

and that of jail cook under such contract of employment are incompatible, there is no legal objection to a person holding and performing the duties of both of said positions or employments. The only question with respect to the compatibility of said positions that could arise is whether it is physically possible for the matron to perform the duties of both positions or employments. This is a question of fact in the particular case.

By way of specific answer to your question I am of the opinion that if it is not physically impossible for the jail matron referred to in your communication to perform her duties as matron under the provisions of Section 3178, General Code, above quoted, and also her duties as jail cook under her contract of employment with the sheriff, and if she can perform said last named duties without neglecting her duties as matron, there is no legal objection to the employment of such matron as jail cook.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

65.

DISTRICT BOARD OF EDUCATION—LEGAL DUTIES—RIGHT TO PARTICIPATE IN STATE EDUCATIONAL EQUALIZATION FUND—ALL LEGAL CLAIMS PAYABLE FROM THE THEN CURRENT APPROPRIATIONS.

*SYLLABUS:*

1. *Boards of education are charged by law with the duty of maintaining the elementary schools of the school district for at least thirty-two weeks of each school year, and of providing necessary high school privileges for the resident youths of the district, who have completed the work of the elementary grades, either by maintaining a high school within the district or by paying the tuition for such high school pupils in other high schools. If they fail to provide such school facilities in a district of a county school district, the county board of education shall operate such schools and provide necessary school facilities to such an extent as the local board of education should have done, and the cost thereof shall be paid out of the county treasury from the general fund on vouchers signed by the president of the county board of education. The money so paid from the county treasury shall be a charge against the district for which it is paid.*

2. *When necessary, in order to enable a board of education to conduct the schools and provide necessary school privileges for the youths of the district, participation may be had in the State educational equalization fund, commonly known as State aid, by making proper application therefor and meeting the requirements of law for such participation.*

3. *All legal and enforceable claims against a school district must eventually be paid from the then current appropriations, even though the liability for such claim had been incurred in prior years.*

COLUMBUS, OHIO, February 5, 1929.

HON. G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

“The clerk of the Madison Township, Rural School District, Richland

County, Ohio, did on July, 1927, which was the date at which time the budget commission of this county met, certify to such budget commission that said school district's funds showed an unincumbered balance of four thousand (\$4,000.00) dollars. The budget commission then prepared a budget upon this basis and appropriations were made by the county commissioners for the year 1928. Now it has appeared that said school district is short of funds to pay the salary of its teachers and necessary expenses to the sum of four thousand nine hundred ninety-nine (\$4,999.00) dollars. An examination further disclosed that the clerk's certification of the four thousand (\$4,000.00) dollars unincumbered surplus, was wholly false and that in fact, there was an over-draft in the sum of five thousand (\$5,000.00) dollars at the time of certification, thereby causing the deficiency in the 1928 funds.

As before stated this deficiency in the funds of 1928 is made up of the pay of school teachers, school supplies and other very necessary and vital expenditures. I have been unable to discover by what means or method, legally, we can pay these 1928 accounts or make up this deficiency, therefore, I would be pleased to have your immediate opinion, due to the fact that said teachers and creditors, mainly teachers, are anxious for their money."

By authority of Sections 5625-20, et seq., General Code of Ohio, the taxing authority of each subdivision or other taxing unit is required, in July of each year, to adopt a tax budget for the next succeeding fiscal year. Such budget should present certain information with respect to the financial requirements of the subdivision during the succeeding fiscal year, including a statement of the amounts needed for current operating expenses, permanent improvements, amounts required for the payment of final judgments, debt charges and other needs. It should also present a statement as provided by subdivision 2 of Section 5625-21, General Code, as follows:

"(a) Estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unincumbered balances at the end of the current year, and the funds to which such estimated receipts are credited.

(b) Estimated amount required from the general property tax in each fund, which shall be the difference between the contemplated expenditures therefrom and the estimated receipts, as herein provided. The section of the General Code under which the tax is authorized shall be set forth.

(c) Comparative statements so far as possible, in parallel columns, of taxes and other revenues for the current year and the two preceding years."

