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EDUCATION—CLASSROOM FACILITIES CONSTRUCTION,
§3318.01 *et seq.* R.C.—TOTAL TAXABLE VALUE TO BE DETER-
MINED, LAST GENERAL TAX LIST, §§319.28, 319.29 RC.

SYLLABUS :

The language in Section 3318.05 (A), Revised Code, "the total value of all property in the school district as listed and assessed for taxation at the time of passage of the resolution declaring the necessity of the election," has reference to the value of all property in the school district as shown on the last general tax lists prepared by the county auditor, and certified to the county treasurer, pursuant to Sections 319.28 and 319.29, Revised Code, next prior to the passage of the resolution declaring the necessity of the election.

Columbus, Ohio, January 19, 1959

Hon. E. E. Holt, Superintendent of Instruction
Department of Education, Columbus, Ohio

Dear Sir :

I have before me your three letters requesting the opinion of this office on questions arising under Chapter 3318., Revised Code, relating to state aid to school districts in procuring necessary classroom facilities. Your first communication reads as follows:

"On October 29, 1957 the Southern Local School District, Meigs County, submitted an application for the purchase of classroom facilities from the State of Ohio, pursuant to the provisions of Sections 3318.01 to 3318.20, inclusive of the Revised Code. The County Auditor of Meigs County certified that the total assessed valuation of all taxable property in the Southern Local School District was \$5,359,468. This certification was dated December 11, 1957. This was the evaluation considered when the computation of local funds available was made and when the project was given favorable consideration by the State Board of Education on February 10, 1958 pursuant to the provisions of Sections 3318.03. This evaluation of \$5,359,468 was also used when the determination of the State Board of Education was approved by the Controlling Board, March 12, 1958 and when a Conditional Approval was granted to this district by the State Board of Education on March 18, 1958.

"On May 29, 1958, the Southern Local School District Board of Education approved a Resolution of Necessity to issue bonds

in the amount of \$374,000. The Resolution submitted to the Department of Taxation for the issuance of bonds in excess of 4% carried the tax valuation of \$5,359,468.

"The election on this bond issue was held on July 8, 1958. The vote for the bond issue was 723, against the bond issue 680. Following the election it was found that the Southern Local Board of Education had neglected to file the Resolution referred to above with the State Department of Taxation. This Resolution was filed July 22, 1958.

"The State Department of Education on July 22, 1958 raised the question as to whether or not the Southern Local School District had voted on an issue of bonds in an amount sufficient to raise their net bonded indebtedness to within \$5,000.00 of 9% of the total tax of all property in the school district as listed and assessed for taxation at the time of passage of the resolution declaring the necessity for the election as provided for in Section 3318.05 of the Revised Code.

"The Southern Local School District on August 21, 1958 filed with the State Department of Education a new Auditor's certificate of estimated assessed valuation. This certificate was dated May 12, 1958 and was signed by Perry A. Riggs, Auditor of Meigs County. This certification shows an estimated assessed valuation of \$5,300,000.

"The total bonded indebtedness of the Southern Local School District subject to Sections 133.02 and 133.04, Revised Code, including the issue of \$274,000 is \$472,400. Our questions are:

"1. Does the above total net bonded indebtedness as based on the estimated valuation of \$5,300,000 meet the requirements of Section 3318.05 R.C.?

"2. May the State Board of Education proceed with the project for State assistance for the construction of classroom facilities for this local school district pursuant to the Sections 3318.01 to 3318.20, inclusive of the Revised Code?"

Your second letter, based on the same statement of facts, presents this specific question :

"May we have your opinion of the exact meaning of the tax list which shall be used in complying with the provisions of Section 3318.05, paragraph (A) of the Revised Code which reads in part: . . . "9% of the total value of all property in the school district as listed and assessed for taxation at the time of the passage of the resolution declaring the necessity of the election; . . .". We would hope that your opinion would include a clear-out procedure to be followed by county auditors in compiling and certifying such lists. Should the State Board of Education with-

draw conditional approval where a school district board fails to meet the full requirements of Section 3318.05, paragraph (A) ?”

Your most recent query on this subject is as follows:

“Reference is made to my letters of August 27, 1958 and September 30, 1958 requesting an interpretation of Section 3318.05, Paragraph (A) of the Revised Code in relation to the bond issue in the Southern Local School District of Meigs County. Reference is also made to a letter from your office dated November 10, 1958 signed by Mr. Hugh A. Sherer, Chief Counsel, to the effect that since the question referred to above had become a court action in the Common Pleas Court of Meigs County it would be improper for the Attorney General to rule pending an adjudication of the case. I am attaching thermo-fax copies of this correspondence for your information.

“I have been informed that the Meigs County Court rendered its decision last month. I am therefore renewing my request for your interpretation of Section 3318.05, Paragraph (A) of the Revised Code. There are presently a number of school district projects under the provisions of Section 3318.01 to 3318.20, inclusive, Revised Code, where the bond issues were based on the 1957 tax duplicate rather than on an estimate certified by the County Auditor at the time of the passage of the Resolution of Necessity as was the case in Southern Local School District, Meigs County.

“Our immediate question is, may the State Board of Education proceed to process these projects and transfer the State’s portion of the estimated project cost to the State Treasurer to be credited to the school district’s project construction account in accordance with Section 3318.09, Paragraph (G) R.C.?”

“In the cases of the City of Tallmadge, the Kenston Local School District—Geauga County, and the Streetsboro Local School District—Portage County we are now ready for this procedure. In order to expedite these projects your early attention to this problem will be appreciated.”

In your most recent inquiry I do not understand that you raise any question relative to the particular situation in the Southern Local District, Meigs County, which was the subject of the adjudication above mentioned. Because I deem it beyond the power of my office to disturb a judicial decision which has now become conclusive on the parties concerned by reason of failure to appeal the same, it should be understood that what follows herein is addressed to the proceedings now pending before the state board as described in the final paragraph of your most recent inquiry

above, and to similar proceedings which may hereafter come before such board.

Moreover, it is my understanding that in the pending proceedings so listed above there has been no failure to secure the consent of the department of taxation as provided in Section 133.04, Revised Code, and that question, originally raised only with reference to the peculiar facts in the Southern Local District case, need not here be considered.

In this situation it appears that the only question here to be considered is that which is set out in your second communication above, *i.e.* that relating to the valuation to be utilized in ascertaining whether the net bonded indebtedness of the district has been brought within "five thousand dollars of nine per cent of the total value of all property of the school district as listed and assessed for taxation" as this language is used in Section 3318.05, Revised Code. This section in pertinent part reads:

"The conditional approval of the state board for a project shall lapse and the amount reserved and encumbered for such project shall be released unless, within one hundred twenty days following the date of certification of the conditional approval to the school district board or such other time as may be fixed by the state board for good cause shown, the school district board accepts such conditional approval and the electors of the school district vote favorably on both the following propositions, which shall be combined in a single proposal:

"(A) On the question of issuing bonds of the school district board for the school district's portion of the estimated cost of the project, which portion shall be an amount sufficient to raise the net bonded indebtedness of the school district to within five thousand dollars of nine per cent of *the total value of all property in the school district as listed and assessed for taxation at the time of passage of the resolution declaring the necessity of the election*; provided, that such question need not be submitted if at the time of passage of such resolution the net bonded indebtedness of the school district (1) aggregates ninety-five per cent or more of said nine per cent and is within twenty thousand dollars of said nine per cent, or (2) is within twenty thousand dollars of said nine per cent; and * * *" (Emphasis added)

You point out in your requests that the total value of property in some school districts is increasing rapidly whereas in other school districts it seems to be decreasing. In order to determine how much net bonded indebtedness a school district must have incurred or must incur it is

necessary to determine what is meant by the underlined portion of the above quoted statute. This in turn necessitates a review of taxing procedures so as to determine when all property in the district is listed and assessed for taxation.

The term "list" as used in the sections of the Revised Code pertaining to taxation procedures has various meanings. But because Section 3318.05, Revised Code, refers to "* * * all property in the school district as listed * * *", a use of the term "list" must be found which has the same meaning with reference to "all property." "All property" would include real property, personal property, and public utility property. Such a use of the term "list" is found in Sections 319.28 and 319.29 of the Revised Code. These sections read as follows:

Section 319.28, Revised Code:

"On or before the first Monday of August, annually, the county auditor shall compile and make up, in tabular form and alphabetical order, separate lists of the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names *real property* has been listed in each township, municipal corporation, special district, or separate school district, or part of either in his county, placing separately, in appropriate columns opposite each name, the description of each tract, lot, or parcel of real estate, the value of each tract, lot, or parcel, the value of the improvements thereon, and of the names of the several public utilities whose property, subject to taxation on the general tax list and duplicate, has been apportioned by the department of taxation to the county, and the amount so apportioned to each township, municipal corporation, special district, or separate school district or part of either in his county, as shown by the certificates of apportionment of *public utility* property. If the name of the owner of any tract, lot or parcel of real estate is unknown to the auditor, 'unknown' shall be entered in the column of names opposite said tract, lot, or parcel. Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the auditor shall correct such lists in accordance with the additions and deductions ordered by the department of taxation, and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year. In making up such tax lists the auditor may place each town lot in its numerical order, and each separate parcel of land in each township according to the numerical order of the section." (Emphasis added)

Section 319.29, Revised Code:

“On or before the first Monday of August, annually, the county auditor shall compile and make up, in tabular form and alphabetical order, separate lists of the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names personal property required to be entered on the general tax list and duplicate has been listed and assessed as shown on the returns and in the preliminary and final assessment certificates in the hands of the auditor pursuant to sections 5711.01 to 5711.36, inclusive, 5727.29, and 5727.30 of the Revised Code, in each township, municipal corporation, special district, or separate school district or part of either in his county. He shall place in an appropriate column opposite each name, the aggregate value of such personal property as listed and assessed in such lists. On or before the third Monday of August in each year the Auditor shall correct such lists in accordance with the additions and deductions ordered by the department of taxation, and shall certify and deliver one copy of such corrected lists to the county treasurer. The copies prepared by the auditor shall constitute the auditor’s general tax list and treasurer’s general duplicate of personal property for the current year.”

