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1. SCHOOL FOUNDATION LAW — SCHOOL DISTRICTS TO BE ENTITLED TO ADDITIONAL AID — MUST HAVE TAX LEVY FOR CURRENT SCHOOL OPERATION OF AT LEAST THREE MILLS AND TAXING DISTRICT OF SAID SCHOOL DISTRICT MUST HAVE TOTAL TAX LEVIES OF AT LEAST TEN MILLS FOR ALL PURPOSES — SECTIONS 4848 TO 4848-10 G. C.

2. BOARD OF EDUCATION OF SCHOOL DISTRICT — WHERE ABOVE REQUIREMENTS MET AND ONE OR MORE SCHOOLS MAINTAINED — AVERAGE DAILY ATTENDANCE — LESS THAN ONE HUNDRED AND EIGHTY PUPILS — REQUIREMENTS TO BE ENTITLED TO RECEIVE ADDITIONAL AID UNDER SCHOOL FOUNDATION PROGRAM — FUND — DIFFERENCE BETWEEN AMOUNT NECESSARY TO OPERATE AT REASONABLE LEVEL OF EDUCATIONAL EFFICIENCY, NOT LESS THAN \$1150.00 PER ANNUM FOR EACH ONE TEACHER, ELEMENTARY SCHOOL, OR \$2400.00 PER ANNUM FOR EACH TWO TEACHER, ELEMENTARY SCHOOL, AND COMPUTED YIELD, THREE MILLS ON EACH DOLLAR, PROPERTY ON TAX DUPLICATE, PLUS TOTAL INCOME OF 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 IRREDUCIBLE DEBT AND INCOME FROM SCHOOL TRUST AND LAND RENTAL FUNDS.

SYLLABUS:

1. In order for a school district to be entitled to additional aid under the school foundation law (Sections 4848 to 4848-10, inclusive, General Code), it must have a tax levy for current school operation of at least three mills and the taxing district of which said school district is a part must have total tax levies of at least ten mills for all purposes.

2. A board of education of a school district meeting the above requirements and maintaining one or more schools, each or any of which has an average daily attendance of less than one hundred and eighty pupils, and which has established to the satisfaction of the superintendent of public instruction and the state controlling board that

such schools are essential and efficient parts of the state school system, is entitled to receive as additional aid under the school foundation program for such school or schools, the difference between the amount necessary to operate such school or schools at a reasonable level of educational efficiency, which in no event may be less than \$1150 per annum for each one teacher elementary school or \$2400 per annum for each two teacher elementary school, and the computed yield of three mills on each dollar of 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.

Columbus, Ohio, March 16, 1944

Hon. Henry J. Knapke, Prosecuting Attorney
Celina, Ohio

Dear Sir:

This will acknowledge receipt of your communication, which reads as follows:

"Paragraph c of Section 7595-1c (under recodified paragraph d of Section 4848-4) reads as follows:

'If and when the board of education of a school district maintaining one or more schools each or any of which has an average daily attendance of less than one hundred eighty pupils, shall establish to the satisfaction of the director of education and the state controlling board that such schools are essential and efficient parts of the state school system, the amount to be allowed per pupil for the purpose of determining the minimum operating cost of a foundation program of education shall be such as will enable such school or schools to operate at a reasonable level of educational efficiency. For this purpose, schedules of foundation program operating costs for schools of less than one hundred eighty pupils in average daily attendance shall be established by the director of education; but in no case shall the minimum operating cost of a foundation program of education, upon which is based the allotment of moneys from the state public school fund, be less than one thousand one hundred and fifty dollars per annum for each one-teacher elementary school and two thousand four hundred dollars per annum for each two-teacher elementary school, plus the cost in each case of maintaining the approved pupil transportation and tuition foundation programs, or either, as hereinafter provided. Such schedules shall define the minimum operating cost of each of the several foundation programs for schools with small average daily attendance *in terms of a specific amount per pupil*

per day for each size type of school and such specific amount shall be used in place of the amounts specified in paragraphs (a) and (b) of this section.'

(Emphasis mine.)

House Bill amended Substitute Senate Bill No. 115, enacted by the last session of the legislature, changes the amount specified in item (a) of the first paragraph of the above mentioned Section 7595-1c or recodified Section 4848-4, to read as follows:

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

In view of the wording of this particular paragraph, I would like to have your answer to the following question:

Is the board of education maintaining one or more schools, each or any of which has an average daily attendance of less than one hundred and eighty pupils, and which has satisfied the director of education and the state controlling board that such schools are essential and efficient parts of the state public school system, entitled to receive from the foundation program a minimum of twenty-nine cents per day for each pupil, for a term not to exceed one hundred and eighty days, when such sum exceeds the minimum of \$1150 for a one-room school or \$2400 for a two-room school, as set forth in the paragraph quoted above, even though such approved schools are operating as a one-room or a two-room school?"