After the tax budget is adopted, it shall be submitted to the county auditor on or before the 20th day of July of the current year or at such later time as may be prescribed by the Tax Commission of Ohio. The county auditor, in turn, lays the same before the Budget Commission, together with an estimate prepared by him of the amount of any state levy, the rate of any school tax levy as heretofore determined, and such other information as the Budget Commission may request or the State Tax Commission may prescribe.

The Budget Commission thereupon ascertains whether or not certain tax levies are properly authorized and, if so authorized, approves them without modification. In addition thereto, the Budget Commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations allowed by law. It has authority to revise and adjust the estimate of balances and receipts from all

sources for each fund and shall determine the total appropriation that may be made therefrom.

When the Budget Commission has completed its work, it shall forthwith certify its action to the taxing authority of each subdivision and other taxing unit of the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit. Each taxing authority, by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, or at such later date as may be approved by the Tax Commission of Ohio, Sections 5625-26, 5625-27 and 5625-29 read in part as follows:

Section 5625-26. "The certification of the budget commission to the taxing authority of each subdivision or taxing unit as set forth in the preceding section shall show the various funds of such subdivision other than the funds to be created by transfer. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, and the rate of the levy and what portion thereof is within and without the fifteen mill tax limitation, and on the debit side the total appropriations that may be made therefrom. There shall be attached thereto a summary which shall be known as the 'Official certificate of estimated resources,' which shall state the total estimated resources of each fund of the subdivision other than funds to be created by transfer. Before the end of the year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure."

Section 5625-27. "On or about the first day of each fiscal year, the fiscal officer of each subdivision and other taxing units shall certify to the county auditor the total amount from all sources available for expenditures from each fund set up in the tax budget, with any balances that may exist at the end of the preceding year. The budget commission taking into consideration balances, revenues to be derived from taxation and from other sources, shall revise its estimate of the amounts that will be credited to each fund from such sources, and shall certify to the taxing authority of each subdivision an amended official certificate of estimated resources. \* \* \* The total of appropriations made at any time during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources or any amendment thereof certified prior to the making of the appropriation or supplemental appropriation."

Section 5625-29. "On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an annual appropriation measure and thereafter during the year may pass such supplemental appropriation measures as it find necessary, based on the revised tax budget and the official certificate of estimated resources or amendments thereof. \* \* \* "

It is apparent that the purpose of having stated in the budget an estimate of unencumbered balances at the end of the fiscal year, as provided by subdivision 2 (a) of Section 5625-21, General Code, is to serve as a guide to the Budget Commission in computing the necessary tax levies for the subdivision or taxing unit, and will,

unless found to be false in the meantime, be reflected in the "Official certificate of estimated resources" spoken of in Section 5625-26, supra. The tax levy for any purpose will be reduced by such an amount as had been estimated to be an unencumbered balance available for the purpose. If it turns out that the estimate of an unencumbered balance is false and that fact is not learned until it is too late to be corrected in the budget the amount credited to any particular fund available for appropriation and use will be reduced by the amount of the estimate. .

It appears that in the school district to which you refer, the estimate of unencumbered balances at the end of the fiscal year of 1927, made in July, 1927, was false and that in fact there was at that time an overdraft of \$5,000.00 in the funds of the district. I am informed that on January 1, 1928, the accounts of the district showed an overdraft at the bank of approximately \$4,000.00 and various other discrepancies such, for instance, as an utter disregard of the provisions of law with reference to the making of contracts. Ultimately there appears to have been a shortage in the accounts of the clerk of the board.

The true state of affairs was not learned until some time in April, 1928, when an examination of the accounts of the district was made by the Bureau of Inspection and Supervision of Public Offices. In the meantime and for some considerable time before, contracts had been made and expenditures incurred without complying with the law which required the clerk, as the fiscal officer of the district, to certify, when contracts are made or orders given involving the expenditure of money, that the money had been lawfully appropriated and was in the treasury or in process of collection, to the credit of an appropriate fund free from previous encumbrances.