As to real property and public utility property, therefore, the general tax list comes into being when the county auditor has compiled the list as provided in Section 319.28, Revised Code, and has corrected the list, and has made and certified a duplicate thereof to the county treasurer as he is normally required to do on or before the first day of October in each year. As to personal property the general tax list comes into being when the county auditor has compiled the list as provided in Section 319.29, Revised Code, and has corrected and made and certified a duplicate thereof to the county treasurer as he is normally required to do on or before the third Monday of August in each year.

In addition to determining when the property in the school district is listed for taxation it must also be ascertained when such property is assessed for taxation. Looking to Black’s Law Dictionary I find several definitions that are helpful in determining what is meant by the word “assessed” as used in Section 3318.05, Revised Code. Part of the Black’s definition of “assess” is:

“In connection with taxation of property, means to make a valuation and appraisal of property, usually in connection with listing of property liable to taxation and implies the exercise of discretion on the part of officials charged with duty of assess-

ing, including the listing or inventory of property involved, determination of extent of physical property and placing of value thereon."

Also appropriate here is Black's definition of "assessed valuation," which is:

"Value on each unit of which a prescribed amount must be paid as property taxes."

Another reading of Sections 319.28 and 319.29, Revised Code, makes it apparent that the assessed value of all property in the school district has been ascertained as of the date that the general tax lists come into being, for in compiling the tax lists the county auditor is required by Sections 319.28 and 319.29, Revised Code, to place in the appropriate columns the value of the property to be taxed.

All of the real and public utility property in a school district is normally listed and assessed for taxation as of the first day of October of each year, and all of the personal property in a school district is listed and assessed for taxation when the county auditor has compiled, corrected and made copies of the list as provided in Section 319.29, Revised Code, which he normally will have done on or before the third Monday in August. The total value of all property in a school district "as listed and assessed for taxation" thus remains the same from the time the general tax lists for one year come into being until the general tax lists for the next year come into being.

The latest general tax lists that have come into being prior to the passage of the resolution declaring the necessity of an election will show the total value of all property in the school district, and it is these lists that must be used to determine how much net bonded indebtedness a school district must incur, as provided in Section 3318.05, Revised Code, so as to qualify itself to purchase classroom facilities from the state board of education.

In reaching this conclusion I have given consideration to the decision in *Hoback v. Board of Education of Southern Local School District*, an action by a taxpayer seeking to enjoin the board from proceeding in the school facility financing project which was the subject of your initial inquiry above. I am informed that no written decision was rendered in this cause but I was supplied on January 12, 1959 with a copy of the

entry by which the court's ruling was journalized. This entry in pertinent part reads:

“* * * The Court further finds that the use by the defendant Board of Education of the Meigs County Auditor's estimate for the year 1958 of the value of all property listed and assessed for taxation in Southern Local School District in determining the amount of bonds sufficient to raise the net bonded indebtedness of said school district to within nine per cent of the value of all property listed and assessed for taxation at the time of passage of the resolution declaring the necessity of submitting the question of issuing such bonds to the electors as provided in Section 3318.05, Revised Code, is in compliance with law. * * *”

Whether under the facts pleaded or stipulated in that case the total property valuation in the “Meigs County Auditor's estimate for the year 1958” was at material variance with the total value as would have been determined on the basis I have indicated above as the proper one, I am not informed; and, of course, we cannot, from this entry, ascertain by what line of reasoning this conclusion was reached, nor even what arguments were made to the court on this point. This being so, and in view of the considerations hereinbefore pointed out, I am not inclined to regard this decision as setting the law in Ohio in this regard with respect to any case except the particular project involved in that litigation.

It is therefore my opinion that the language in Section 3318.05 (A), Revised Code, “the total value of all property in the school district as listed and assessed for taxation at the time of passage of the resolution declaring the necessity of the election,” has reference to the value of all property in the school district as shown on the last general tax lists prepared by the county auditor, and certified to the county treasurer, pursuant to Sections 319.28 and 319.29, Revised Code, next prior to the passage of the resolution declaring the necessity of the election.

Respectfully,
MARK McELROY
Attorney General