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SCHOOL FOUNDATION FUND—DEDUCTION FROM DISTRIBUTION FOR FINAL QUARTER FOR 1956—SECTION 3317.02 (E) RC—EFFECTIVE OCTOBER 1, 1956—DETERMINED FROM LATEST TAX DUPLICATE CERTIFIED BY DEPARTMENT OF TAXATION—SECTION 3317.10 RC.

SYLLABUS:

In determining the deduction from the amount to be allowed for the final quarter of 1956, by way of distribution of the school foundation fund, as such deduction is set forth in paragraph (E) of Section 3317.02, Revised Code, as enacted by the 101st General Assembly and to become effective October 1, 1956, the basis for such determination should be the latest tax duplicate which has been certified by the department of taxation under Section 3317.10 of the Revised Code, which on October 1, 1956, will presumably be the 1955 duplicate.

Columbus, Ohio, June 11, 1956

Hon. R. M. Eyman, Director of Education and
Superintendent of Public Instruction
Columbus, Ohio

Dear Sir:

In your recent communication you presented to me two questions, the first of which related to Division (A) of Section 3317.02 of the Revised Code as enacted in Amended Senate Bill No. 321, of the 101st General Assembly, and the second relating to an interpretation of Division (E) of said section. The first question was dealt with in my Opinion No. 6353, issued on March 9, 1956. At that time I reserved your second question for future consideration.

You stated that the State Board of Education had arrived at an interpretation of said Division (E) as follows:

“For the last quarter of 1956 the calculation under division (E) of Section 3317.02 shall be based upon the same tax duplicate figure used in calculating the amount of state support for the first half of the calendar year 1956 under the provisions of the Foundation Program law that is now in effect.”

In order to approach this matter intelligently it seems necessary to set forth a portion of Section 3317.02 as follows:

“There shall be paid, in the last quarter of the calendar year 1956 and in each calendar year thereafter, to each local, exempted village and city school district, which has a tax levy for current school operation for the current calendar year of at least ten mills, the total sum of the following factors:

“(A) The total approved salary allowance allocated to such district under section 3317.052 of the Revised Code, or the total of the salaries for certificated employees for the current school year, whichever amount is the lesser;

“(B) plus fourteen hundred and twenty-five dollars multiplied by the total number of approved teacher units credited to such district under section 3317.05 of the Revised Code, for other current expenses;

“(C) plus the total approved transportation costs allocated to such district under section 3317.051 of the Revised Code;

“(D) plus ten per cent of the total approved salary allowance allocated to such district under section 3317.052 of the Revised Code, for the employer's contribution to the teachers' retirement fund and the cost of the certificated employees' sick leave;

“(E) minus an amount equal to ten mills multiplied by the total value of the tax duplicate of such district as certified by the department of taxation under section 3317.10 of the Revised Code.

“If the amount arrived at by the above formula is less than the total amount of state support such district received during the calendar year ending December 31, 1955, then there shall be paid to such school district an amount equal to that received during the calendar year ending December 31, 1955, under the provisions of sections 3317.02 and 3317.04 of the Revised Code, including an amount equal to the amount of tuition paid for such district received for special education but exclusive of the amount such district received for the purchase of school buses and for the retirement of such bus notes.” * * *

This statute and the procedure therein set forth do not become effective until October 1, 1956.

Let it be noted at the outset that the provisions above set out constitute a new formula for determining the allowance "in the last quarter of the year 1956, and in each calendar year thereafter." Presumably, the allowance for the earlier portion of 1956 has already been determined according to the pre-existing statutes.

Divisions (A), (B), (C) and (D) of the above quoted matter set up certain affirmative allowances which are to be added together in arriving at the basis for the distribution of the foundation fund of the state to the several local, exempted village and city school districts. Division (E) on the other hand sets up a formula for determining an amount which is to be deducted from the sum of such allowances, and that deduction is to be arrived at by multiplying the total tax duplicate of each such district, as certified by the department of taxation, by ten mills. The precise question involved in your inquiry is whether for the purposes of that deduction your board is to take the tax duplicate figure which was used for calculating the amount of state support for the first half of the calendar year 1956, or whether you shall take as the basis the tax duplicate figure at a later period.

Since Section 3317.02 is not to take effect until October 1, 1956, and since the determination of the amount of state support for the first half of the calendar year 1956 had to be determined under the law in force in 1955, and in accordance with the tax list then in existence, I find it impossible to discover any basis for concluding that the determination of the allowance for the last quarter of 1956 should be based upon the same tax list as used in 1955.

Under the statutes relating to the determination of the total tax list in any year, it appears that the proceedings leading thereto culminate in Section 319.28 of the Revised Code, which, after providing for the making up by the county auditor of the tax list, reads as follows:

* * * "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.)

It may be noted in passing, that that section has not undergone any change since 1931. It therefore appears that October 1st is the day upon which it is the duty of the auditor to deliver a copy of such list to the treasurer, and this list is described as being "the general duplicate of real and public utility property *for the current year.*"

Section 3317.10, referred to in Division (E) of Section 3317.02 supra, reads as follows:

"On or before the twenty-fifth day of October of each year, the department of taxation shall certify to the state board of education the amount of the tax duplicate of each school district of the state.

"Upon receipt of such certification the state board of education with the approval of the state controlling board shall calculate the amount due each district pursuant to section 3317.02 of the Revised Code. The state board of education shall certify to the clerk of the board of education of each district the sum so calculated for such district."

It is here to be observed that the department of taxation on or before the 25th day of October of each year, must certify to the state board of education the amount of the tax duplicate of each school district of the state, which duplicate, as already stated, has been finally determined and has been certified by the county auditor to the county treasurer. As already noted, all of these sections mentioned, are to become effective October 1, 1956. Prior to amendment, the section last quoted, was in effect in general substance with November 30th as the date for the certification.

I am informed by your department that the difficulty which would be encountered if the duplicate for the "current year" were used, arises from the fact that many taxing districts delay far beyond the first day of October the completion of their tax list, and that it would be impossible, therefore, for the state department of taxation to certify to the state board of education the amount of the tax duplicate of each school district as it would ultimately be fixed for the year 1956. And it is claimed, therefore, that as a practical matter, an earlier tax duplicate must be used for the purpose of the calculation by the state board of education of the apportionment of the foundation fund for the last quarter of 1956. In this connection, I am informed that in arriving at the figure for the first half of 1956, the tax duplicate for 1954 was used as the basis.

It would appear that the department's interpretation of existing Section 3317.10 RC., as permitting a certification based on the duplicate of the preceding calendar year is one based on administrative necessity in view of what may be regarded as the "normal" delay in completion of the tax lists in the several counties of the state. While such an interpretation could now possibly be defended on the ground of such necessity, and by reason of long continued administrative precedent, there can be no justification for extending such interpretation as here suggested, for as to the computation relating to the final quarter of 1956 there is neither such necessity nor such precedent. Certainly the duplicate that was due to be completed by October 1, 1955, will be available in time for use in determining the distribution for the last quarter of 1956.

It is accordingly my opinion that in determining the deduction from the amount to be allowed for the final quarter of 1956, by way of distribution of the school foundation fund, as such deduction is set forth in paragraph (E) of Section 3317.02, Revised Code, as enacted by the 101st General Assembly and to become effective October 1, 1956, the basis for such determination should be the latest tax duplicate which has been certified by the department of taxation under Section 3317.10 of the Revised Code, which on October 1, 1956, will presumably be the 1955 duplicate.

Respectfully,
C. WILLIAM O'NEILL
Attorney General