I am not advised what steps were taken, when the budget which was made up in 1928, upon which was based the 1929 appropriations, to take care of the then outstanding liabilities of the district, or whether or not since April, 1928, the terms of Section 5625-33 of the General Code, with reference to the clerk's certificate, have been complied with in the making of contracts or the giving of orders involving the expenditure of money. Nor does it appear whether or not the claims for school supplies and other necessary and vital expenditures of which you speak were, at the time the purchases were made or contracts entered into, accompanied with a proper clerk's certificate as provided by law.

At any rate, it now appears that the district is beset with a lot of claims for school supplies and other purchases, some of which are quite old, running back I am informed as far as 1926, as well as liabilities for teachers' salaries, and there are not sufficient moneys with which to meet these claims. Your question is whether or not the claims may now lawfully be paid.

All claims which are enforceable against a school district, those for which there rests upon the district a legal liability to pay, may lawfully be paid, regardless of when the debt was contracted. Such claims must eventually be paid. So far as claims for teachers' salaries are concerned, if contracts were properly entered into and the teachers performed the services, a legal liability rests on the district to pay the salary earned and the teacher might reduce this liability to judgment and compel its payment. Contracts with teachers do not require the certificate of the clerk, nor do contracts for the payment of the salaries of regular employes and officers. Section 5625-33, General Code, in providing for the clerk's certificate, makes an exception with respect to agreements for the payment of salaries of employes, officers and teachers in the following language:

"The term contract as used in this section shall be construed as exclusive of current payrolls of regular employes and officers."

So far as the claims for school supplies and other expenditures are concerned,

if, at the time the expenditures were authorized, a clerk's certificate was made, even though it be false, the contract is valid and may be enforced. It is provided in Section 5625-33, General Code, as follows:

"Any certificate of a fiscal officer attached to a contract, shall be binding upon the political subdivision as to the facts set forth therein."

Any of such claims for which a proper clerk's certificate was not made when the contract out of which the claims arose was entered into or the order involving the expenditure given, are not enforceable legal claims and the district cannot be required to pay such claims.

Those claims upon which there is a legal liability, including teachers', officers' and employes' contracts and claims for which a clerk's certificates were issued when the contracts were entered into or orders given for the expenditure, must eventually be paid. The district cannot be forced to pay claims (other than those for teachers, officers and employes), for which proper clerk's certificates were not issued when the contracts were entered into or expenditures authorized.

Bonds cannot be issued for current operating expenses or for the payment of past due accounts, nor may money be borrowed for that purpose except to the extent of fifty per cent of anticipated tax settlements and then only for a limited time. See Section 2293-4, General Code. In the meantime, the elementary schools of the district must be kept in operation for at least thirty-two weeks during each school year and necessary high school privileges provided by some means. If the local board of education fails to provide sufficient school privileges for the youth of school age in any school district, it becomes the duty of the county board of education to do so (See Sections 7596-1 and 7610-1). When necessary in order to enable a board of education to conduct the schools, participation may be had in the State Educational Equalization Fund, commonly known as State aid, by making proper application therefor and meeting the requirements of law for such participation.

The State Educational Equalization Fund is created for the benefit of weak school districts and is administered by the Director of Education. The Director of Education is limited in the administration of this fund not only by the amount of the appropriation therefor, but by certain restrictions of law found in Sections 7595-1 et seq., of the General Code.

As will be observed upon consideration of the terms of Section 7595-1, General Code, before a school district is entitled to participate in the State Educational Equalization Fund, proper application must be made therefor. The terms of the statute require that the application should be made prior to the 31st day of July of any year. However, the Supreme Court has held in the case of *State vs. Ross*, 109 O. S. 461, that the application may be made subsequent to that date, if not made before, and I believe the practice to be to permit the application to be made at any time. Participation in this fund is not permitted unless the taxpayers of the district do their part, first, by way of subjecting themselves to taxation in order to meet the financial needs of the district. The Director of Education is given broad power in the supervision of the affairs of the district, such as the adjustment of teachers' salary schedules and the making of adjustments and changes in local school policy and administration as a condition to permitting the district to participate in the State Educational Equalization Fund.

