

2691.

APPROVAL, BONDS OF WYANDOT COUNTY, OHIO—\$7,833.18.

COLUMBUS, OHIO, December 17, 1930.

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

2692.

APPROVAL, BONDS OF WYANDOT COUNTY, OHIO—\$2,008.94.

COLUMBUS, OHIO, December 17, 1930.

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

2693.

APPROVAL. BONDS OF WYANDOT COUNTY, OHIO—\$4,571.56.

COLUMBUS, OHIO, December 17, 1930.

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

2694.

SCHOOL FUNDS—PROMISE OF STATE AID BY DIRECTOR OF EDUCATION WITH APPROVAL OF CONTROLLING BOARD CONSTITUTES A MORAL OBLIGATION—WHEN SUCH PROMISE CONSIDERED A LEGAL OBLIGATION—IF DEFINITE CONTRACT ENTERED INTO PRIOR TO JANUARY 1, 1931, MONEY MAY BE EXPENDED AFTER CLOSE OF BIENNIUM.

SYLLABUS:

1. *Where the Director of Education, with the approval of the Controlling Board, proposes to a local school district the extension of state aid for rehabilitation purposes in accordance with formulas and regulations issued with reference thereto by the said Director of Education, the promises thus made constitute a moral obligation on the part of the state officials to meet the promises so made. When upon making of such a promise the Director of Finance certifies that there is a balance in the appropriation pursuant to which such obligation is required to be paid not otherwise obligated to pay precedent obligations, there is created a definite and binding legal obligation on the*

part of the Director of Education and the Controlling Board to carry out the terms of the promise as made.

2. *When, prior to January 1, 1931, a definite contract is entered into between the State of Ohio by its Director of Education with the concurrence of the Controlling Board and a Board of Education of a local school district for the advancement of money from state funds to said board of education for rehabilitation purposes pursuant to the provisions of Sections 7595 et seq. of the General Code, and the General Appropriation Act of the 88th General Assembly, the moneys so appropriated by said act may be expended in pursuance of said contract and in accordance with the regulations adopted by the Director of Education for such purposes after December 31, 1930.*

COLUMBUS, OHIO, December 18, 1930.

HON. JOHN L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“On December 1, 1930, the State Department finds that obligations amounting to \$207,378.98 have been made against the 1930 appropriation for Educational Equalization and Rehabilitation, payments on which cannot be made until 1931. These obligations involve new buildings, building additions or major repairs in 47 districts and were presented to and approved by the State Controlling Board then transmitted to the respective boards of education for their action. Since most of these were contingent on the passage of bond issues at the November 1930 election it will not be possible to prepare the plans, advertise as required by law and let the contract prior to January 1, 1931. I am therefore asking for an opinion covering the following points :

1. Does the obligation of funds from the State Educational Equalization and Rehabilitation Fund by the State Department, approved by the State Controlling Board and accepted by the local boards of education constitute an encumbrance of these funds even though the actual contracts cannot be let until after January 1, 1931?

2. In case this does not constitute an encumbrance, what procedure is necessary in order that the State may carry out its part of the agreement with the local boards of education involved?”

By force of Section 7595, General Code, there is created a “state educational equalization fund” for the equalization of educational advantages throughout the State, to be administered by the Director of Education, “subject to the restrictions of law.” The fund consists entirely of funds appropriated thereto by the General Assembly.

Section 7595-1, General Code, provides that school districts in need of aid from the state educational equalization fund to “maintain their schools”, may apply to the Director of Education for such aid. Certain restrictions and limitations are set forth in Sections 7595-1, 7596 and 7596-1, General Code, with respect to when such aid may be granted, and the Director of Education is directed to see that school districts applying for such aid meet the requirements set forth therein before extending the aid requested.

Section 7596-1, General Code, defines the expression—“Maintain the schools” as used in these statutes, to mean “to discharge the obligations incident thereto.” Other restrictions are placed on the distribution of this fund by the Director of Education, by Section 7596-2, General Code, which reads as follows :

"The Director of Education, with the advice and consent of the Controlling Board, shall issue formulas and regulations for determining the educational need of districts for current expense, and in determining the amounts necessary, for current expense purposes, in the operation of Section 7597, he shall be governed by these formulas and regulations.

