

before a valid purchase can be made, the fund should be properly provided and the auditor's certificate, as required by section 5625-33, General Code, should be furnished.

It should also be noted that section 2414, General Code, provides that where such purchase involves the expenditure of a thousand dollars or more twenty days must elapse after the introduction of the proposition before the expenditure can be made, unless such expenditure is agreed to by the unanimous consent of all the members present of the board. From the statutes above quoted, it also appears that the county surveyor has no part in the purchasing of such materials except where the county commissioners authorize him to purchase the same where the work is to be done by force account. Under sections 7184 and 7192, General Code, the surveyor has general charge of and supervises the construction and repair of roads, and under section 7187, he must approve all estimates which are paid from the county funds for the construction and repair of roads. This latter section was construed in my Opinion No. 32, addressed to the Bureau of Inspection and Supervision of Public Offices. These statutes, however, do not empower the surveyor to determine what materials must be purchased by the commissioners, but rather make it his duty to see that the materials so purchased comply with the contract. The commissioners may use their discretion as to the kind of materials to be purchased even though this does not meet the approval of the surveyor. In Opinions of the Attorney General for 1929, Vol. I, page 665, it was held that the commissioners, in the purchase of road machinery, tools and equipment, may use their discretion as to the make thereof, even though such make does not meet the approval of the county surveyor.

I am of the opinion therefore that,

1. The county commissioners are authorized by section 7214, General Code, to purchase materials for road repairs and construction, and in making such purchases, they are not required to let the contract therefor by competitive bidding.

2. The county surveyor has nothing to do with the kind of such materials so determined to be purchased, except where the county commissioners have authorized the surveyor to make the purchases for work that is to be done by force account.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

220.

COUNTY EDUCATIONAL EQUALIZATION FUND—HOW DISTRIBUTED  
—DISTRIBUTION NOT AFFECTED BY A SUBSEQUENT REDUCTION  
IN SALARY OF TEACHERS.

**SYLLABUS:**

1. *The distribution of the "county educational equalization fund" as directed by Section 7600 of the General Code of Ohio, in so far as the distribution attributable to teachers and other educational employes in a school district during any school year is concerned, should be based on the salary schedule adopted by the county board of education, and the number of teachers and employes fixed by said board in pursuance of its survey conducted by authority of said Section 7600, General Code, prior to the preceding first day of April, and certified to the several school districts of the county school district.*

2. *The basis of the distribution of the "county educational equalization fund" for any school year, as fixed by the determination of the county board of education in pursuance of its survey conducted for that purpose prior to the beginning of the school year, is not changed or in any wise affected by reason of the fact that during the school year it is found necessary to suspend all or a part of the schools in some districts on account of lack of funds to operate them, in consequence of which suspension certain teachers and employes will receive less than eight hundred dollars per year.*

COLUMBUS, OHIO, March 17, 1933.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

"Due to delinquency in the collection of taxes in certain school districts of this county the local boards of education find that they will be unable to continue their schools for a longer period than the eight months as required by Section 7610-1 of the General Code. It is their plan because of the lack of funds to suspend their schools under authority of Section 7730, of the General Code, after the eight months.

This will result in several of the teachers' salaries dropping below the eight hundred dollar minimum on which the distribution of the 2.65 mills is authorized in Section 7600 of the General Code.

The question is, do the above facts give the County Superintendent of Schools the authority to prevent the payment to such Boards of Education of their proportionate share of the 2.65 mills theretofore allowed and approved by the County Board of Education from the February and July tax settlements of this year?"

Section 7600, General Code, reads in part, as follows:

"After each semi-annual settlement with the county treasurer each county auditor shall immediately apportion school funds for his county. Each city school district and each exempted village school district shall receive the full amount of the proceeds of the levy of two and sixty-five hundredths mills provided in section 7575, General Code, in the given school district. The proceeds of such levy upon property in the territory of the county outside of city and exempted village school districts shall be placed in the 'county board of education fund' and shall be known as a 'county educational equalization fund.'

On or before the first day of April of each year, the county board of education shall make a survey of the county school district to determine the number of teachers and other educational employes, and the number of transportation routes necessary to maintain the schools of the county school district. After a public hearing, the county board of education shall certify to the board of education of each school district of the county school district the basis upon which they are determined and the approximate amounts which the several districts may expect to receive for teachers' salaries, the salaries of other educational employes and for transportation.

