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1. BUDGET REQUIRED TO BE SUBMITTED ON OR BEFORE DECEMBER 1, 1955—BOARD OF EDUCATION OF COUNTY SCHOOL DISTRICT—SHOULD BE BASED ON ANTICIPATED EXPENSES FOR ENTIRE YEAR, 1956—CONSIDERATION FOR CHANGES OCCASIONED DURING YEAR—SECTION 3317.13 RC—AM. SUB. SB 321, 101 GA.
2. STATE SUPERINTENDENT OF EDUCATION—MUST PROVIDE FORMS FOR SUBMISSION BY COUNTY BOARDS FOR BUDGETS FOR 1956—MAY REQUIRE SUCH SEPARATION OF EXPENSES INCURRED DURING LAST QUARTER, 1956, AS HE DEEMS ADVISABLE.
3. STATE DEPARTMENT OF EDUCATION—MAY PAY OR CAUSE TO BE PAID TO SEVERAL COUNTY BOARDS OF EDUCATION SUMS REQUIRED FOR REIMBURSEMENT UNDER SECTION 3317.13 RC—PAYMENTS AT SUCH TIMES AND IN SUCH INSTALLMENTS AS IT DEEMS PROPER—DUE REGARD FOR CHANGES EFFECTED BY AMENDMENT, EFFECTIVE OCTOBER 1, 1956.

## SYLLABUS:

1. The budget required by Section 3317.13, Revised Code, to be submitted on or before December 1, 1955, by a board of education of a county school district should be based on the anticipated expenses of such board for the entire year of 1956, with due consideration for changes that may be occasioned during the year by the enactment of Amended Substitute Senate Bill No. 321, of the 101st General Assembly.

2. The state superintendent of education, in providing forms for the submission by county boards of education for their budgets for the year 1956, may require such separation as he deems advisable of the expenses to be incurred by said boards during the last quarter of 1956, by reason of the provisions of Amended Substitute Senate Bill No. 321, enacted by the 101st General Assembly and becoming effective October 1, 1956.

3. The state department of education may, under the provisions of Section 3317.13, Revised Code, pay or cause to be paid to the several county boards of education the sums required for their reimbursement under the provisions of said section, at such times and in such installments as it deems proper, having due regard for the changes effected by the amendment of said section, effective October 1, 1956.

Columbus, Ohio, November 22, 1955

Hon. R. M. Eyman, Superintendent of Public Instruction  
Department of Education, Columbus, Ohio

Dear Sir:

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

“Amended Substitute Senate Bill No. 321, as enacted by the 101st General Assembly, establishes an entirely new formula for computing state support for the school districts of Ohio and provides also a different formula for the allocation of funds for the support of the budget of operating expenses for each county board of education in the state.

“Under the provisions of Section 3317.02 of the Revised Code, as amended by Senate Bill 321, the distribution of state funds to local, exempted village, and city school districts in the last quarter of the calendar year 1956 will be made in accordance with the new formula.

“Payments to each county board of education are made in accordance with the provisions of Section 3317.13 of the Revised Code. Since Section 3317.13, as amended by Senate Bill 321 provides, as does the present law, that on or before the first day of December of each year each county board of education shall prepare a budget of operating expenses for the ensuing year, the

question arises as to the application of the provisions of amended Section 3317.13 in the distribution of funds for the fourth quarter of the calendar year 1956. I should like to have your opinion in answer to the following questions:

"1. In the fourth quarterly distribution of state funds for the calendar year 1956 shall payments be made to the county boards of education of the state in accordance with the formula prescribed by Section 3317.13 of the Revised Code as amended by Senate Bill 321?

"2. If the answer to question No. 1 is in the affirmative, what should be the basis for determining the amount of the payment to each county board of education in distributing funds for the fourth quarter of the calendar year 1956?"

The questions raised by you appear to relate only to the reimbursement to county boards of education of the expenses of maintenance of their offices, and particularly to the items covering the compensation and expenses of supervisory teachers and special instruction teachers employed by them. These questions grow out of radical changes in the school laws effected by passage of Amended Substitute Senate Bill No. 321, which, in so far as it relates to the questions here involved, will not take effect until October 1, 1956.

