

but no such provision exists in reference to the establishment by township trustees of a place for the holding of a court by a justice of the peace, which is indicative of a legislative intent that the providing of the same should not be an obligation of the township. This conclusion is strengthened by consideration of the fact that township trustees are required by statute to furnish justices of the peace with certain facilities, such as a General Code and civil docket.

My predecessors have held that township trustees have no statutory authority to pay office rent for various officials of the township, including a justice of the peace. Opinions of the Attorney General for 1913, p. 384; Opinions of the Attorney General for 1915, p. 371.

If no authority to pay the office rent for a justice of the peace exists, it is reasonable to deduce from such lack of statutory enactment, and from the absence of express provisions for the purpose, that township trustees are under no mandatory duty to provide an office for a justice of the peace. In the case concerning which you inquire, however, there already exists a township hall, and I assume that it is suitable and, at least at times, available for other uses than those to which it is at present devoted.

Your attention is called to section 3397, General Code, concerning the control and leasing of a township hall. This section provides that the township trustees may, from time to time, lease so much thereof as may not be needed for township purposes. While the duties of a justice of the peace are not so engrossing as to justify making provision for a permanent office for him, yet it would seem that the holding of court by a justice of the peace constitutes a township purpose, and so, while there is no obligation to provide permanent quarters for the justice in the town hall, the trustees should make available to him the facilities of the hall at reasonable times for the purpose of holding court.

In specific answer to your inquiry, I am of the opinion that:

1. A board of township trustees is not required to provide an office for a justice of the peace of the township.
2. Township trustees should make available, at reasonable times, the facilities of a town hall to a justice of the peace of the township for the purpose of holding court.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3037.

COUNTY EDUCATION EQUALIZATION FUND—SCHOOL DISTRICT  
COMPOSED OF TERRITORY FROM TWO COUNTIES—METHODS  
OF APPORTIONMENT IN COUNTY OF LEAST TERRITORY IN  
DISTRICT OUTLINED—AMENDMENT OF 1929 FOR DETERMINING  
PROPER APPORTIONMENT VOID FOR UNCERTAINTY.

SYLLABUS:

1. *In view of the provisions of Section 7600, General Code, as amended in 1929, Section 7600-1, General Code, in so far as it purports to provide a method of determining the proper apportionment of the 2.65 mills tax levy made by authority of Section 7575, General Code, to parts of a school district which is situated in two or more counties, is void for uncertainty.*
2. *When the actual enrollment of pupils residing in a part of a school*

*district of a county school district which extends into an adjoining county is obtained, whether they attend school in that district or elsewhere, this territory should share in the county education equalization fund of the county in which the territory lies, in the proportion that that enrollment bears to the total similar enrollment in the entire territory of the county. When that proportion is determined it should be remitted by the auditor of that county to the auditor of the county of whose county school district the district is a part, placed by him in the county board of education fund of his county school district, and apportioned by the county board of education of that county school district as a part of the county education equalization fund among the whole school districts of the county school district, in accordance with Section 7600, General Code, regardless of county lines.*

COLUMBUS, OHIO, March 10, 1931.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion with reference to the manner of apportioning the proceeds of the 2.65 mills tax levy directed by Section 7575, General Code, to parts of school districts which extend into a county but which are a part of the county school district of which the territory of an adjoining county forms the major part.

The purpose of the annual tax levy of 2.65 mills made by direction of Section 7575, General Code, on all the taxable property within the State of Ohio is to equalize school advantages throughout the State so far as that may be done with the proceeds of this levy. To that end, the Legislature has provided that the proceeds of the levy within each county be retained in the said county and distributed by the auditor thereof to the school districts and parts of school districts in such county in the manner set out in Sections 7600 and 7600-1 of the General Code.

By force of Section 7600, General Code, each city school district and exempted village school district receives the full amount of the tax collected from such districts. The proceeds of the said levy upon the taxable property outside of city and exempted village school districts in each county are to be placed in the "County Board of Education Fund" and shall be known as a "County Education Equalization Fund."

The distribution of the "County Education Equalization Fund" to be made by a county auditor is to be in accordance with the apportionment thereof by the county board of education of the county school district of which the territory of the county forms the major part.

