

for the purpose of erecting thereon the school building in which is to be maintained a school for the education of the inmates of the home, and the same may be done without competitive bidding and upon such terms as may be agreed upon between the board of county commissioners and the said board of education.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4540.

BOARD OF EDUCATION—"OPERATING EXPENSES" AS USED
IN SEC. 7595-1 (i) DEFINED—BUDGET FOR SCHOOL DISTRICT DISCUSSED.

SYLLABUS:

1. *The words "operating expenses" as used in Section 7595-1 (i), General Code, are not synonymous with the phrase "contingent expenses" as used in Section 4744-2, General Code.*

2. *"Operating expenses" as used in Section 7595-1 (i) include expenses incident to salaries as well as those which had formerly been called contingent expenses.*

3. *It is not necessary under the present law that boards of education within a county school district include anything in their budget to be certified to the county auditor for operating expenses of the county board of education of the county school district in which the local district is located.*

COLUMBUS, OHIO, August 14, 1935.

HON. NELSON CAMPBELL, *Prosecuting Attorney, Mount Gilead, Ohio.*

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

"Section 4744-2, of the General Code, reads as follows:

'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.' (Italics, mine.)

Section 4744-3, provides for the establishment by the county auditor of a 'County Board of Education Fund.'

Section 7595-1-i, provides as follows:

'On or before *the first day of December, 1935*, and each year thereafter, *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 director of education 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 attendance*. 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 director of education from the share of the district in the state public school fund.

The director of education shall certify to the auditor of state the total of such deductions of the districts of the county school districts; 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.*' (Italics mine.)

QUERY: Does Section 7595-1-i repeal all, part or none of Sections 4744-2 and 4744-3?

(a) Are the words 'operating expenses' as used in Section 7595-1-i synonymous with the words 'contingent expenses' as used in Section 4474-2?

(b) What is meant by 'operating expenses' as used in Section 7595-1-i?

(c) In the event Sections 4744-2 and 4744-3, or parts of them are still in effect, what should be included in the budget to be certified to the county auditor?

Section 4744-2 specifically mentions both salaries and contingent expenses, while Section 7595-1-i speaks only of 'operating expenses.' "

For a proper understanding of the manner in which the expenses incident to the functioning of a county board of education, including the payment of salaries and contingent expenses were paid, prior to the enactment of Section 7595-1 (i) as enacted in House Bill 466 of the 91st General Assembly, it is

necessary to note the provisions of the so-called budget law and also the provisions of Section 4744-3, General Code, which are not quoted in your letter.

Under the terms of Section 5625-1 (j) General Code, a county board of education for purposes within the purview of the "Uniform Tax Levy Law" sometimes called the Budget Law, is constituted a "district authority."

Section 5625-20, General Code, provides that on or before the 15th day of July of each year the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board or commission, and each district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority thereof, or in the case of a municipality, with its chief executive officer, before the first of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year in such form as shall be prescribed by the taxing authority of the subdivision, or by the bureau. Under the terms of this statute it was the duty of the county board of education to file with the taxing authorities of the several school districts within the county school district an estimate of its proportionate needs from that district for the payment of salaries and contingent expenses during the next succeeding fiscal year, and it was the duty of the taxing authority of those districts to include this amount in their budgets which were to be filed with the county auditor.

Section 4744-3, General Code, provides as follows:

"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 such portion of the salaries of the county and assistant county superintendents and for contingent expenses, as may be certified by the county board. Such amount shall be placed in a separate fund to be known as the 'county board of education fund.'

The county board of education shall certify under oath to the state auditor the amount due from the state as its share of the salaries of the county and assistant county superintendents of such county school district for the next six months. Upon receipt by the state auditor of such certificate, he shall draw his warrant upon the state treasurer in favor of the county treasurer for the required amount, which shall be placed by the county auditor in the county board of education fund."

It will be observed that under the terms of these various statutes a complete scheme was provided for the payment of the necessary expenses of a county board of education, including salaries and contingent expenses.

These moneys were practically all derived from local levies within the school districts of a county school district.

Upon the enactment of Section 7595-1 (i), General Code, House Bill No. 466, of the 91st General Assembly, enacted June 12, 1935, as an emergency measure, the entire scheme of paying all the operating expenses of a county board of education, which necessarily included salaries and contingent expenses was changed. It is provided therein that these expenses be budgeted by the county board of education and a budget therefor be prepared and filed with the Director of Education, who shall apportion the cost represented by such budget among the various districts of the county school district on the basis of the average daily attendance, and deduct the same from the share of the state public school fund to be distributed to the several districts of the county school districts.

While repeals by implication are not favored, it must be said that when the provisions of a later statute are completely repugnant to those of a former statute, the former statute is repealed by implication. It is obvious that the provisions of Section 7595-1 (i) and those of Sections 4744-2 and 4744-3, General Code, cannot all be operative. The payment of the operating expenses of the county board of education cannot be made from both local levies within the county school district and also from the state public school fund. I therefore hold that Section 7595-1 (i) General Code, repeals by implication the provisions of Sections 4744-2 and 4744-3, General Code, and that it is not now necessary for school districts to include anything in their budgets filed with the county auditor for the payment of the operating expenses of the county board of education within their county school district.

It seems apparent that the term "operating expenses", as used in Section 7595-1 (i) is not entirely synonymous with the words "contingent expenses" as used in Section 4744-2, General Code. By operating expenses it is evidently meant all the expenses incident to the functioning of a county board of education, which include salaries as well as other expenses such as clerk hire, stationary, etc., which in Section 4744-2, General Code, are classed as contingent expenses.

In specific answer to your questions, I am of the opinion:

1. The words "operating expenses" as used in Section 7595-1 (i), General Code, are not synonymous with the phrase "contingent expenses" as used in Section 4744-2, General Code.

2. "Operating expenses" as used in Section 7595-1 (i) include expenses incident to salaries as well as those which had formally been called contingent expenses.

3. It is not necessary under the present law that boards of education within a county school district include anything in their budget to be certified

to the county auditor for operating expenses of the county board of education of the county school district in which the local district is located.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4541.

APPROVAL, BONDS OF ROCKY RIVER VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$45,000.00 (UNLIMITED).

COLUMBUS, OHIO, August 14, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4542.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO, \$28,000.00 (UNLIMITED).

COLUMBUS, OHIO, August 14, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4543.

APPROVAL, NOTES OF LIBERTY TOWNSHIP RURAL SCHOOL DISTRICT, UNION COUNTY, OHIO, \$3,163.00.

COLUMBUS, OHIO, August 14, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.