A revaluation of the taxable property of the district may be made by the State Tax Commission upon the recommendation and request of the Director of Education, when necessary, in order that the district shall not receive money from the State Educational Equalization Fund by reason of its under-valuation. Provisions with

respect to the levying of taxes as a condition to receiving State aid are set out in Sections 7595-1, 7596 and 7596-1, General Code, which read in part as follows:

Section 7595-1—

“ \* \* \* ”

Such application shall not be granted unless the property of the given district is to be taxed for the current year for the current expense of school operation at a rate of at least eight mills, and is to be taxed for the current year for all school purposes at a rate of at least nine and one-half mills, provided that in a school district having a valuation of property for the preceding year of less than twenty-five hundred dollars per child enumerated the preceding year and having a sinking fund, interest and bond retirement levy in excess of three mills, the director of education may authorize the inclusion within the foregoing rate of eight mills of all or any part of the sinking fund, interest and retirement levy in excess of three mills.

\* \* \* ”

Section 7596—

“ \* \* \* For this purpose he shall have power to order any local board of education or any county board of education to exercise any power of whatsoever character in them vested by law, and such order shall be complied with forthwith, as a condition precedent to any participation in such fund. If the additional levy necessary to meet the conditions set forth in Section 7595-1 has not been submitted to the electors, such order shall direct such submission for such number of years as the director may deem best; and if such submission is not made, or if the electors of the district do not approve the additional levy for ensuing school years so submitted, the district shall not participate in such fund, unless through the operation of Section 7596-1.”

Section 7596-1—

“ \* \* \* In case the statements presented in accordance with Section 7595-1 and the examinations directed by Section 7595-2 and 7596 prove that the board of education in question has failed to put to a vote the proposition to levy additional taxes above certain tax limitations in order that the levy may meet the requirements for the district to share in the state educational equalization fund, or that the district has voted upon such proposition and has failed to give it the necessary majority, the Director of Education upon ascertaining such action to be necessary to enable the district to receive the sum from the state educational equalization fund necessary to maintain the schools for eight months in the year shall direct the county board of education to levy the additional taxes on the property of the given village or rural school district necessary for such purpose and the county board of education shall be empowered to levy such additional taxes. \* \* \* ”

In short, before State aid may be granted to a school district, the taxpayers of the district must subject themselves to taxation through the district authorities in the manner and to the extent provided for in Section 7595-1, supra, and if they fail to do so and the needs of the district require it in order to maintain the schools, the Director of Education is empowered to compel them to do so.

The district must pay its debts and must maintain the schools although to do so results in a high rate of taxation.

You are, therefore, advised that Madison Township rural school district is liable for and must provide for the payment of all its past due accounts for teachers' and employes' salaries, if contracts were properly entered into therefor and the services have been rendered; also for the payment of all present claims against the district

which claims had attached to them at the time contracts therefor were made or the expenditures authorized proper clerk's certificates as provided for by Section 5625-33 of the General Code; and in the meantime the district must provide for the maintenance of the elementary schools of the district for at least thirty-two weeks of each school year, as well as necessary high school privileges for the youths of the district.

Claims for supplies and the like, not contracted for in compliance with law, are not enforceable obligations against the district and although, if the district received the benefit of such supplies, it may lawfully pay for them as moral obligations, it behooves the district to be just before it is generous and such claims should at least await the clearing up of its present financial difficulties and cannot lawfully be paid from State aid funds.

To provide the means for meeting the financial needs of the district, participation may be had, if necessary, in the State Educational Equalization Fund by complying with the law with reference to the requirements for such participation.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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66.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES—WAYNE W. ANDERSON.

COLUMBUS, OHIO, February 5, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration the official bond of Wayne W. Anderson, for the faithful performance of his duties as Resident Division Deputy Director in Division No. 3.

This bond is given in accordance with the requirements of Section 1183 of the General Code, and to it is attached a certificate of the surety company to the effect that the person signing said bond in behalf of the said company is authorized to sign official bonds of the nature and for the amount therein involved, binding upon said company. Likewise, there is evidence submitted that the said surety company is authorized to transact the business of fidelity and surety insurance in this state.

Finding said bond in proper legal form and properly executed, I have noted my approval thereon and am returning the same to you.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*