

28.

STATE PUBLIC SCHOOL FUND—FOUNDATION PROGRAM—
SCHOOL DISTRICTS FEWER THAN THREE TEACHERS,
AVERAGE DAILY ATTENDANCE LESS THAN ONE HUN-
DRED AND EIGHTY PUPILS—MINIMUM OPERATING
COST—ALLOCATION—IN NO CASE LESS THAN FULL
AMOUNT \$1150.00 EACH ONE-ROOM; \$2400.00 EACH TWO-
ROOM SCHOOL HOUSE — TAX DUPLICATE — YIELD
THREE MILLS.

SYLLABUS:

There should be allocated and paid from the State Public School Fund to all school districts of the State which are found by the proper authorities as provided by law to be essential and efficient parts of the State Public School System and which maintain one or more schools each or any of which has fewer than three teachers or an average daily attendance of less than one hundred eighty pupils, an amount equal to the minimum operating cost of the Foundation Program as defined by law or as determined by the Director of Education pursuant to law, but in no case less than the full amount of \$1150.00 for each one-room school and \$2400.00 for each two-room school in the district, without deduction of an amount equivalent to a computed yield of three mills on each dollar of the taxable property on the tax duplicate of such district.

COLUMBUS, OHIO, January 25, 1939.

HON. E. N. DIETRICH, *Director of Education, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication of recent date, wherein my advice is requested concerning the allotment and distribution of funds from the State Public School Fund under circumstances as outlined in a letter to you by counsel for several school districts in Darke County.

As you state, this letter, which is addressed to you, is self-explanatory, and so far as is pertinent is as follows:

"We represent the following school districts in Darke County, Ohio, to wit:

Greenville No. 12
 New Weston
 Neave No. 1
 Neave No. 5
 Neave No. 6

These districts have one and two-room schools included in the foundation program for 1938 for 'additional aid' under section 7595-1b, General Code.

In calculating the 'additional aid' you have deducted from the amounts allowed these districts three mills on each dollar of taxable property on the tax duplicate of the district, pursuant to the requirements of section 7595-1b, General Code. However, these districts do not claim 'additional aid' under the provisions of section 7595-1b. They claim the full allowance of \$1150.00 for each one-room school and \$2400.00 for each two-room school under the provisions of section 7595-1 as the 'minimum operating cost of the foundation program' for such schools as defined in section 7595-1c, paragraph (c). From the allowance of \$1150.00 for each one-room school and \$2400.00 for each two-room school there should not be deducted the proceeds of the three mills on each dollar of taxable property on the tax duplicate of the district because there is no authority in the school foundation law for deducting the three mills unless such schools are seeking to qualify for the 'additional aid' under section 7595-1b.

* * * * *

Kindly advise us what your attitude is with reference to payment to the above school districts of the balances due these districts from the 1938 program."

In your letter to me you state:

"It has been our policy until the recent decision of the Supreme Court to deduct the three mills.

Kindly advise me what shall be our policy in the future. Does the recent decision in Case No. 27290 require us to pay the full amount of \$1150.00 for each one-room school and \$2400.00 for each two-room school?"

Section 7595, General Code, provides in substance, that there shall be a State Public School Fund in the state treasury, and states that its purpose is:

“For the support and maintenance of the public school system and for the equalization of educational advantages throughout the state.”

The statute further states that this fund shall be administered by the Director of Education, with the approval of the State Controlling Board, subject to the “restrictions of law.” The “restrictions of law”, as spoken of in Section 7595, General Code, are contained in Sections 7595-1 to 7595-1i, inclusive, of the General Code.