Section 3317.13, Revised Code, reads as follows:

"On or before the first day of December of each year, each county board of education shall prepare a budget of operating expenses for the ensuing year for the county school district and shall certify the same to the superintendent of public instruction who shall apportion the cost represented by such budget among the various districts of the county school district on the basis of pupils in average daily membership. The amounts so apportioned shall be certified to the clerks of the various school districts and in the case of each district such amount shall be deducted by the superintendent from funds allocated to the district under sections 3317.02, 3317.04 and 3317.12 of the Revised Code.

"The superintendent shall certify to the auditor of state the total of such deductions of the districts of the county school district; whereupon the auditor of state shall issue his warrant in such amount on the treasurer of state in favor of the county board of education of each county, to be deposited to the credit of a separate fund, hereby created, to be known as the 'county board of education fund.'"

This section, as amended, reads as follows:

"On or before the first day of December of each year, each county board of education shall prepare a budget of operating

expenses for the ensuing year for the county school district on forms prepared and furnished by the state board of education and shall certify the same to the state board of education, together with such other information as the board may require. Such budget shall consist of two parts. Part (A) shall include the cost of salaries and travel expenses of supervisory teachers and of special instruction teachers and part (B) shall include the cost of all other lawful expenditures of the county board of education. The state board of education shall review such budget and may approve, increase, or decrease such budget.

“The county board of education shall be reimbursed by the state board of education from state funds for the cost of part (A) of the budget to the extent of the number of supervisory teachers and special instruction teachers employed by the county board that does not exceed the number of supervisory teacher units and special instruction teacher units approved for the county school district pursuant to section 3317.05 of the Revised Code. The county board of education shall be reimbursed by the state board of education from state funds for the cost of part (B) of the approved budget which is in excess of one hundred dollars per teacher unit times the total number of approved teacher units calculated under section 3317.05 of the Revised Code, for all the local school districts within the limits of such county school district. The cost of part (B) not in excess of one hundred dollars per teacher unit times the number of approved teacher units shall be apportioned by the state board of education among the local school districts in the county school district on the basis of the total number of approved teacher units in each school district.

“If part (B) of the budget is in excess of that approved by the state board of education, such excess cost shall be apportioned by the state board of education among the various school districts in the county school district on the basis of the total number of approved teacher units in each such school district, provided that a majority of the boards of education of such local school districts approve such apportionment. The state board of education shall initiate and supervise the procedure by which the local boards shall approve or disapprove such apportionment.

“The amounts so apportioned shall be certified to the clerks of the various school districts and in the case of each district such amount shall be deducted by the state board of education from funds allocated to the district under section 3317.02 of the Revised Code.

“The state board of education shall certify to the auditor of state the total of such deductions of the districts of the county school district; whereupon the auditor of state shall issue his warrant in such amount on the treasurer of state in favor of the

county board of education of each county, to be deposited to the credit of a separate fund, hereby created, to be known as the 'county board of education fund.'”

It will be noted that the general obligation placed upon each county board of education is precisely the same in the new act as in the present law, so far as relates to the duty of preparing a budget. The time fixed is on or before the first day of December of each year and each board is required to prepare a budget of operating expenses for the “ensuing year” for the county school district. “Ensuing year” certainly means the entire year, and in view of the context refers to the calendar year next ensuing. The doubt that is raised by this new legislation so far as the duties of the county board are concerned, grows out of the fact that there will obviously be certain expenses of the county board to be included within the budget relating to the last quarter of the year 1956, which relate to the period after the amended act takes effect, to wit, October 1, 1956. Accordingly, the question arises whether the county board in making its budget for the entire year, is required or permitted to take into consideration the changes that will come about in the last quarter by reason of a law which is not yet effective.

