

OPINION NO. 71-043

Syllabus:

A board of education of a local school district may issue "contracts" to school personnel for the ensuing year, even though, to the board's knowledge, the estimated income will be less than the total amount of said contractual obligations.

To: Robert D. Webb, Ashtabula County Pros. Atty., Jefferson, Ohio
 By: William J. Brown, Attorney General, August 20, 1971

I am in receipt of your request for my opinion, which you state as follows:

"The estimated income for the calendar year of 1971 will be less than the amount necessary to meet contractual obligations for all school personnel, both certified and non-certified, for the calendar year 1971.

"Is it possible for said school system [Grand Valley Local School] to issue contracts for the ensuing year, knowing that the estimated income will be less than the amount of said contractual obligations?"

It appears from other statements in your letter that the board has obtained advances on the school foundation program payments. Amended Substitute House Bill No. 1023; 133 Ohio Laws, 2895, 2898. I conclude therefore that extraordinary procedures have been exhausted and that your question is confined to the budgeting rules applicable to school boards. These are regulated under the Budget Commission provisions, Section 5705.27 et seq., Revised Code.

Section 5705.39, Revised Code, in pertinent part, is as follows:

"The total appropriations from each fund shall not exceed the total of the estimated revenue available for expenditure therefrom, as certified by the budget commission,* * *."

Section 5705.41, Revised Code, is, in part, as follows:

"No subdivision or taxing unit shall:

"(A) Make any appropriation of money except as provided in sections 5705.01 to 5705.47, inclusive, of the Revised Code;* * *

"(B) Make any expenditures of money unless it has been appropriated as provided in such sections;

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"(D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount

required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances.* * *

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* * * 'Contract' as used in this section excludes current payrolls of regular employees and officers.

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A school district is a subdivision to which such provisions apply. See Section 5705.29, Revised Code. Thus, a school district may expend only such money as has been appropriated and may not appropriate more than the total of the estimated revenue available for expenditure.

As to contracts with school personnel, one of my predecessors, in Opinion No. 1261, Opinions of the Attorney General for 1927, held, in Syllabus No. 5, as follows:

"The statutory requirement that no contract shall be entered into by any subdivision until the fiscal officer has certified that the money for the payment thereof is in the treasury or in the process of collection, has no application to the contract of employment between boards of education and the teachers of the district."

In discussing the matter, he said, at page 2261, as follows:

"A consideration of this language [Section 5705.41 (D), Revised Code] together with the entire provisions of the Act discloses that it was the intention of the legislature that the term 'contract' as used in that section should not be applied to the contract of employment of the regular employes and officers who were paid by current payrolls. Therefore, even though the teachers are employed by contract as specifically provided for by law, they are placed in the same class as other employes and the provision that the money must be appropriated before the contract is entered into has no more application to such teachers than it has to other employes.* * *"

In accord, are Opinion No. 4872, Opinions of the Attorney General for 1932; Lee v. Brewster Village School District, 29 N.P. (n.s.) 134 (1932); Bower v. Board of Education, 8 Ohio C.C.R. (n.s.) 305 (1906). The same is true, of course, respecting contracts of non-

teaching employees, as regulated under Section 3319.081 et seq., Revised Code. See Opinion No. 71-021, Opinions of the Attorney General for 1971.

Thus, the board of education may not expend or obligate itself to expend more than its budgeted income for a year and that the execution of "contracts" for personal service of teachers and nonteaching personnel does not constitute the creation of an obligation to expend more than the budgeted income. Accordingly, a school board may issue contracts to school personnel even though the estimated income will be less than the total amount of compensation called for in such contracts.

While not expressly involved in your question, your attention is directed to the provisions of Section 5705.46, Revised Code, which are, in part, as follows:

"* * *The total expenditures for such purpose [payment of current payrolls] during the first half of any fiscal year shall not exceed six tenths of the appropriation therefor, unless the taxing authority of such subdivision, by a three-fourths vote of all the members, waives such limitation.* * *"

Under those provisions the board must take affirmative action by three-fourths vote of its members if the school is intended to be operated continuously until the funds are depleted. When depleted, of course, the employment relationship becomes altered to the extent that no further payments for personal service may be made, or, in other words, a layoff becomes mandatory.

In specific answer to your question, it is my opinion, and you are so advised that a board of education of a local school district may issue "contracts" to school personnel for the ensuing year, even though, to the board's knowledge, the estimated income will be less than the total amount of said contractual obligations.