount from such foundation fund, may recalculate such allotment and reduce the same by reason of transfers of a portion of the territory of such district.

Columbus, Ohio, March 9, 1959

Hon. G. William Brokaw, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“I would appreciate your formal opinion on the following question:

“In 1958 a transfer of territory was made from the Beaver Local School District to the Lisbon Exempted Village School District, both districts being within Columbiana County. The transfer was made under the provisions of Sections 3311.23 of the Revised Code and the territory transferred amounted to approximately 6.5% of the tax valuation of the Beaver Local School District. As provided in said section, the Columbiana County Board of Education made an equitable division of the funds and indebtedness between the districts involved.”

“Following the above transfer, the State Department of Education made an arbitrary reduction of approximately 6.5% in the school foundation payments to the Beaver Local School District for the last two quarters of 1958. The apportionment of state funds under the Foundation Program (3317.01-3317.16) had been made long before the transfer of territory on the basis of ‘teacher units.’ The foundation money was, of course, encumbered and appropriated by the Beaver Local School District for payment of teacher’s salaries, etc. Although 102 pupils in all grades were transferred to the Lisbon Exempted Village School District, it was not possible for Beaver Local School District to hire any fewer teachers, nor was it necessary for the Lisbon Ex-

empted Village School District to hire any additional teachers. The net result is that the Beaver Local School District does not have sufficient funds to pay its teachers, with whom it contracted in good faith.

“Therefore, my specific question is: Does the State Department of Education or any of its employees or agents have any authority whatever to make a re-calculation of Foundation Program money, once it is made, so as to reduce and deprive a school district of money which has already been appropriated for the payment of teacher’s salaries and other expenses, when a transfer of territory has been made from that school district (as described above)?”

The gist of your question appears to be this: where a certain amount has been apportioned to a school district from the foundation fund established under Section 3317.01 *et seq.*, Revised Code, may the state board of education reduce that apportionment during the course of the year because transfers of territory from the district have reduced the number of pupils in attendance therein.

We may begin with the provisions of Section 3317.01, Revised Code, which places the entire administration of the foundation fund in the hands of the state board of education, with the approval of the controlling board.

The foundation fund, in accordance with the requirement of said Section 3317.01, Revised Code, is supplied by an appropriation in the biennial appropriation act. Section 3317.02, Revised Code, sets out the elements which are to enter into the payment to each district. One of the requirements is that the district have a tax levy for school operation for the current calendar year of at least ten mills. Among the items entering into the total allowance is the following:

“(B) plus fourteen hundred and twenty-five dollars multiplied by the total number of approved teacher units credited to such district under Section 3317.05 of the Revised Code, for other current expenses;

“(C) plus the total approved transportation costs allocated to such district under section 3317.051 of the Revised Code;”

It is notable that this measurement is not based on the number of teachers employed but upon the “teacher units.” Section 3317.05, Revised Code, provides the method for calculation of “approved teach units” for each school district. There is a sliding scale dependent upon the grade and the average daily membership. For example, it is provided:

“(B) The average daily membership in grades one through eight, as certified under section 3317.03 of the Revised Code, if more than one hundred seventy-four, shall be divided by thirty;”

The scale for elementary schools goes on up to the following provisions :

“(F) The average daily memberships in grades one through eight, as certified under section 3317.03 of the Revised Code, if more than thirty-nine and less than fifty-five, shall be divided by twenty-six;”

Similar variations are provided for high schools.

It is evident, therefore, that when the school mentioned in your letter lost 102 pupils by the transfer of territory, it lost at least three teacher units upon which its apportionment is in part based.

I direct your attention to a further provision of Section 3317.02, *supra* :

“Whenever school districts are consolidated as a result of the creation of a new school district or the transfer of territory from one or more school districts to another district or districts, pursuant to Chapter 3311., of the Revised Code, the *total apportionment of funds to the affected districts* under sections 3317.02 and 3317.05 of the Revised Code for the year in which such consolidation takes place shall not be reduced on account of such consolidation.”

At first glance it might be concluded that this provision would prohibit a reduction in the apportionment to the district referred to in your letter, but I call attention to the use of the words “*total apportionment of funds to the affected districts.*” That *total* is the amount which may not be reduced.

It must be obvious that if a district such as the one mentioned in your letter should have a large portion, say half of its entire territory and school population transferred to another district, it would be wholly unreasonable for that district to receive the full amount that had originally been apportioned to it, or for the transferee district to have that added burden thrust upon it without an increase in its original apportionment.

I find nothing in the law requiring the state board of education to make its apportionment at any stated time. In your letter you state that it had been made prior to the transfer of territory. Nor do I find anything in the law that would forbid the state board of education making a change

in the apportionment during the year, if the circumstances would seem to warrant it.

Section 3317.11, Revised Code, contains this provision:

“The amounts due the districts, as provided in section 3317.02 of the Revised Code, shall be distributed to such districts in quarterly payments. On or before the last day of February, May, August, and November in each year, the state board of education shall calculate the amounts to be paid to the respective districts as such quarterly payments, and shall certify to the auditor of state the amounts of such quarterly payments, whereupon the auditor of state shall issue his warrants on the treasurer of state in favor of the respective districts for the amounts so certified and the treasurer of state shall forthwith pay the same to the designated districts.”

Here you will observe the definite provision that on or before the last day of each February, etc., the state board of education is to *calculate the amounts* to be paid to the respective districts and certify the same to the auditor of state. This provision as to quarterly calculation and certification strengthens my opinion that the state board of education was acting within its authority in making the change referred to in your letter, by reason of the territorial changes in the district in question.

I am informed by the state board that it has been the uniform practice of the department of education for some years to make such adjustments as stated in your letter and while administrative practice may not be invoked to contradict the plain provisions of a statute, it is entitled to great weight in dissolving ambiguity. 37 Ohio Jurisprudence, 689.

It is accordingly my opinion and you are advised that under the provisions of Section 3317.01, *et seq.*, Revised Code, providing for the distribution of the foundation fund, the state board of education, having allotted to a school district for a given year a certain amount from such foundation fund, may re-calculate such allotment and reduce the same by reason of transfers of a portion of the territory of such district.

Respectfully,
MARK McELROY
Attorney General