

his expenses. At the first regular meeting of council in each and every month, he shall submit a full statement of all moneys received, from whom and for what purposes received and when paid into the treasury. Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and expenses collected, which have been advanced out of the county treasury, shall be by him paid over to the county treasury on the first business day of each month."

Here the distribution is made not according to the status of the officer trying the case, but is made according to the character of the case in which the fine is imposed. In ordinance cases all fees collected go into the city treasury and in state cases the costs advanced out of the county treasury are paid into that treasury, but other costs are payable into the city treasury. Cases arising under the Crabbe act are, of course, state cases, and as this department has construed section 4270 particularly in Opinion 1393, you are advised that in such cases costs which have been advanced out of the county treasury are payable to the county treasurer and the rest of said costs are payable to the city treasurer.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1889.

SCHOOLS—WHERE COUNTY BOARD OF EDUCATION ASSUMES CONTROL OF SCHOOLS OF LOCAL DISTRICT UNDER PROVISIONS OF SECTION 7610-1 G. C.—MONEYS EXPENDED, HOW CHARGED—WHERE CONTROL ASSUMED BECAUSE OF DEFAULT OF LOCAL BOARD AND FUNDS EXHAUSTED—DUTY OF LOCAL BOARD TO RAISE MONEY TO MEET OBLIGATIONS INCURRED BY COUNTY BOARD—MAY LEVY TAX TO EXTENT OF THREE MILLS IRRESPECTIVE OF ALL LIMITATIONS UPON VOTE OF ELECTORS FOR LOCAL SCHOOL PURPOSES—WHEN LOCAL BOARDS OF EDUCATION MAY BORROW OR ISSUE BONDS WITHOUT VOTE OF ELECTORS.

1. *Where the county board of education has assumed control of the schools in a local school district under the provisions of section 7610-1 G. C., the moneys expended by the county board in such local district become a charge against the local district and the amounts so paid from the general fund in the county treasury by the county board of education shall be retained from the proper funds due such local school district at the time of making the semi-annual distribution of taxes.*

2. *Where the county board of education has assumed control of the schools in a local school district because of the default of the local board and the funds of such local district are exhausted, it becomes the duty of the board of education in the local district to raise the money necessary to meet the obligations incurred in such local district by the county board of education in keeping the schools going.*

3. *For local school purposes boards of education in local districts may levy a tax to the extent of three mills irrespective of all limitations upon vote of the electors, as set forth in sections 5649-4, 5649-5 and 5649-5a G. C.*

4. *For the funding of those obligations which are valid, existing and binding,*

including the pay of teachers, janitors and school drivers, local boards of education may borrow, or issue bonds without a vote of the electors, in the manner provided in sections 5656 and 5658 G. C.

COLUMBUS, OHIO, March 2, 1921.

HON. W. R. WHITE, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the following statement of facts:

“One of the townships of this county, to-wit, Clay township, failed to authorize by special election an additional three mill levy so as to enable them to participate in the \$500,000 reserve, and the funds of the township for school purposes have been exhausted, and the board refuses and neglects to issue or offer to issue bonds under authority of sections 5656 and 5658 of the General Code of Ohio as suggested in your opinion No. 1508, and refuses to carry on the school. The amount of the Clay township school fund to be distributed at the February settlement will not be sufficient to pay the salaries of the teachers or refund any money paid out by the county school board which has now assumed the right to employ the teachers under the provisions of section 7610-1 G. C.

1. Can the county board of education, under the above statement of facts, proceed to issue bonds under authority of sections 5656 and 5658 of the General Code—the township board failing and refusing so to do.

2. If so, can they issue the bonds before the employment of the teacher is completed?

There is some question whether the bonds would sell and if the county continues to pay the teachers the county would lose the amount so paid out. If the county board cannot issue bonds the schools must close.”

Pertinent sections of the statutes are as follows:

“*Section 7610.* If a board of education in a district fails in any year to estimate and certify the levy for a contingent fund as required by this chapter, or if the amount so certified is deemed insufficient for school purposes, the commissioners of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any or all such duties and acts, in the same manner as the board of education by this title is authorized to perform them.”

“*Section 7610-1.* If the board of education in a district fails to provide sufficient school privileges for all the youth of school age in the district, or to provide for the continuance of any school in the district for at least thirty-two weeks in the year, or to provide for each school an equitable share of school advantages as required by this title, or to provide suitable school houses for all the schools under its control, or to elect a superintendent or teachers, or to pay their salaries, or to pay out any other school money, needed in school administration, or to fill any vacancies in the board within the period of thirty days after such vacancies occur the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all of such duties or acts, in the same manner as the board of education by this title is authorized to perform them. All salaries and other money so paid by the county board of education shall be paid out of the county treasury on

vouchers signed by the president of the county board of education, but they shall be a charge against the school district for which the money was paid. The amount so paid shall be retained by the county auditor from the proper funds due to such school district, at the time of making the semi-annual distribution of taxes."

"Section 5656. The * * * board of education of a school district * * * for the purpose of extending the time of payment of any indebtedness, which from its limits of taxation such * * * district * * * is unable to pay at maturity, may borrow money or issue the bonds thereof, so as to change, but not increase the indebtedness in the amounts, for the length of time and at the rate of interest that said board * * * deem proper, not to exceed the rate of six per cent per annum, payable semi-annually."

"Section 5658. No indebtedness of a * * * school district * * * shall be funded, refunded or extended unless such indebtedness is first determined to be an existing, valid and binding obligation of such * * * school district * * * by a formal resolution of the * * * board of education * * * thereof. Such resolution shall state the amount of the existing indebtedness to be funded, refunded or extended, the aggregate amount of bonds to be issued therefor, their number and denomination, the date of their maturity, the rate of interest they shall bear and the place of payment of principal and interest."

