

1064

PUBLIC SCHOOL FUND—SUPERINTENDENT OF PUBLIC INSTRUCTION—WITHOUT AUTHORITY TO GRANT ADDITIONAL AID UNLESS TOTAL TAX LEVIES OF TAXING DISTRICT OF WHICH SCHOOL DISTRICT IS A PART ARE AT LEAST TEN MILLS FOR ALL PURPOSES—SECTION 4848-3 G. C.

SYLLABUS:

The superintendent of public instruction is without authority to grant the additional aid from the state public school fund authorized by Section 4848-3, General Code, to a school district unless the total tax levies of the taxing district of which said school district is a part are at least ten mills for all purposes.

Columbus, Ohio, July 5, 1946

Dr. Clyde Hisson, Superintendent of Public Instruction, Department of Education  
Columbus, Ohio

Dear Sir :

I have before me your communication requesting my opinion and reading as follows :

“I have been asked by the State Controlling Board to secure from you an answer to the following question :

‘Should school districts which have a total tax rate less than 10 mills for all purposes, receive additional aid from the School Foundation Law?’”

The school foundation program, so-called, is embraced in Sections 4848 to 4848-11, General Code. By the provisions of Section 4848 there is established 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.” This fund is to be administered by the superintendent of public instruction with the approval of the state controlling board and subject to the restrictions of law.

By Section 4848-1 there is provided a direct apportionment and payment from said fund to each school district of the state in an amount based upon the number of pupils in average daily attendance and graduated according to the several grades. This apportionment appears to be an outright subsidy on a uniform basis for all schools of the state.

Section 4848-3, General Code, makes provision for an additional payment to schools under certain circumstances and with certain limitations therein stated. That section 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.)

It will be observed that this “additional aid” is to be in such amount as will equal the difference between the cost of maintaining the foundation program as “hereinafter defined” and the several other sources of revenue which come to the various schools of the state. Two distinct limitations however, are imposed: (1) that a school district must have a tax levy for current school operation of at least three mills in order to be entitled to receive this additional aid, and (2) no school district shall be entitled to receive additional aid unless the total tax levies of the taxing district of which such school district is a part amount to at least ten mills for all purposes.

Section 4848-4 sets up certain minimum operating costs for schools of various grades and classes which appear to be the basis of the foundation program referred to in Section 4848-3 supra. It does not seem necessary for the purpose of this discussion to outline the minimum costs set up by Section 4848-4. I see nothing in that section or that schedule of minimum operating costs which appears to me to negative or in any way limit the express provisions of Section 4848-3 which excludes from the benefits of this additional aid a school that is a part of a district which is levying a total of less than ten mills for all purposes. The obvious

purpose of that limitation is to put upon every school district the burden of helping itself to the limit of its power under the ten mill constitutional limitation before asking for the additional aid contemplated by the law.

Prior to the enactment of the law in its present form as a part of the new school code of 1943, what is now Section 4848-4 was, in substance, represented by Section 7595-1c. That section which was repealed in the enactment of the new school code contained the following language:

"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.* 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 supplied.)

In the case of *State ex rel. Board of Education of Greenville Township, Rural School District, Darke County v. Dietrich*, 134 O. S., 474, it appeared that the relator, the Board of Education of Greenville Township, Rural School District of Darke County, which had been operating ten one-room schools, each having one teacher, and one two-room school with two teachers, had been removed from all of the benefits of the school foundation law because it was found that the total tax rate for all purposes in the district was less than ten mills. In this action, which

was in mandamus, the board sought to compel the reinstatement of the school for participation in the fund. The court held as shown by the second branch of the syllabus as follows:

“Under the provisions of the School Foundation Act (Section 7595 et seq., General Code, 116 Ohio Laws, 585), a school district wherein one-room and two-room schools are operated is not precluded from participation in the state public school fund by reason of the fact that such district is a part of a taxing district wherein the total tax levies for all purposes is less than ten mills.”

It will be observed from a reading of the case that the district was not claiming the right to the “additional aid” provided for by Section 7595-1b, General Code, as it then existed, the provisions of which are embodied in present Section 4848-3, General Code, which I have quoted, but rather that the district, having been excluded from the primary subsidy contemplated by the foundation fund, was seeking a restoration to the benefit of that portion of the law. The court in its opinion said:

“It is not contended that relator comes within the requirements for the so-called “additional aid” provided for by Section 7595-1b, General Code. In our opinion, those provisions do not deprive the relator of the benefits clearly provided by Sections 7595-1 and 7595-1c, General Code.”

This case therefore does not in any way conflict with the opinion which I have reached that the law as it then stood as well as the law in its present reading was intended to exclude school districts from the benefit only of the “additional aid” provided by Section 4848-3 in case they did not avail themselves of their power of taxation to the limit of ten mills and did not in any wise affect the rights of such districts to participate in the general and primary benefits of the fund which granted a subsidy to all schools. The opinion of the court in that case did place emphasis on the provision which was contained in Section 7595-1c which I have italicized which appeared to give to the one-teacher and two-teacher schools certain minimum allotments. However, in the recodification embodied in the new school code that provision was stricken from the law, the rest of the paragraph quoted being reenacted verbatim. The Dietrich case therefore would not appear to have any bearing on the law as it now stands, or on the question you have submitted.

In specific answer to your question it is my opinion that the superintendent of public instruction is without authority to grant the additional aid from the state public school fund authorized by Section 4848-3, General Code, to a school district unless the total tax levies of the taxing district of which said school district is a part are at least ten mills for all purposes.

Respectfully,

HUGH S. JENKINS  
Attorney General