Section 7595-1, General Code, provides for what is commonly called the annual normal apportionment and distribution from the public school fund to each school district in the state. This is sometimes called the “flat” distribution, which has nothing whatever to do with what is known in the law as “additional aid” for school districts. The amount of the normal apportionment and distribution from the State Public School Fund to each school district in the state other than those districts which maintain one or more schools each or any of which have fewer than three teachers, is based on a schedule of definite rates per pupil in average daily attendance in the several grades of the schools of the several districts. As to those districts which maintain one or more schools each or any of which have fewer than three teachers the statute, Section 7595-1, General Code, provides, inter alia, as follows:

“In districts maintaining one or more schools, each or any of which have fewer than three teachers, the amount to be paid such districts on account of attendance in such schools shall be limited by the *minimum operating cost of the foundation program as defined by law or as determined by the director of education pursuant to law.*” (Italics the writer’s.)

Section 7595-1c, General Code, defines “minimum operating cost of a foundation program” for any school district in terms of a schedule of rates per day per pupil in average daily attendance. A separate provision is made in this statute with respect to the determination of the “minimum operating cost of a foundation program” for school districts maintaining one or more schools each or any of which has an average daily attendance of less than one hundred and eighty pupils. This provision of the statute is as follows:

“(c) 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 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 approved pupil transportation and tuition foundation programs, or either, as hereinafter provided.*" (Italics the writer's.)

From the foregoing provisions of law it clearly appears that it is the intent of the law that school districts otherwise qualified, wherein are maintained one or more schools each or any of which has an average daily attendance of less than one hundred eighty pupils, (and I presume it is safe to assume that any such districts would have one or more schools which had fewer than three teachers) shall receive from the Public School Fund at least as much as "the minimum operating cost of a foundation program" as determined for the particular district according to the formulae set out in the statute for the determination of such matters, and that in no case shall this minimum operating cost of a foundation program of education for the purpose of the allotment of moneys from the State Public School Fund be less than \$1150.00 per annum for each one-teacher elementary school and \$2400.00 per annum for each two-teacher elementary school plus transportation and tuition programs as set out in the statute. No mention is made in any of these statutes of deductions from these amounts of the equivalent of a three-mill levy within the district or of any other deductions.

In Section 7595-1b, General Code, provision is made for what is called "additional aid" from the Public School Fund for certain school

districts which qualified for the same. "Additional aid" as the term is here used, means precisely what the term implies. That is, such aid is something in addition to the normal or "flat" distribution to the district from the Public School Fund and is extended only in cases where it is determined the revenue resources of the district are insufficient to enable the board of education for the district to conduct its schools upon the minimum operating cost of a foundation program. The statute reads in part, as follows:

"If, in any school district which has a tax levy for current school operation of at least three mills, the revenue resources of any district are insufficient to enable the board of education thereof to conduct the schools in such district upon the minimum operating cost of a foundation program, as defined by or established pursuant to law, such district shall be entitled to receive additional aid, to be apportioned from the state public school fund by the director of education, 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, less the deductions made by the county auditor pursuant to sections 288, 7678, 1465-66, 7828 and 7834 of the General Code, and plus the total income of such district received from all other state sources, but exclusive of federal and state aid for vocational education and state aid for special classes; 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."

It is with respect to the determination of the amount of "additional aid" that may be extended to a district that the deduction of the equivalent of a three-mill levy is involved. This has nothing whatever to do with the computation of the minimum cost of a foundation program or with the determination of the proper amount of normal or "flat" distribution from the Public School Fund, which a school district is entitled to receive.

If any doubt ever existed about this question it is removed by the recent decision of the Supreme Court in the case of *State ex rel. Greenville Township Rural School District vs. E. N. Dietrich, Director of Education of the State of Ohio, et al.*, 134 O. S., 474, decided November 30, 1938 (No. 27290.) This case, which was an action in mandamus, involved the normal distribution from the public school fund to the Greenville Township Rural School District of the Darke County School Dis-

trict, wherein were maintained eleven one-room schools with an average daily attendance ranging from twenty-one to thirty pupils and one two-room school with an average daily attendance of 27.8 pupils. In the prayer of the petition the relator asked that the Director of Education authorize and approve an allowance to the school district of the sum of \$1150.00 for each one-room school and \$2400.00 for the two-room school. The defendant demurred to the petition which directly raised the question of whether or not the allotment of funds as prayed for was compulsory. Of course, if it was not legal, it was not compulsory. The court granted the peremptory writ of mandamus and in this writ stated in part:

