

1303

TRANSFER OF ENTIRE SCHOOL DISTRICT TO ANOTHER DISTRICT—FOUNDATION PROGRAM MONIES SHALL NOT BE LESS IN SUCCEEDING 3 YEARS AFTER TRANSFER THAN THE SUM RECEIVED SEPARATELY BY THE DISTRICTS DURING YEAR WHICH TRANSFER WAS CONSUMMATED—§3317.02, R.C.

SYLLABUS:

The provision of Section 3311.231, Revised Code, that upon transfer of an entire school district to another district foundation program monies accruing to the receiving district shall not be less in any of the succeeding three years after the transfer than the sum of the amounts received by the school districts separately during the year in which the transfer was consummated, operates as an exception to the general rule of Section 3317.02, Revised Code, that during and after the year 1961 every school district participating in the school foundation program must maintain a tax levy for current operations of at least ten mills.

Columbus, Ohio, April 25, 1960

Hon. E. E. Holt, Superintendent of Public Instruction
State Department of Education, Columbus 5, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“Your opinion is solicited on the following problem:

“Section 3311.231 of the Revised Code became effective July 28, 1959. In November of 1959 ‘A’ local school district was transferred to ‘B’ local school district. You may assume the transfer is proper and complete in all respects pursuant to the above section and that the transfer has been approved by both districts.

“The last paragraph of the foregoing Section reads as follows:

‘If an entire district is transferred, foundation program moneys accruing to a district receiving school territory under the provisions of this section shall not be less, in any year during the next succeeding three years following the transfer, than the sum of the amounts received by the districts separately in the year in which the transfer was consummated.’

“Section 3317.02 of the Revised Code, as amended by Am. Sub. H. B. 705, 103rd General Assembly, became effective

January 1, 1960. Said section provides that if for any school district the amount computed under the five-factor formula prescribed by Section 3317.02 is less than \$2,000 multiplied by the number of approved teacher units such district is eligible in the calendar year 1960 for state support in the amount of \$2,000 per teacher unit, even though the district has a tax levy for current school operation of less than 10 mills.

"Section 3317.02 further provides, however, that in the calendar year 1961 and in each calendar year thereafter a school district must have a tax levy for current school operation of at least ten mills to be eligible for Foundation Program monies either on the basis of the amount determined by the five-factor formula or on the basis of the minimum guarantee of \$2,000 per teacher unit.

"School district 'B', to which district 'A' was transferred, has a total current operating levy of less than 10 mills. It is, of course, entitled to receive in the calendar year 1960 the sum of the amounts actually received by districts 'A' and 'B' separately in 1959, the year in which the transfer was consummated.

"We should like to have your opinion on this question:

"Is district 'B' entitled to receive in the calendar years 1961 and 1962 the sum of the amounts actually received by the two districts separately in the calendar year 1959, even though the tax levy for current school operation in district 'B' is less than ten mills?"

Much of the subject matter of your present request was considered in Opinion No. 1154, Opinions of the Attorney General of 1960, issued on February 15, 1960. The syllabus of that Opinion reads as follows:

"Pursuant to Section 3311.231, Revised Code, where an entire local school district is transferred to another local school district, foundation moneys accruing to the receiving district are determined in accordance with Section 3317.02, Revised Code; and, under the provisions of both such sections, such moneys may not be less, in any year during the next succeeding three years following the transfer, than the sum of the amounts actually received by the two districts separately in the year in which the transfer was consummated."

While this holding disposes of your question, it is true that Opinion No. 1154, *supra*, did not expressly review the implications of the language recently added to Section 3317.02, Revised Code, by the 103rd General Assembly. This part of that statute reads as follows:

"* * *

“In no event shall there be paid to each local, exempted village and city school district an amount less than two thousand dollars multiplied by the number of approved teacher units credited to such district under section 3317.05 of the Revised Code, subject to the provisions set forth in this paragraph. During the calendar year 1960, a school district which receives only the minimum guarantee of two thousand dollars per teacher unit shall not be required to have the minimum levy for current operation required elsewhere in this section. During the calendar year 1961 and in each calendar year thereafter, such a district shall have a tax levy for current school operations of at least ten mills. The foregoing requirement may be waived by the state board of education where a severe economic hardship would otherwise occur.

“* * *”

At first glance, this provision may seem inconsistent with the final paragraph of Section 3311.231, Revised Code, set forth in your request. The two statutes adopt, however, different approaches to the same problem. The final paragraph of Section 3311.231, Revised Code, fixes the rights of the two school districts as of the time of transfer. The fruits of such past action are then enjoyed for three succeeding years. Section 3317.02, Revised Code, as effective January 1, 1960, adopts a prospective view and applies to future actions of the board of education of the school district involved.

This view is strengthened by application of the rule of statutory construction which enables a special provision in a statute to operate as an exception to general statutes on the same subject with which the special provision would be, otherwise, inconsistent. In the present case, Section 3317.02, Revised Code, promulgates a general rule of the foundations program applicable to all school districts in the state, i.e., during and after 1961 all school districts must maintain a tax levy for current school operations of at least ten mills. Section 3311.231, Revised Code, on the other hand, is a special provision of the foundation program relating only to school districts which consolidate by the transfer of one complete school district to another. For this reason it appears that the final paragraph of Section 3311.231, Revised Code, is an exception to the general requirements of Section 3317.02, Revised Code. That this was the intent of the legislature is further supported by the fact that both amendments were enacted into law in the same year by the same General Assembly.

The result of this interpretation of these two statutes is that, when one school district is transferred to another, the receiving district will re-

ceive for the succeeding three years at least the same sums received by the two districts separately during the year of transfer despite the fact that the receiving district or both districts before transfer did not maintain a tax levy for school operations of at least ten mills.

It is, therefore, my opinion and you are accordingly advised that the provision of Section 3311.231, Revised Code, that upon transfer of an entire school district to another district foundation program monies accruing to the receiving district shall not be less in any of the succeeding three years after the transfer than the sum of the amounts received by the school districts separately during the year in which the transfer was consummated, operates as an exception to the general rule of Section 3317.02, Revised Code, that during and after the year 1961 every school district participating in the school foundation program must maintain a tax levy for current operations of at least ten mills.

Respectfully,

MARK McELROY

Attorney General