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EDUCATION, CLERK, BOARD OF—COUNTY SCHOOL DISTRICT—FAILURE TO SUBMIT STATEMENTS OF FISCAL OPERATIONS AND FINANCIAL CONDITION OF BOARD—BUREAU SHOULD NOTIFY COUNTY SUPERINTENDENT OF SCHOOLS—IF DERELICTION OF DUTY, SUPERINTENDENT MAY APPOINT ANOTHER CLERK—SECTIONS 4841-6, 4843-5 GC.

SYLLABUS:

Where the Bureau of Inspection and Supervision of Public Offices is of the opinion that the clerk of a board of education of any district within a county school district has failed to render the statements of fiscal operations and financial condition of such board, as required by the provisions of Section 4841-6, General Code, the Bureau may properly bring the matter to the attention of the county superintendent of schools with the request that that officer determine whether there has been such a dereliction of duty on the part of such clerk as would require the superintendent to appoint another person to make such reports under the provisions of Section 4843-5, General Code.

Columbus, Ohio, April 10, 1953

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“Not infrequently the State Examiners in the Bureau of Inspection and Supervision of Public Offices find when they make an audit, especially in some of the local school districts, that the clerk neglects or fails to keep the records in such shape as to enable us to make an intelligent audit. It then devolves upon the examiner to do the clerical work necessary to be done to get the records in such shape that an audit can be made. Obviously, this was not the intent of the law providing for inspection and it becomes expensive to the State since the Examiner can only charge a portion of his salary to the school district being audited and the Bureau must absorb the remainder of his per diem charge.

“G.C. Section 4841, et seq., provides for the election and duties of clerks, particularly Section 4841-8, and by these sections it would seem that clerks of boards of education have certain duties and responsibilities which they must perform before taking office.

“Under Chapter 7, School Reports, of the school laws, Section 4843, et seq., there is found in Section 4843-5:

“Upon the neglect or failure of the clerk of the board of education or executive head of the schools of any district within the county school district to make the reports required by law, by the time specified, the county superintendent must appoint some suitable person to make such reports, who shall receive a reasonable compensation therefor to be paid from the county board of education fund. The amount of such compensation shall be withheld by the county auditor from the funds due such district at the time of the next tax settlement and be credited to the county board of education fund.’

“An opinion is requested as to whether or not Section 4843-5 is broad enough in its application to clerks of Boards of Education to cover a situation where an Examiner finds that the records have not been kept in such a manner as to insure an intelligent audit from the examination of such records so that the Examiner could request the county superintendent to appoint some suitable person to make such reports of receipts and expenditures, or whether the phrase ‘to make the reports required by law, by the time specified’ is applicable only to the school reports covered by G.C. Sections 4843-1, 4843-2, 4843-3 and 4843-5.

“* * * I know of no other remedies which might be invoked, however, if there are other statutory provisions whereby it could be insured that these records would be properly kept, I would appreciate your advice on the matter.”

The prior statute analogous to Section 4843-5, General Code, quoted in your inquiry, was Section 7791, General Code. Prior to the enactment of House Bill No. 288, Eighty-Ninth General Assembly, 114 Ohio Laws, 77, this section was made applicable by its terms to “reports required in this title,” reference thus being made to Title V, Part Second of the General Code as codified in 1910. In the amendment effected by House Bill No. 288, supra, this section was made applicable to “reports required by law.”

Also included in House Bill No. 288 was an amendment of Section 7787, General Code, which was amended to read:

“On or before the first day of August in each year, the board of education of each city and exempted village school district shall report to the director of education, and the board of each rural and village school district shall report to the county superintendent of schools, the school statistics of its district. Such reports shall set forth the receipts and expenditures, the

length of the school term, the enrollment of pupils, including in the case of districts situated in more than one county the enrollment in each county, the aggregate days of attendance, the number, qualifications and salaries of teachers and other employees, the number of school houses and school rooms, and such other items as the director of education requires.

“The aggregate days of attendance of pupils in a school which is closed for more than five consecutive school days during the year on account of an epidemic of disease or other emergency requiring such closing shall be ascertained by multiplying the average daily attendance at such school by the number of days such school would have been in session but for such emergency.

“In computing the aggregate days of attendance in night schools, summer schools and other special schools operated on an abnormal daily time basis, four hours of attendance on the part of a pupil shall be taken as the equivalent of one day’s attendance.

“It shall be the duty of the clerk of the board to prepare and transmit the annual report of receipts, expenditures and other financial information, and the duty of the executive head of the schools of the district, if any, to prepare and transmit the report of other school statistics, and if there be no such executive head such duty shall devolve upon the county superintendent of schools.”

In the amendment of these sections by this enactment there is clearly evident an intent that the provisions of Section 7791, *supra*, should be applicable to the financial reports which the clerk was “required by law” to prepare and make. These provisions of Section 7791, General Code, were reenacted without change as Section 4843-5, General Code, in the recodification in 1943 of the school laws in House Bill No. 217, 120 Ohio Laws, 475.

In this recodification of 1943, however, Section 7787 was not retained as a single section, a portion thereof relating to school statistics being reenacted in Section 4843-2, General Code, and a portion thereof relating to the preparation and submission of financial reports being reenacted in Section 4841-6, General Code. This section reads as follows:

“The clerk of each board of education shall keep an account of all school funds of the district upon such forms as may be prescribed and approved by the bureau of inspection and supervision of public offices. The clerk shall receive and preserve all vouchers for payments and disbursements made to and by the board. The clerk shall render a statement to the board of education monthly,

or oftener if required, showing the revenues and receipts from whatever source derived; the various appropriations made by the board, the expenditures and disbursements therefrom, the purposes thereof, the balances remaining in each appropriation and the assets and liabilities of the school district. At the end of the fiscal year such statement shall be a complete exhibit of the financial affairs of the school district which may be published and distributed with the approval of the board of education."

I perceive nothing in this recodification of 1943 which could be supposed to limit the application of Section 4843-5, *supra*, to the reports provided for in Sections 4843, 4843-1, 4843-2 and 4843-3, General Code, all of which relate chiefly to statistics of school attendance and scholastic data. Indeed, it would appear that such section could not apply to statistical reports such as these, since they are required to be made either by the teachers, the board of education, or by the superintendent concerned, rather than by the clerk. For this reason, and because the provisions of Section 4841-5, as previously enacted in Section 7791, General Code, were clearly applicable to financial reports required to be made by the clerk, I conclude that they are presently applicable to the reports required of the clerk under the provisions of Section 4841-6, *supra*.

Accordingly, in specific answer to your inquiry, it is my opinion that where the Bureau of Inspection and Supervision of Public Offices is of the opinion that the clerk of a board of education of any district within a county school district has failed to render the statements of fiscal operations and financial condition of such board, as required by the provisions of Section 4841-6, General Code, the Bureau may properly bring the matter to the attention of the county superintendent of schools with the request that that officer determine whether there has been such a dereliction of duty on the part of such clerk as would require the superintendent to appoint another person to make such reports under the provisions of Section 4843-5, General Code.

Coming now to your general question relative to other statutory provisions whereby it could be insured that school records are properly kept, your attention is invited to the provisions of Sections 4841-1 and 4843-4, General Code, which are applicable to the clerks of boards of education of all school districts. Although these statutes do not confer any authority on the bureau to initiate action in the circumstances you have described, I perceive no reason why the bureau should not, in a proper case, bring

the matter of a clerk's dereliction to the attention of the officers who are authorized to initiate such action, together with the bureau's recommendations in the matter.

Respectfully,

C. WILLIAM O'NEILL
Attorney General