The proceeds of the county educational equalization fund shall be apportioned by the county board of education to each school district and part of district within the county outside of city and exempted village

school districts on the basis of the number of teachers and other educational employes employed therein, and the expense of transporting pupils as determined by the above educational survey, and the balance according to the ratio which the aggregate days of attendance of pupils in such districts, respectively, bears to the aggregate days of attendance of pupils in the entire county outside of exempted village and city school districts.

The annual distribution attributable to teachers and employes shall be according to the following schedule; thirty-seven and one-half per centum of the salary of each teacher or educational employe receiving a salary of not less than eight hundred dollars and a like percentage of the compensation paid to each person giving instruction in trade or technical schools, extension schools, night schools, summer schools and other special school activities, but not to exceed nine hundred dollars for any teacher or educational employe or other such person. Provided that the amount distributed to each district shall be upon the basis of the same salary schedule as determined by the county board of education, but in no case shall the amount paid per teacher or educational employe be less than three hundred dollars or more than nine hundred dollars. \* \*\*

It will be observed from the terms of the aforesaid statute that the county board of education is directed to make a survey on or before the first day of April of each year, to determine the number of teachers and other educational employes necessary for the proper functioning of the schools of the county school district during the ensuing school year, and that this fact, together with the approximate amounts which the several districts may expect to receive for teachers' salaries and the salaries of other educational employes shall be certified to the board of education of each school district. It will also be observed with reference to the distribution of the "county educational equalization fund" to the several districts in the county school district, so far as that amount attributable to teachers is concerned, that such distribution shall be "upon the basis of the same salary schedule as determined by the county board of education."

This language evidently means that the county board of education shall adopt a salary schedule and the computation for each district shall be upon this "same" salary schedule. It seems to clearly follow that the amounts or the proportions of the county educational equalization fund shall be distributed to the districts for any school year as determined prior to the beginning of the school year and that it is based upon the salary schedule adopted by the county board of education rather than upon the amounts actually paid.

This matter is discussed in a rather exhaustive opinion rendered by my predecessor, which opinion may be found in the Opinions of the Attorney General for 1930, at page 46. It is there held:

"In accordance with the terms of Section 7600, General Code, as amended by the 88th General Assembly, the proportionate share of the 2.65 mills tax levy provided for by Section 7575, General Code, which is to be allotted to each school district of a county school district is based on the salaries stated in the salary schedule adopted by the county board of education and not on the salaries actually paid.

In the absence of abuse of discretion, the determination of a county board of education as to the number of teachers and other educational employes in the several districts of the county school district, the adop-

tion of a salary schedule for these districts and a determination of a transportation schedule upon which are based the distribution of the 2.65 mills tax levy provided for by Section 7575, General Code, among these districts, is final."

Under an earlier form of the statute which was not materially different so far as the question here under consideration is concerned, it was held by a former Attorney General, in an opinion which is reported in Opinions of the Attorney General for 1920, page 394, that:

"In determining the basis of the distribution attributable to salaries paid teachers, the number of teachers provided for and the salaries provided for such number of teachers as fixed prior to August 1 of any year for the succeeding school year are to be taken."

I am of the opinion, in specific answer to your question that the distribution of the proceeds of the 2.65 mills tax levy authorized by Section 7575 of the General Code, in so far as the distribution attributable to teachers and other employes in the school districts mentioned in your inquiry during the school year 1932-33 is concerned, should be based on the salary schedule adopted by the county board of education, and the number of those teachers and employes fixed by the said board in pursuance of its survey conducted by authority of Section 7600, General Code, prior to April 1, 1932, and so certified to the several districts, and that this distribution will not be affected by reason of the fact that during the school year it is found necessary to suspend the schools on account of lack of funds to operate them, in consequence of which certain teachers and employes will receive less than eight hundred dollars per year. The county superintendent of schools has nothing to do with the matter except as clerk of the county board of education. He is without any power whatever to change the basis of distribution of the county educational equalization fund as fixed by the county board's survey and the salary schedule adopted by it. The distribution is made by the county auditor.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

221.

CLERK PRO TEMPORE—BOARD OF EDUCATION—MAY NOT SIGN CHECKS OR DISBURSE PUBLIC FUNDS.

**SYLLABUS:**

*A clerk pro tempore of the board of education selected in accordance with section 4753, General Code, may not during the disability of the clerk sign orders on the depository for disbursement of funds under section 4768, nor may he sign checks issued against a payroll account in accordance with section 7612-1 of the General Code.*

COLUMBUS, OHIO, March 17, 1933.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of your recent communication, which reads as follows: