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SCHOOL BUSES OWNED BY BOARD OF EDUCATION—NOT WITHIN DISCRETIONARY POWER OF SUPERINTENDENT OF PUBLIC INSTRUCTION TO REIMBURSE BOARD FOR EXPENDITURES MADE IN BUILDING GARAGE FOR HOUSING SUCH BUSES—SECTION 4848-3 G. C.

SYLLABUS:

It is not within the discretionary power of the superintendent of public instruction under the authority of Section 4848-3, General Code, to reimburse a board of education for expenditures made in building a garage for the purpose of housing school buses owned by such board.

Columbus, Ohio, May 29, 1946

Dr. Clyde Hissong, Superintendent of Public Instruction  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Under the provisions of the Foundation Program law, this department establishes for each school district of the state, for the

purpose of distributing funds pursuant to the provisions of Section 4848-3 of the Ohio General Code, a so-called minimum operating cost figure which includes not only amounts for elementary schools and for high schools but also an amount which represents the approved cost of pupil transportation in the district.

The maximum amount that will be approved for transportation in any district is determined by applying to certain significant factors in the district's transportation program a formula prescribed by this department. Where such maximum amount is in excess of the district's actual expenditure for transportation, the amount of such expenditure becomes the approved cost figure that is included in computing the district's so-called Foundation Program.

In a number of school districts in the state, boards of education have built garages to house school buses. Boards of education of other districts have expressed a desire to do so providing it is possible to secure state funds for such purpose. The situation gives rise to the following question:

Would it be within the discretionary power of the Superintendent of Public Instruction to reimburse a board of education for expenditures made in building a garage for the sole purpose of housing school buses owned by the board of education, providing the total approved cost including the amount allowed as a reimbursement on the cost of constructing the garage were within the maximum amount that might be approved for the district under the formula established for determining such maximum amount?"

The school foundation program, so-called, is embraced in Sections 4848 to 4848-10, inclusive, of the General Code. These provisions were formerly contained in Sections 7595 to 7595-11 of the General Code.

Section 4848 provides for the establishment of a "state public school fund in the state treasury for the support and maintenance of the public school system and for the equalization of educational advantages throughout the state." It is further provided that to this fund shall be credited any funds appropriated thereto by the General Assembly and the proceeds of any taxes and fines which are by law to be applied to that fund.

Section 4848-1 provides for the apportionment from the fund to each school district of the State in an amount equal to twenty-five cents a day for each pupil of school age in average daily attendance from grades one to eight, and twelve and one half cents per day for each pupil five

years of age or over in average daily attendance in kindergarten classes, and thirty cents per day for each pupil in average daily attendance from grades nine to twelve inclusive.

Section 4848-3 reads as follows :

“Any school district, which has a tax levy for current school operation of at least three mills, shall be entitled to receive additional aid, to be apportioned from the state public school fund by the superintendent of public instruction, as hereinafter provided.

The amount of such additional aid which such a district shall be entitled to receive in any year shall be the difference between the cost of maintaining the foundation program, as hereinafter defined, and an amount equivalent to a computed yield of three mills on each dollar of the taxable property on the tax duplicate of such district, plus the total income of such district received from all other state sources, but exclusive of federal and state aid for vocational education, state aid for special classes, and interest on the irreducible debt and income from school trust and land rental funds ; provided, further, however, that no school district shall be entitled to receive additional aid unless the total tax levies of the taxing district of which said school district is a part are at least 10 mills for all purposes.

The superintendent of public instruction shall ascertain *the amount required to supplement the revenue of such district to enable it to maintain the foundation program* as hereinafter defined, and shall apportion the same to such district in the same manner and at the same time as other apportionments of the state public school fund are made to the school districts of the state, according to the provisions of law.

*All funds received from the state public school fund shall be used to pay current operation expenses only.”*

(Emphasis supplied.)

Section 4848-4 provides, in part, as follows :

“For the purpose of distributing the state public school fund, the minimum operating cost of the foundation program is hereby defined to be :

(a) For pupils in average daily attendance in grades one to eight, inclusive, thirty seven and one-half cents a day for each pupil, for a term not to exceed one hundred and eighty days.

\* \* \*

(e) For districts in which transportation of pupils is necessary, *an amount equal to the approved cost of such transportation service* which shall be in addition to the amounts specified in paragraphs (a) and (c) or (d) of this section.

