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SCHOOL DISTRICT—FUNDS RECEIVED UNDER AMENDED SENATE BILL 286, SECTION 1, PASSED BY 95TH GENERAL ASSEMBLY—MAY BE USED TO AUGMENT GENERAL FUND OF SCHOOL DISTRICT OUT OF WHICH SALARY IS PAID TO CLERK OF SCHOOL BOARD.

SYLLABUS:

Funds received by a school district under Section 1 of Amended Senate Bill No. 286 passed by the 95th General Assembly, may be used to augment the general fund of the school district out of which the salary of the clerk of the school board is payable.

Columbus, Ohio, January 30, 1945

Hon. Earl Henry, Prosecuting Attorney
Cambridge, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“A question has arisen under Section 1 of Amended Senate Bill No. 286. The Board of Education of Adams Township Local School District has made inquiry as to whether or not it can apply a portion of funds received under said Section 1 in payment of a portion of the salary of the clerk of said school board. It seems that the question might depend upon whether or not the

clerk is an 'employee' or an 'officer' within the meaning of the school laws and within the meaning of G. C. 7896-109. G. C. 4845 separates those on the payrolls into two distinct classes, to wit: 'employees' and 'officers'. The school statutes, in several places, refer to the clerk as an 'officer' and to his 'term of office'. The clerk's office certainly has many of the characteristics of a public office. If such payments to the clerk are dependent upon such distinction between an 'employee' and an 'officer' of the school board, then it would seem that this money cannot be applied by the board of education upon the salary of its clerk. The clerk of said Adams Township Local School Board is not a member of the board of education.

Will you please render to me your formal opinion on this question as to whether or not funds received by said school district under Section 1 of Amended Senate Bill No. 286 can be used for the purpose of paying or making payment on the salary of the clerk of said school board."

The first section of the act to which you refer, to wit, Amended Senate Bill No. 286, passed by the 95th General Assembly, reads as follows:

"In addition to all other apportionments of state funds authorized by law there shall be apportioned and paid by the superintendent of public instruction, subject to the approval of the state controlling board, to each school district in the state in the year 1944 an amount equal to eight dollars for each pupil in average daily attendance in grades 1 to 12, inclusive, such apportionments to be based upon the average daily attendance figures used in the apportionments of funds for the year 1944 under the provisions of Sections 4848-1 and 4848-4 of the General Code. To provide funds for the purposes of this section, there is hereby appropriated to the department of education, out of any moneys in the state treasury to the credit of the general revenue fund not otherwise appropriated, the sum of eight million eighty-five thousand dollars, (\$8,085,000.00). Funds received by each school district under the provisions of this section shall be used toward the payment of salaries of teachers and other school employees for the school year 1944-1945."

It will be noted that this section does not provide for setting up any special fund for the money thus appropriated, and it may therefore be assumed that it will be paid into the general fund of each school district. This general fund appears to be the fund into which all moneys whether arising from taxation or special appropriation, which are intended for

the current operation of the school are to be paid. This general fund for all subdivisions is provided for by Section 5625-5, General Code, as one general operating fund from which any expenditures for current expenditures may be made; and Section 5625-10, General Code, provides in part as follows:

“All revenue derived * * * from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund.”

Section 484I, General Code, provides for the election of a clerk. That section reads as follows:

“The board of education of each local, exempted village and city school district at an organization meeting shall elect a clerk who may or may not be a member of the board. Such clerk shall be elected for a term of not to exceed four years. In the case of a county board of education, the county superintendent shall act as clerk of such board.”

Section 484I-1, General Code, provides:

“The board of education of each local, exempted village or city school district shall fix the compensation of its clerk, which shall be paid from the general fund of the district. No order for payment of a clerk’s salary shall be drawn until he presents to the board of education evidence that all reports required by law have been filed by him.”

Section 484I-2, General Code, reads as follows:

“In every school district the clerk shall be the treasurer of the school funds. No moneys of a school district shall be paid out except on a check signed by not less than two officers of the school district who shall be the clerk and one other of the following: The president, vice president, business manager, or assistant superintendent in charge of business administration. Payroll disbursements shall constitute an exception to this requirement if otherwise provided by law. All moneys received by a clerk of a school district from any source whatsoever shall be immediately placed by him in a depository designated by the board of education of such school district, as provided by the uniform depository act.”

The above provisions relative to the election and duties of the clerk are as prescribed by the new School Code enacted by the 95th General

Assembly, found in 120 O. L. 475. They do not appear to differ in any essential respect from the provisions formerly in force relative to the clerk. Former Section 4747, General Code, provided for the election of the clerk but for a period of two years. Section 4781, General Code, provided for the payment of his salary from the "contingent fund" instead of from the general fund as at present. Section 4768, General Code, required the countersignature of the clerk to all orders for the payment of all school money.

Shortly before the enactment of the new School Code, the Supreme Court had before it the case of Schrock vs. Board of Education, which involved the status of a clerk of a board of education. The case was decided in 141 O. S. 528, the first branch of the syllabus reading as follows:

"The clerk-treasurer of a city board of education is not an officer exercising any function of sovereignty but is only an employee of such board of education. (Board of Education of City School District of City of Cleveland v. Juergens, 110 Ohio St., 667; Board of Education of City School District of City of Cleveland v. Featherstone, 110 Ohio St., 669, approved and followed.)"

It is said in 32 O. Jur. p. 874:

"The term 'employment' is more comprehensive than the term 'office' for while an office is an employment, it does not follow that an employment is an office. * * * The most important characteristic which distinguishes an office from an employment is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of the government, to be exercised by him for the benefit of the public."

The character of a public employment is not to be determined by what it is called, but by the nature of the powers and duties conferred on the incumbent. The distinguishing characteristic of a public office is well stated in *State ex rel Newman v. Skinner*, 128 O. S. 325, where it was held:

"A public officer, as distinguished from an employee, must be invested by law with a portion of the sovereignty of the state and authorized to exercise functions either of an executive, legislative or judicial character."

While it is true that the sections hereinabove quoted from the new school law relative to the clerk, speak of him and also of the business manager and assistant superintendent as "officers", it seems clear from the authorities above noted that they are not public officers in the technical sense in which an officer is distinguished from an employee.

Section 4845, General Code, being also a part of the new School Code, provides in part as follows :

"In any school district the salaries of *all employees and officers* of the board of education and all payrolls may be paid in such manner as the board of education may authorize. To provide money for such payment if made in cash, the president and clerk of the board of education shall, upon receipt of the proper payroll and warrant, issue checks upon the depositories payable to the treasurer for the *aggregate amounts* stated in such payrolls."
(Emphasis added.)

The language of the statute just quoted is broad enough to include all persons who are employed by the board of education in any capacity, including its clerk, administrative employees and teachers. Evidently a single check may be drawn upon the general fund for the payment of the entire payroll.

Accordingly it is my opinion, in specific answer to your question, that the funds received by a school district under Section 1 of Amended Senate Bill No. 286, passed by the 95th General Assembly, may be used to augment the general fund of the school district out of which the salary of the clerk of the school board is payable.

Respectfully,

HUGH S. JENKINS
Attorney General