The first part of the statute, Section 7600, General Code, provides that the auditor shall apportion the school funds of the county. Later, provision is made to the effect that the county board of education makes the actual apportionment of the county education equalization fund and the auditor makes the actual distribution of it by giving orders on the county treasurer to each local school district treasurer for the proportion of the fund allotted to the local district by the county board of education. See Section 7601, General Code.

Section 7600, General Code, especially as last revised in 1929, sets up quite a complicated formula for the apportionment of the county education equalization fund. With respect thereto, it provides:

"On or before the first day of April of each year, the county board of education shall make a survey of the county school district to determine the number of teachers and other educational employes, and the num-

ber of transportation routes necessary to maintain the schools of the county school district. After a public hearing, the county board of education shall certify to the board of education of each school district of the county school district the basis upon which they are determined and the approximate amounts which the several districts may expect to receive for teachers' salaries, the salaries of other educational employes and for transportation.

The proceeds of the county educational equalization fund shall be apportioned by the county board of education to each school district and part of district within the county outside of city and exempted village school districts on the basis of the number of teachers and other educational employes employed therein, and the expense of transporting pupils as determined by the above educational survey, and the balance according to the ratio which the aggregate days of attendance of pupils in such districts, respectively, bears to the aggregate days of attendance of pupils in the entire county outside of exempted village and city school districts.

The annual distribution attributable to teachers and employes shall be according to the following schedule: thirty-seven and one-half per centum of the salary of each teacher or educational employe receiving a salary of not less than eight hundred dollars and a like percentage of the compensation paid to each person giving instruction in trade or technical schools, extension schools, night schools, summer schools and other special school activities, but not to exceed nine hundred dollars for any teacher or educational employe or other such person. Provided that the amount distributed to each district shall be upon the basis of the same salary schedule as determined by the county board of education, but in no case shall the amount paid per teacher or educational employe be less than three hundred dollars or more than nine hundred dollars.

The annual distribution attributed to expense of transportation of pupils shall be in accordance with a schedule to be determined by the county board of education."

In 1920, when provision was first made by Section 7575, General Code (108 O. L. Part 2, page 1306) for a State levy for school equalization purposes to be retained in the several counties, Section 7600, General Code, was amended (108 O. L., Part 2, page 1308) so as to provide for the distribution of the proceeds of the said levy by the several county auditors to the school districts and parts of districts within their counties on the basis of salaries, transportation costs and average days of attendance of pupils in each of the districts. It did not then provide, as it now does, that the said salaries and transportation costs upon which the apportionment was made, were to be determined by a survey to be made by the county board of education, but rather as shown by "reports required by law." The provision with reference to the survey was incorporated in the statute in 1929.

Even then, however, the computation to be made to determine the proper apportionment of these taxes in accordance with the statute was complicated and presented many difficulties for county auditors and accountants of the Bureau of Inspection.

The statute, Section 7600, General Code, as then enacted, fixed the manner of apportioning these taxes to school districts and "parts of districts" of a county school district on the basis of the number of teachers and other educational employes employed therein, and the expense of transporting pupils as shown

by reports required by law and the balance according to the ratio which the aggregate days of attendance of pupils in such districts bear to the aggregate days of attendance of pupils in the entire county. At the same time, in 1920, there was enacted Section 7600-1, General Code, in which a formula was set up for determining the number of teachers and other persons employed and aggregate days of attendance of pupils as a basis for the distribution of this tax where parts of districts were involved. Said Section 7600-1, General Code, has not since been amended or repealed. It reads as follows:

"In cases in which any school funds are required to be distributed or apportioned to parts of school districts on the basis of number of teachers and other persons employed and aggregate attendance of pupils, the shares of such parts of districts shall be ascertained by taking the total enrollment of pupils residing in such parts of districts and comparing such enrollment with the total enrollment of pupils in the entire school districts; the proportion thus obtained shall be applied to the number of teachers and other persons employed in each whole school district and the aggregate days of attendance of pupils in each whole school district, respectively, and the result shall be considered the number of teachers and other persons employed in such parts of the districts and the aggregate days of attendance of pupils therein, respectively.

Distribution to such parts of districts on the basis of transportation of pupils shall be based on the number of pupils transported residing in such parts of districts."