For a proper conception of the matters involved in this inquiry, there is required a consideration of the provisions of what is commonly referred to as the school foundation law enacted originally in 1935 (116 O. L. 585) and then codified as Sections 7595 to 7595-i, inclusive, of the General Code, the purpose of which, stated in its title was "creating a public school fund in the state treasury and providing for the distribution thereof, with a view to providing a thorough and efficient system of common schools throughout the state, promoting economy and efficiency in the operation thereof and providing for the equalization of educational opportunities." By subsequent codification these aforesaid statutes with certain changes became Sections 4848 to 4848-10, inclusive, of the General Code, as contained in House Bill 217 of the 95th General Assembly.

Section 4848, General Code (formerly Section 7595, General Code)

provides that there shall be a state public school fund in the state treasury for the support and maintenance of the public school system, to be administered by the Superintendent of Public Instruction with the approval of the State Controlling Board and subject to the restrictions of law.

Section 4848-1, General Code (formerly Section 7595-1, General Code) which provides for the annual apportionment and payment from the state public school fund to each school district, of certain fixed amounts based on the number and grades of pupils in the several different types of schools in average daily attendance during the school year next preceding such apportionment, reads in part as follows:

“There shall be apportioned and paid from the state public school fund to each school district of the state an amount equal to twenty cents a day for each pupil of school age in average daily attendance in part-time, continuation and evening schools and, for regular day school attendance, an amount equal to seventeen cents per day for each pupil thereof in average daily attendance in grades 1 to 8, inclusive, and an amount equal to eight and one-half cents per day for each pupil five years of age or over in average daily attendance in kindergarten classes, and an amount equal to twenty-five and one-half cents per day for each pupil thereof in average daily attendance in grades 9 to 12, inclusive, during the school year next preceding such apportionment, *except that in districts, other than city districts, maintaining one or more schools, each or any of which have fewer than three teachers, no payments for such schools shall be made to such districts under the provisions of this section.*”

(Emphasis added.)

The distribution made under the provisions of this last mentioned section is sometimes referred to as the “flat distribution”.

Under the express terms of said section school districts, other than city school districts, which maintain one or more schools each or any of which have fewer than three teachers are not entitled to participate in such so-called “flat distribution”, in so far as such schools are concerned. It is therefore obvious that no payments may be made under said section for one or two room schools maintained by a district, other than a city district.

In addition to such so-called “flat distribution”, provision is made by Sections 4848-3 and 4848-4, General Code, whereby school districts

which properly qualify under the law may receive "additional aid" to be apportioned and paid to said districts from the state public school fund by the Superintendent of Public Instruction. Section 4848-3, General Code (formerly Section 7595-1b, General Code,) provides 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."

Section 4848-4, General Code (formerly Section 7595-1g, General Code), in so far as the same is material hereto, reads:

"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, twenty-five cents a day for each pupil, for a term not to exceed one hundred and eighty days.

(b) For pupils five years of age or over in average daily attendance in kindergarten classes twelve and one-half cents a day for each pupil, for a term not to exceed one hundred and eighty days.

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

(d) For pupils in elementary schools and high schools having an average daily attendance of less than one hundred eighty pupils, such amounts per day as will be sufficient to meet the increased cost per pupil due to small classes, to be determined as follows:

If and when the board of education of a school district maintaining one or more schools, each or any of which has an average daily attendance of less than one hundred eighty pupils, shall establish to the satisfaction of the superintendent of public instruction and the state controlling board that such schools are essential and efficient parts of the state school system, the amount to be allowed per pupil for the purpose of determining the minimum operating cost of a foundation program of education shall be such as will enable such school or schools to operate at a reasonable level of educational efficiency. For this purpose, schedules of foundation program operating costs for schools of less than one hundred eighty pupils in average daily attendance shall be established by the superintendent of public instruction; but in no case shall the minimum operating cost of a foundation program of education, upon which is based the allotment of moneys from the state public school fund, be less than one thousand one hundred and fifty dollars per annum for each one-teacher elementary school and two thousand four hundred dollars per annum for each two-teacher elementary school, plus the cost in each case of, maintaining the approved pupil transportation and tuition foundation programs, or either, as hereinafter provided. Such schedules shall define the minimum operating cost of each of the several foundation programs for schools with small average daily attendance in terms of a specific amount per pupil per day for each size type of school and such specific amount shall be used in place of the amounts specified in paragraphs (a) and (c) of this section.