The county boards, of course, have only such powers at present as the present law gives them. It cannot borrow from a prospective statute to alter or increase such powers. But it is by both the old and the new statutes given authority and required to make a budget for its operating expenses for the entire year 1956. I see nothing in the law, however, and no principle of limitation of powers that would prevent the board from taking cognizance of anticipated increases in its operating expenses for the last quarter of 1956, or of changes in the law that may affect or alter the source from which its reimbursement is to come. A budget is, after all, only an estimate of probable income and expenses, based on all presently obtainable information.

It is plain that the divergence from the present procedure would come by reason of the fact that under the new law that part of the budget which is designated as (A), to wit, the salaries and expenses of its supervisory and special teachers, will be paid to the board by the state, whereas it has heretofore been a part of the expense that was required to be apportioned to the local board constituting the county district. Accordingly, it is my opinion that the county board, in making its budget in December of 1955, for the ensuing year, would be quite within its

powers in separating that budget into two parts—one representing the normal operating expenses for the first nine months, and the other representing the normal expenditures for the fourth quarter of the year plus the estimated cost of the compensation and expenses of supervisory teachers and special instruction teachers during such final quarter. An alternate procedure would be to set forth the regular budget for the entire year, exclusive of that portion which is designated as (A) in the new law for the last quarter of 1956, and then set forth that additional expense embraced within (A) as a separate item. The budget submitted in this form should be prepared on forms furnished by you and would furnish to your department the information which would be required in making a proper allocation of the county board's expenses to the several local districts.

It is to be noted that under the terms of Section 3317.13, Revised Code, as it is now in force, it is the duty of the Superintendent of Public Instruction to apportion the entire cost represented by such budget among the various districts of the county school districts on the basis of the number of pupils in average daily membership, and that the amounts so apportioned shall be certified to the clerks of the various school districts, and in the case of each district such amount shall be deducted by the superintendent from funds allocated to the district under Section 3317.02, 3317.04 and 3317.12, of the Revised Code. Of these sections, Sections 3317.04 and 3317.12 have been repealed by Senate Bill No. 321, effective October 1, 1956. Section 3317.02 was amended so as to substitute an entirely different formula for the distribution of state funds to the local, exempted, village and city school districts. I do not deem it necessary for the purposes of this opinion to go into the details of the basis of distribution thus provided. This section is also to take effect on October 1, 1956.

As to the duties of your department, I do not see anything in the provisions of Section 3317.13 above quoted, either before or after its amendment, which fixes any time within which the apportionment of cost to the local districts must be made, or any provision that would require it to be paid in its entirety at the same time. Accordingly, in my opinion, the Superintendent of Public Instruction would have the authority to take notice of the change that is due to become effective on October 1st as to the distribution to the districts and as to the reimbursement of the county district. Presumably this distribution whether made at one time or at successive periods should be made as promptly as possible, and in

view of the manner of the preparation and submission of the budget by the county boards as hereinbefore suggested, it would seem that the distribution for the nine months period might take place in the manner heretofore followed, leaving the distribution of the costs for the last quarter of the year until the new law comes into effect. This would not, in my opinion, result in any failure of performance of duty or assumption of authority on the part of your department.

Accordingly, in specific answer to the questions submitted, it is my opinion :

1. The budget required by Section 3317.13, Revised Code, to be submitted on or before December 1, 1955, by a board of education of a county school district should be based on the anticipated expenses of such board for the entire year of 1956, with due consideration for changes that may be occasioned during the year by the enactment of Amended Substitute Senate Bill No. 321, of the 101st General Assembly.

2. The state superintendent of education, in providing forms for the submission by county boards of education for their budgets for the year 1956, may require such separation as he deems advisable of the expenses to be incurred by said boards during the last quarter of 1956, by reason of the provisions of Amended Substitute Senate Bill No. 321, enacted by the 101st General Assembly and becoming effective October 1, 1956.

3. The state department of education may, under the provisions of Section 3317.13, Revised Code, pay or cause to be paid to the several county boards of education the sums required for their reimbursement under the provisions of said section, at such times and in such installments as it deems proper, having due regard for the changes effected by the amendment of said section, effective October 1, 1956.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General