County school districts, of course, are not necessarily coterminous with counties. A part of a rural or village school district of a county school district may extend into a county adjoining the county whose territory forms the major part of the county school district. Section 4684, General Code, reads in part, as follows:

" \* \* In each case where any village or rural school district is situated in more than one county such district shall become a part of the county school district in which the greatest part of the territory of such village or rural district is situated."

Apparently, it was for the purpose of providing a means for the proper apportionment of the 2.65 mills tax levy to parts of school districts, where those parts of districts were in different counties, that Section 7600-1, General Code, was enacted. The distribution there provided for, necessarily required consideration of school reports made as directed by Section 7787, General Code. These reports are made by local school officials of each school district, to the county auditors of the several counties, setting forth the salaries paid, transportation costs, enrollment of pupils and attendance records within the district. Said Section 7787, General Code, provides *inter alia*:

"The board of education of a school district situated in two or more counties shall also report the enrollment of pupils residing in each county; and the board of education of a school district situated partly in an original surveyed township or other district of county entitled to an apportionment of the interest on the common school fund or to a dividend of the rents and profits of school lands shall report the

enrollment of pupils residing in such original surveyed township or district of country (county). \* \* \*

When a school district is situated in two or more counties, the reports required by law shall be made to the auditor of each county."

Only a portion of this tax was required by Section 7600, General Code, to be distributed or apportioned on the basis of salaries and the aggregate days of attendance of pupils and even if an auditor did get the data from an adjoining county with reference to enrollment, so as to enable him to have a proper basis for computing the portion of the tax required to be distributed on the basis of salaries and aggregate days of attendance of pupils, he was still at a loss to determine the proper proportion to be distributed which was attributable to expense of transportation. The reports, when he got them from the adjoining county, would not show this data for each part of a district lying in the different counties and no law existed requiring district officials to furnish this data. In fact if the district was a centralized district or a district in which the schools had been consolidated it was very difficult to definitely allocate transportation costs to the parts of a district lying in different counties. This question has become more complicated, and more misunderstanding exists as to the practical application of Section 7600, General Code, since the last amendment of Section 7600, General Code, in 1929. Under the present statute, the apportionment of these funds to districts and parts of districts in a county is not made by the auditor of the county but by the county board of education. The portion attributable to teachers and employes and to expense of transportation of pupils is not based on the actual number of persons employed and the actual salaries paid, and on the actual costs of transportation of pupils, but is to be made in accordance with schedules determined by the county board of education after a survey of the educational needs and requirements of the county school district. See Opinions of the Attorney General for 1929, p. 1859 and Opinion No. 1750, rendered April 9, 1930.

It is my opinion that Section 7600-1, General Code, in so far as it purports to provide a method for a proper determination of the apportionment of the 2.65 mills tax levy made by authority of Section 7575, General Code, to parts of a school district which is situated in two or more counties, is void for uncertainty since the amendment of Section 7600, General Code, in 1929, and that there is now no method fixed by statute whereby such apportionment may be made.

Until such time as the Legislature fixes a method for determining a proper apportionment of such tax for such parts of districts, some practicable equitable method consistent with the intent of the law should be followed.

Before any provision was made by Section 7575, General Code, whereby a uniform state levy was made for education equalization purposes, the proceeds of which were to be retained in the counties and distributed therein, there existed certain revenues derived from the sale of lands which had been granted by Congress for the support of public schools, to originally surveyed townships, which townships frequently were situated in two or more counties. There also existed during that time, under laws districting the state for school purposes, school districts composed of territory in more than one county. To provide for the proper distribution of tax revenues to such districts and fractional townships there were enacted certain provisions of law now embodied in Section 7599, General Code, which section reads as follows:

"The funds belonging to a district composed of territory in more

than one county shall be paid by the treasurers of the other counties to the treasurer of the county having the greatest tax valuation in such district. The auditors of other counties must make settlement on account of such funds with the auditor of the county having the greatest tax valuation; and the treasurer of the district shall make the settlement with such auditor, required by section seventy-six hundred and two."

The above section was enacted in its present form, except as to such change in phraseology as was made by the codifying commission in 1910 to make the reference to statutes made therein conform to the new numbering of the Code, in 1904 (97 O. L., 350) this was ten years before the creation of county school districts and the enactment of the provision that rural and village school districts situated in more than one county shall become a part of the county school district in which the greatest part of the territory of such village or rural school district is situated. Section 4684, *supra*.