"Section 5659. For the payment of the bonds issued under the next three preceding sections, the board of education * * * shall levy a tax, in addition to the amount otherwise authorized, each year during the period the bonds have to run sufficient in amount to pay the accruing interest and the bonds as they mature."

In your statement of facts you indicate that the board of education of the Clay township school district "refuses and neglects to issue or offer to issue bonds under authority of sections 5656 and 5658 of the General Code," for the purpose of the further operation and maintenance of the schools in such district. You further indicate that the county board of education has taken over the operation and maintenance of such schools in this district and has been paying the teachers the necessary expenses of such operation under the provisions of section 7610-1 G. C., supra, and that "the amount of Clay township school funds to be distributed at the February settlement, will not be sufficient to pay the salaries of teachers or refund any money paid out by the county school board." You desire to know whether the county board of education, under sections 5655 and 5658 G. C., supra, can proceed to issue bonds in accordance with the provisions of such sections, the local board of education having refused to do so, as authorized in Opinion No. 1508 (Opinions of the Attorney-General for 1920).

An examination of the provisions of section 7610-1 shows that the section is very sweeping in its character in the authority given to a county board of education, for it says:

"The county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all of such duties and acts, *in the same manner as the board of education by this title is authorized to perform them.*"

However, this section has been recently construed by the court of appeals of Athens county in a decision handed down on February 18, 1921, in a case similar to yours, and consideration of the question of the issuance of bonds by the county board of education is unnecessary. In this case (*The State of Ohio ex rel Samuel I. Dinsmore, Plaintiff, vs. Fred Cornwell, Auditor of Athens County, Ohio, Defendant*) the court say:

"The relator is a teacher in the schools of Carthage township rural school district for the year 1920-21. He has been paid part of his salary, but the funds of the township board of education are now exhausted and the money to be received by the township board in the current collection of taxes, presently to be credited at the semi-annual distribution, have been anticipated and expended. The relator has had issued to him by the county board of education, proceeding under section 7610-1 G. C., a voucher for his due and unpaid salary and seeks in this court under favor of that section a writ of mandamus compelling the county auditor to draw his warrant on county funds in the county treasury for the payment of such salary.

The impaired condition of the finances of the Carthage township board of education is due to the fact that it has not taken advantage of the opportunity of increasing its school levy as authorized by sections 5649-5a, and following, G. C., and has thereby caused its already insufficient funds to be further depleted by losing its distributive share in the reserve of the state common school fund under section 7596 G. C.

The right of the relator to compel the county auditor to issue his warrant depends upon section 7610-1 G. C. Under this section when the township board of education failed to pay the relator's salary it became the duty of the county board to perform such duty 'in the same manner as the board of education (township) by this title is authorized to perform them.' No one would contend that the local board could compel the application of the general funds of Athens county to the satisfaction of the liability of the Carthage board of education, nor does it appear that such power was attempted to be conferred on the county board. The statute provides that the vouchers of the county board

'shall be a charge against the school district for which the money was paid. The amount so paid shall be retained by the county auditor from the proper funds due to such school district, at the time of making the semi-annual distribution of taxes.'

The Attorney-General of Ohio in his official opinion No. 1508, issued August 21, 1920, construed this provision to mean the *next* semi-annual distribution of taxes, and if this opinion is sound the relator is clearly not entitled to the writ prayed for because no funds in the next semi-annual distribution will be due to the local board. At any given semi-annual distribution the accounts between the county and local board are adjusted, including, of course, advancements made under section 2692, and the balance is paid to the treasurer of the local board. Sections 7600, 7601 G. C. It is, therefore, inconceivable that the General Assembly meant by the section above quoted to suspend the general statutes requiring semi-annual settlements, or meant to require the county treasury to satisfy the liabilities of the local board of education for an indefinite period, and perhaps forever. To so construe this section is to hold that the county commissioners are

authorized and required to raise money by general levy throughout the county to pay the obligations of the Carthage township board of education. The statute can not be so construed as to lead to a result wholly mischievous and probably unconstitutional.

It does not follow, however, that the relator is to be denied his salary. If, as we must assume, but can not here determine, the relator has a legal contract with the board of education, he can not be deprived of his hire. When he was employed neither he nor the employing board were required to anticipate that the electors of Carthage would refuse to vote the increased levy which, together with the state aid that would then have become available, would make it possible for the board of education to meet its contracts. *The duty is now upon the local board to raise the money necessary to meet its obligations. This it seems to be authorized to do by sections 5656 and 5658 G. C. At all events, the relator can not assert his claim against the treasury of Athens county.*"

In view of this recent decision of the court of appeals in construing section 7610-1 G. C., it must be held that:

1. Where the county board of education has assumed control of the schools in a local school district under the provisions of section 7610-1 G. C., the moneys expended by the county board in such local district become a charge against the local district and the amounts so paid from the general fund in the county treasury by the county board of education shall be retained from the proper funds due such local school district at the time of making the semi-annual distribution of taxes.

2. Where the county board of education has assumed control of the schools in a local school district because of the default of the local board and the funds of such local district are exhausted, it becomes the duty of the board of education in the local district to raise the money necessary to meet the obligations incurred in such local district by the county board of education in keeping the schools going.

3. For local school purposes boards of education in local districts may levy a tax to the extent of three mills irrespective of all limitations upon vote of the electors, as set forth in sections 5649-4, 5649-5 and 5649-5a G. C.

4. For the funding of those obligations which are valid, existing and binding, including the pay of teachers, janitors and school drivers, local boards of education may borrow, or issue bonds, without a vote of the electors, in the manner provided in sections 5656 and 5658 G. C.

Respectfully,

JOHN G. PRICE,

Attorney-General.