The superintendent of public instruction shall prescribe regulations governing methods and means of transportation and shall make recommendation as to the cost of foundation programs for pupil transportation in districts in which transportation is deemed necessary. The effects of sparsity of population and of other conditions reasonably beyond the control of the board of education of the school district shall be considered in the determination of such transportation costs. The costs of transportation in all instances shall be determined and fixed by the local boards of education, but not to exceed that recommended by the superintendent of public instruction." (Emphasis supplied.)

This section contains frequent references to "operating costs." I take it that that phrase relates to the cost of current operation as distinguished from any cost that would be in the nature of capital investment or permanent equipment.

This meaning appears to me to be emphasized in the provisions of Section 4848-5 which relate to the terms upon which a pupil may attend school outside of his district of school residence. The statute sets out the method by which his tuition to be paid by the district of his residence is to be computed. It reads, in part, as follows:

"From the total expenditures for conducting the schools of the district attended *there shall be deducted* the amounts expended for the following purposes; *capital outlay; permanent improvements; debt service; transportation; operation of school lunch rooms; tuition to another school district; operation of summer school, part-time schools and evening schools; and maintenance of playgrounds; and there shall also be deducted that portion of the salary of a vocational teacher for which the district receives state and federal funds. The result so obtained shall represent the operating cost* to be recognized in the calculation of tuition rates."

Section 4848-10 requires each county board of education annually to prepare a budget of "operating expenses for the ensuing year for the county school district" and to certify the same to the superintendent of public instruction as the basis for the distribution of the state public school fund to the local districts of the county school district.

Aside from these references to operating expenses which seem to me to clearly exclude the idea of capital expenditure, we have the explicit provision already quoted in Section 4848-3 to the effect that "all funds received from the state public school fund shall be used to pay current

operating expenses only." This language appears to me to call for no interpretation and to admit of no question.

As indicating that the General Assembly itself recognized that the foregoing provisions would not include capital expenditures such as the construction of buildings, the 96th General Assembly added a new section, Section 4848-11, General Code, which reads in part as follows :

"All moneys appropriated to the department of education for the purpose of providing financial assistance to school districts for repairing, improving, remodeling *or constructing of school plants* shall be distributed in accordance with the provisions of this section." (Emphasis supplied.)

This section, which is quite lengthy, deals with the procedure whereby a board of education may obtain a special allowance for the purposes indicated. Apparently with the intention of preventing a board from using this particular fund for current expenses, it is further provided in the same section :

"The money received by any school district pursuant to the provisions of this section shall be used only for the purpose of paying the cost of the repair, improvement, remodeling or construction set forth in the application filed by the district with the superintendent of public instruction."

There appears to be no doubt that the building of a garage to house school buses is a legitimate expenditure of the Board of Education. It was so held in 1936 Opinions of the Attorney General, page 1263. However, construction of such building cannot, in my opinion, be regarded as "current operation expense." We could as well regard the building of an addition to a school house or a school building itself as current operating expense.

Section 4848-4, *supra*, requires the superintendent of public instruction, in determining the cost of carrying out the foundation program, and the allowance that shall be made to each district, to take into consideration the cost of transportation of pupils, and authorizes him to prescribe regulations and "make recommendation as to the costs of foundation programs for pupil transportation in districts in which transportation is deemed necessary." The portion of the section which I have already quoted suggests certain local conditions such as sparsity of population

which are to be taken into consideration in determining such transportation costs. Your mention of a "formula" doubtless has reference to this procedure which the superintendent of public instruction is to follow. But there is no suggestion of any departure from the express provision of the preceding section which limits the distribution of the state public school fund to "current operating expenses only."

While Section 4848-11 to which I have referred was evidently intended to supplement the plan of state assistance to public schools as embodied in the "foundation program law," by providing further assistance in the form of appropriations for building construction, yet by the express terms of that section assistance of the latter character must be out of funds "*appropriated \* \* \* for the purpose of \* \* \* constructing,*" etc. Your inquiry does not relate to any appropriation having that declared purpose, but is directed specifically to the use of funds placed at your disposal for distribution under the provisions of Section 4848-3 of the General Code.

Accordingly, in specific answer to your inquiry, it is my opinion that it is not within the discretionary power of the superintendent of public instruction under the authority of Section 4848-3, General Code, to reimburse a board of education for expenditures made in building a garage for the purpose of housing school buses owned by such board.

Respectfully,

HUGH S. JENKINS  
Attorney General