Section 7602, General Code, then Section 3963, Revised Statutes (72 O. L., 63, Section 36) referred to in Section 7599, *supra*, provided, in substance, at that time that when an original surveyed township or fractional township is situated in two or more counties, and the land granted thereto by congress for the support of public schools has been sold, the auditor of the county to whose treasurer the interest on the proceeds of such sale is paid must apportion such interest to the counties in which such township is situated in proportion to the youth of the township enumerated in each. The said auditor was required to certify to the auditor of each of the other counties the amount so ascertained to belong to the part of the township situated in his county and transmit to the treasurer of each of said counties an order on the treasurer of his county for such amount.

Said Section 7602, General Code, was amended upon the adoption of the school code of 1914 (104 O. L., 160) and now reads:

"When an original surveyed township or fractional township is situated in two or more counties, and the land granted thereto by congress for the support of public schools has been sold, the auditor of the county to whose treasurer the interest on the proceeds of such sale is paid must apportion such interest to the counties in which such township is situated in proportion to the youth of the township enumerated in each. Such auditor shall certify to the auditor of each of the other counties the amount so ascertained to belong to the part of the township situated in his county, and transmit to the treasurer of each of such counties an order on the treasurer of his own county for such amount. The auditor of each county shall apportion the amount of such interest belonging to the part of the township in his county, to the districts or parts of districts entitled thereto as is provided for the apportionment of the state common school funds in section 7600, and certify and pay it to the proper school officers, as provided in section 7601."

At the time Section 7602, General Code, was last amended, county school districts were created, and said Section 4648, General Code, mentioned above, was enacted (114 O. L., 133). Section 7600, General Code, was also amended at that time, fixing a method for the distribution of the "state common school funds."

It is obvious that said Section 7599, General Code, cannot now be followed in the distribution of the "county education equalization fund," for the reason that the final distribution of this fund is as for a county school district in accord-

ance with a survey made of that district by its county board of education, and the situs of a village or rural school district which is situated in more than one county is in the county district in which the greatest part of such village or rural district is situated instead of in the county in which the greatest tax valuation of the district lies. The survey upon which the distribution of the fund is based, made for such a district, is made by the county board of education of the county school district for the county in which the greatest part of the territory of the district lies, and the apportionment of the fund for that district is made by that county board of education and certification thereof is made to the county auditor of that county, who in turn, makes the actual distribution to the districts in his county. All the funds for this purpose should be at the disposal of the said county auditor.

By the legislation above referred to, Section 7599, General Code, and cognate sections of the Code the legislature recognized the necessity for the county auditor of the county wherein lay the actual situs of a school district having at his disposal for distribution the funds to be distributed to that district, which at that time was the county having the greatest tax valuation of any district, parts of which were situated in different counties. This affords us legislative sanction for saying that under the present set-up, moneys collected for county educational equalization purposes properly should be remitted to the county auditor of the county in whose county school district all the local districts function which are to receive a portion of the said fund.

I am informed that many county auditors in counties containing parts of school districts which are of an adjoining county school district, send the entire proceeds of the 2.65 mills tax levy collected from such parts of districts to the auditor of the county of whose county school district the said portion of a district is a part. He places it in the county board of education fund of his county school district and it is apportioned by the county board of education, as is the rest of the fund, over the county school district without regard to county lines. There can be little objection to this method, although a still more equitable method, and one more consistent with the purpose of the levy might be followed.

When the actual enrollment of pupils residing in a part of a school district of a county school district which extends into an adjoining county is obtained, whether they attend school in that district or elsewhere, this territory should share in the county education equalization fund of the county in which the territory lies, in the proportion that that enrollment bears to the total similar enrollment in the entire territory of the county. When that proportion is determined it should be remitted by the auditor of that county to the auditor of the county of whose county school district the district is a part, placed by him in the county board of education fund of this county school district, and apportioned by the county board of education of that county school district as a part of the county education equalization fund among the whole school districts of the county school district, in accordance with Section 7600, General Code, regardless of county lines.

Although the result obtained by following either of the methods outlined above is not strictly in accord with the fundamental purposes of the tax levy in question, as that purpose is expressed in Section 7600, General Code, in so far as it operates in parts of districts extending into a county from an adjoining county school district, I believe either method is equitable, and that the latter method is to be preferred.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*