Before drawing vouchers for the distribution of the educational equalization fund applicable to current expense for the period of the current appropriation, he shall submit to the Controlling Board complete estimates of the needs of districts in accordance with the adopted formulas and regulations. The Controlling Board shall approve or modify these estimates, in accordance with equitable principles defined by the board, and shall set aside ten per cent of the balance at that time in the educational equalization fund applicable to current expense as a reserve fund for unforeseen contingencies. The Director of Education shall thereafter be empowered to draw vouchers on the fund according to the estimates so approved or modified.

Distribution of the reserve fund thus created, of any further balance in the educational equalization fund, and of any part of the equalization fund appropriated for rehabilitation of school districts, shall be on presentation of needs made to the Controlling Board by the Director of Education, and the consent of the Controlling Board shall be required for each item of allotment for such needs. Upon such approval, the Director of Education may draw vouchers on the Auditor of State for the respective amounts."

To carry out the provisions of law relating to the state educational equalization fund, the 88th General Assembly made an appropriation in House Bill No. 510, of a certain sum of money for the year 1929, and for the year 1930 direct to the Controlling Board, as follows:

"Subsidy: Educational Equalization and Rehabilitation fund to be expended upon vouchers drawn by the Director of Education and approved by the Controlling Board."

An additional appropriation for each of said years was made in the same form, with the proviso that it might be expended for the uses and purposes mentioned after the exhaustion of the principal appropriation for like purposes and if not expended or obligated for said purposes prior to September 30th of each of said years this additional sum might at the instance of the Controlling Board be available to supplement appropriations made to state departments for operation and maintenance.

By the terms of the appropriation act, sums of money so appropriated, if not expended or obligated prior to December 31, 1930, may not be drawn upon by the Director of Education after said date. The language of the act with respect thereto is as follows:

"The sums * * * named in the column designated '1930' shall not be expended to pay liabilities or deficiencies * * * incurred subsequent to December 31, 1930."

In pursuance of the authority conferred on the Director of Education by virtue of the statutes and the appropriation referred to above, the Director of Education issued, with the approval of the Controlling Board, certain formulas and regulations for determining the needs of such school districts as applied for state aid, and the method and extent of the aid to be extended. In so far as these regulations have to do with rehabilitation or the extension of aid from the state educational equalization

fund for the purpose of building new school buildings or additions, these aforesaid regulations are as follows:

- a. Survey shall be made of the district by the Department of Education to determine the necessity for the proposed improvement, and the share of its cost which should be borne by the local district.
- b. The plans shall meet the approval of the Department of Education.
- c. Each project of this sort shall be set up as a separate proposal showing the amount of money the state is to furnish and shall be submitted to the Controlling Board.
- d. When the local district has accepted the conditions of the proposal and has executed all its provisions, state funds shall be available to pay the part underwritten by the state. Such funds to be paid on bills rendered and satisfactory evidence that the work has been properly done."

The practice is for the Director of Education, after making his survey and determining that a district which has applied for the same, is entitled under the regulations, to participate in the state educational equalization fund for rehabilitation purposes, to propose to the district, in writing, the conditions under which the district may participate in the said appropriation, and the amount of such participation that will be extended to it if it meets the conditions proposed. In many instances one of the conditions is that the district vote and sell bonds for the purpose of raising a portion of the money necessary to make the contemplated improvements for which state aid is to be extended.

This proposition, made over the signature of the Director of Education, if approved by the Board of Control and accepted by the school district in question, constitutes at least a moral obligation on the part of the Director of Education and the Controlling Board to advance to the school district the proposed amount of money, if and when the proposed condition is met. It does not, however, in my opinion, in and of itself, constitute a legal obligation to pay to the school district the proposed amount of money from the appropriation fund for state educational equalization purposes. Before a legal obligation for the expenditure or payment of money may be created by any state officer, board or commission, it is necessary that the terms of Section 2288-2, General Code, be complied with. This section reads as follows:

"It shall be unlawful for any officer, board or commission of the state to enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the expenditure of money, unless the Director of Finance shall first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations."

Many of such proposals have been made by the Director of Education during the past few months, the conditions of which have been met. The amount of these proposals, as you state, was \$207,378.98 on December 1, 1930.

The practice which has been followed by the Director of Education in meeting the obligation incident to the proposals made by the Director of Education for the extension of state aid to school districts for rehabilitation purposes is to retain the moneys proposed to be advanced in the state treasury until such time as it becomes necessary for the school district to which the aid is being extended to expend the money to meet obligations incurred for construction purposes and then to pay the

money direct to the contractors whose contractors call for such payments. See regulation (d) quoted above.