“It is therefore ordered and adjudged that the writ of mandamus prayed for be, and the same is hereby allowed, and it is ordered that immediately upon service of this writ defendant, E. N. Dietrich, Director of Education of the State of Ohio * * * do authorize and approve the allowance to relator of the sum of \$1150.00 for each of said one-room schools and \$2400.00 for said two-room schools and do further report such authorization and approval to the defendants, M. Ray Allison, Joseph T. Ferguson, Al Kalb, William Foss and Herbert S. Duffy, as members of and constituting the State Controlling Board of the State of Ohio for the approval thereof; * * * and defendants M. Ray Allison, Joseph T. Ferguson, Al Kalb, William Foss and Herbert S. Duffy, as members of and constituting the State Controlling Board, are hereby commanded to approve and consent to the allowance and allocation of said sums; and the defendant E. N. Dietrich, as Director of Education of the State of Ohio, is hereby commanded upon obtaining the approval and consent of the defendants M. Ray Allison, Joseph T. Ferguson, Al Kalb, William Foss and Herbert S. Duffy, as members of and constituting the State Controlling Board of the State of Ohio, forthwith to notify and cause the Auditor of the State of Ohio to pay to relator the sum of \$13,900.00, or such other sum as shall be determined after making proper adjustments authorized by law for the fund of the State Teachers Retirement System under the provisions of section 7896-53a, General Code, and for tuition adjustments under the provisions of section 7595-1d, General Code.”

The Supreme Court, in deciding this case, speaking through Matthias, J., quoted that portion of Section 7595-1, General Code, heretofore quoted herein, and followed this quotation by the following observation:

“It is to be observed that here is a mandatory provision that the amount determined as therein directed shall be paid to ‘each

school district of the state,' and that the amount to be paid for schools such as are involved in this controversy shall be limited by the minimum operating cost of the foundation program as defined by law or as determined by the Director of Education pursuant to law. The minimum operating cost of the foundation program is defined by the provisions of Section 7595-1c, General Code. * * * After specifying the method of determining the minimum operating costs for various grades of schools, it is provided as follows:"

Then follows the quotation of that part of Section 7595-1c, *supra*, which is quoted above. The Court then observes:

"It is obvious, therefore, that the minimum operating cost of the foundation program for the schools in question has been defined by Section 7595-1c, General Code, and such schools having been approved by the Director of Education in accordance with the statute, the minimum amount so stated is required to be paid under and by virtue of the provisions of Section 7595-1, General Code."

It appears that in the case referred to above, which involved the allocation and payment from the Public School Fund to school districts wherein were maintained one or more schools with an average daily attendance of less than one hundred eighty pupils the Supreme Court definitely ordered the payment to the districts in pursuance of the School Foundation Law, of \$1150.00 per annum for each one-teacher elementary school and \$2400.00 per annum for each two-teacher elementary school without any deduction other than is required for the fund of the State Teachers Retirement System and for necessary tuition adjustments.

I am therefore of the opinion that there should be allocated and paid from the State Public School Fund to all school districts of the State which are found by the proper authorities as provided by law to be essential and efficient parts of the State Public School System and which maintain one or more schools each or any of which has fewer than three teachers, or an average daily attendance of less than one hundred eighty pupils, an amount equal to the minimum operating cost of the Foundation Program as defined by law or as determined by the Director of Education pursuant to law, but in no case, less than the full amount of \$1150.00 for each one-room school and \$2400.00 for each two-room school in the district, without deduction of an amount equivalent to a computed yield of three mills on each dollar of taxable property on the tax duplicate of such district.

Respectfully,

THOMAS J. HERBERT,

Attorney General.