Pupils in attendance in part-time continuation and evening school shall in no case be included in the average daily attendance upon which calculations are made under subsections (a) and (c) or (d). * * *

As stated in your letter, the 95th General Assembly, through the enactment of Amended Substitute Senate Bill No. 115 which became effective

subsequent to the effective date of House Bill No. 217, provided that the minimum operating cost of the foundation program for pupils in average daily attendance in grades one to eight inclusive, fixed in section 4848-4 at twenty-five cents a day for each pupil, for a term not to exceed one hundred and eighty days, shall, for the fiscal year 1944 and the first six months in the fiscal year 1945, be calculated at the rate of twenty-nine cents a day for each pupil in average daily attendance in such grades for such term.

The question expressly stated by you is whether a board of education maintaining one or more schools, each or any of which has an average daily attendance of less than one hundred and eighty pupils, is entitled to receive from the foundation program a minimum of twenty-nine cents per day for each pupil for a term not to exceed one hundred and eighty days, when such sum exceeds the minimum of \$1150 for a one room school or \$2400 for a two room school.

Nowhere in section 4848-4, General Code, nor in Amended Substitute Senate Bill No. 115 is any language found which provides for a distribution of twenty-nine cents a day to districts maintaining such schools. Each of such acts merely defines the minimum operating cost of the foundation program. Neither of them prescribes the amount to be distributed to school districts.

Section 4848-4, it will be noted, commences with the following language:

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

Section 1 of Amended Substitute Senate Bill No. 115, which as above pointed out increases the amount set out in paragraph a of Section 4848-4 from twenty-five cents to twenty-nine cents, reads:

“For the purpose of distributing state funds to the school districts of the state in the fiscal year 1944, and the first six months in the fiscal year 1945, the minimum operating cost of that portion of a foundation program calculated under paragraph (a) or section 7595-1c or 4848-4 of the General Code,

shall be calculated at the rate of twenty-nine cents a day for each pupil in 'average daily attendance' in grades 1 to 8, inclusive, for a term not to exceed one hundred eighty days."

The amount of additional aid which a district shall be entitled to receive is prescribed in section 4848-3, supra. It will be noted that said section provides that any school district which has a tax levy for current school operation of at least three mills shall be entitled to receive additional aid and that the amount of such additional aid which such district shall be entitled to receive in any year shall be the difference between the cost of maintaining the foundation program and an amount equivalent to the computed yield of three mills on each dollar of the taxable property in such district plus a total income from other state sources and exclusive of other aid or income enumerated therein, with the proviso that no school district shall be entitled to such additional aid unless the total tax levies in the taxing district embracing such school district are at least ten mills for all purposes.

Therefore, before any school district becomes entitled to additional aid it must (1) have a tax levy for current school operation of at least three mills, and (2) the total tax levies of the taxing district of which such school district is a part must be at least ten mills for all purposes. If both of the above requirements are met, a school district would then be entitled to additional aid, if not, such district would of course not qualify for such aid.

In order to determine the amount of such aid, in the case of a school district meeting such requirements, the statute provides that the computed yield of three mills on each dollar of taxable property on the tax duplicate of such district plus the total income of such district received from all other state sources shall be subtracted from the cost of maintaining the effective program, and the difference resulting therefrom shall be the amount of such additional aid to which the district is entitled.

It is therefore necessary in each instance to determine the cost of maintaining the foundation program. In case of a school district maintaining one or more schools, each or any of which has an average daily attendance of less than one hundred and eighty pupils, section 4848-4 of the General Code provides that when the board of education of any

such district shall establish to the satisfaction of the superintendent of public instruction, and the state controlling board, that such schools are essential and efficient parts of the state school system, the amount to be allowed per pupil for the purpose of determining the minimum operating cost of the foundation program shall be such as will enable such school or schools to operate at a reasonable level of educational efficiency. Said section further provides that in no case shall such minimum operating cost be less than \$1150 per annum for each one teacher elementary school and \$2400 per annum for each two teacher elementary school.

Summarizing theabove, it would appear and it is accordingly my opinion that:

1. In order for a school district to be entitled to additional aid under the provisions of the school foundation law, it must have a tax levy for current school operation of at least three mills and the taxing district of which said district is a part must have total tax levies of at least ten mills for all purposes.

2. A board of education of a school district meeting the above requirements and maintaining one or more schools, each or any of which has an average daily attendance of less than one hundred and eighty pupils, and which has established to the satisfaction of the superintendent of public instruction and the state controlling board that such schools are essential and efficient parts of the state school system, is entitled to receive as additional aid under the school foundation program for such school or schools, the difference between the amount necessary to operate such school or schools at a reasonable level of educational efficiency, which in no event may be less than \$1150 per annum for each one teacher elementary school or \$2400 per annum for each two teacher elementary school, and the computed yield of three mills on each dollar of 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.

Respectfully,

THOMAS J. HERBERT
Attorney General