It will readily be seen that in many cases, the time for making such payments will be after December 31, 1930, at which time the appropriation referred to will have been lapsed unless encumbrance certificates in compliance with Section 2288-2, supra, had been filed prior to December 31, 1930.

As stated above, when the Director of Education, with the approval of the Controlling Board proposes to a local board of education to advance to it, from the state educational equalization fund, certain sums of money for rehabilitation purposes, on condition that the local board do certain things, such as set aside local funds for the same purposes, or vote a bond issue, or vote and market a bond issue for the district's share of the proposed improvement, or meet other prescribed requirements, the proposal thus made creates a moral obligation on the part of the state officials to advance the money from the said fund when the conditions are met by the local officials, and the state officials should take such measures as will enable them to meet that moral obligation when the proper time comes. In order to do so there should be executed by the Director of Finance his certificate in compliance with Section 2288-2, supra, to the effect that there is a balance in the appropriation for state educational equalization and rehabilitation purposes pursuant to which such obligation will be required to be paid, not otherwise obligated to pay precedent obligations.

This certificate of the Director of Finance should in my opinion, be made at the time the proposal is made by the Director of Education to the local school districts which is the time the moral obligation spoken of is incurred. The fact, if it is a fact, that the certificate is not then issued does not preclude its being made later. If, through inadvertence or otherwise, the certificate of the Director of Finance is not made when the proposal of the Director of Education is first made to a local school district, it may be made later. In any event it is necessary that the certificate be made before December 31, 1930, if payments are to be made in accordance with the promise, from appropriations made by the 88th General Assembly.

It appears from your statement that in the cases to which you specifically refer, the certificate of the Director of Finance in compliance with Section 2288-2, General Code, was not made when the proposals to the local districts were made, nor has such certificate since been made in those cases. I am of the opinion that the Director of Finance may and should now make his certificate in compliance with the statute in all the cases mentioned so that the Director of Education may carry out his promise and make the promised payments to the local school districts from the appropriation made by the 88th General Assembly.

A somewhat similar situation was considered in an opinion of this office which may be found in the reported opinions of the Attorney General for 1928, at page 2747, where it was held:

"Where, prior to January 1, 1929, a definite contract was entered into between the State of Ohio and a board of county commissioners, for the improvement of a state road, pursuant to the provisions of Section 1200, General Code, a liability upon the part of the state has been incurred and consequently moneys appropriated for such purpose by the 87th General Assembly may be expended for such improvement after December 31, 1928."

In the aforesaid opinion the questions considered related to cooperative agreements between the Director of Highways and county commissioners for the improvement of roads, a very similar arrangement to the cooperation of the State Department of Education with local school districts for rehabilitation authorized by Sections 7595,

et seq., of the General Code, and the appropriations made for said purpose by the 88th General Assembly.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2695.

APPROVAL, BONDS OF WATERLOO RURAL SCHOOL DISTRICT,
LAWRENCE COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, December 18, 1930.

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

2696.

APPROVAL, ARTICLES OF INCORPORATION OF THE ALLIANCE LIFE
AND ACCIDENT INSURANCE COMPANY, ALLIANCE, OHIO.

COLUMBUS, OHIO, December 18, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I beg to acknowledge receipt of the proposed articles of incorporation of The Alliance Life and Accident Insurance Company, of Alliance, Ohio, revised and corrected in accordance with my opinion rendered to you December 13, 1930, being opinion No. 2671.

I find that the proposed articles of incorporation comply with the provisions of title 9, division 3, subdivision 1, chapter 1, of the General Code of Ohio. I also find that said articles are not inconsistent with the constitution and laws of the United States and the State of Ohio. I accordingly have approved the same and return them herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2697.

APPROVAL, AGREEMENT BETWEEN THE STATE OF OHIO AND VIL-
LAGE OF RICHWOOD WITH REFERENCE TO EXTRA WORK CON-
TRACT FOR ROAD IMPROVEMENT IN UNION COUNTY.

COLUMBUS, OHIO, December 18, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted an agreement between the State of Ohio and village of Richwood with reference to extra work contract in connection with the improvement of S. H. No. 117, Section "Richwood," Union County.