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TAXATION—EDUCATION—REQUIRED LEVY FOR SCHOOL OPERATIONS; §3317.02 R.C. DOES NOT INCLUDE ANY LEVIES FOR BOND RETIREMENT FOR SCHOOL CONSTRUCTION OR CAPITAL IMPROVEMENTS

SYLLABUS:

The required tax levy of at least 10 mills for current school operation for the current calendar year as contained in Section 3317.02, Revised Code, does not include any levies for the retirement of bonds which the school district may have issued for school construction or other permanent improvements.

Columbus, Ohio, February 20, 1958

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

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

“Section 3317.02 provides for payments to the school districts of Ohio under the Foundation Program. The first paragraph of this section says:

*'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, etc.'*

"A formal opinion is respectfully requested as to whether the words, 'which has a tax levy for current school operation for the current calendar year of at least ten mills' is intended to include any levies for the retirement of bonds which the districts might have issued for school construction, etc. In this connection, it might be well for you to consider the case of State vs. Brown, 112 Ohio State 590, as well as the case of State ex rel Ohio Public Service Company vs. City of Alliance, 52 Ohio Appeals 252.

"The section which I have in Pages Code concludes with this language:

*'All funds allocated to school districts under this section shall be used to pay current operating expenses.'*

"However, there is an editor's note affixed to the section which appears in the Supplement and reads:

*'The last sentence of this section as printed in the bound volume should be deleted. Its inclusion was an error as it was dropped by the amendment of this section in 125 v. 603.'*

"This, of course, would have no bearing on the question I am raising other than to show that it was the intent of the Legislature to limit the gifts to only such expenditures which were exclusive of capital improvements."

The sole question presented by your communication appears to be whether a levy made by a board of education for the payment of bonds is to be regarded as a part of the tax levy made by a board of education for "current school operation". I find no definition of "current operating expenses" in the school law, but since Section 3317.02, Revised Code, from which you have quoted, refers to the tax levy, I feel justified in resorting to the tax levy for such definition.

In Section 5705.01(F), Revised Code, it is provided:

"(F) 'Current operating expenses' and 'current expenses' mean the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sink-

ing fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision.”

This provision leaves no doubt as to the limits of the term “current operating expenses” and as you will note, expressly excludes levies for payment of interest, sinking fund and retirement of bonds, notes and certificates of indebtedness.

The Supreme Court in the case of *State ex rel. Janes v. Brown*, 122 Ohio St., 590, announced the same conclusion as to “current expenses” of the state government, as used in Section 1(d), Article II, Ohio Constitution, which provides that “laws providing for tax levies for the current expenses of the state government \* \* \* shall not be subject to the referendum”.

I do not understand your reference to the sentence “all funds allocated to school districts under this section shall be used to pay current operating expenses” being the last sentence in said Section 3317.02, Revised Code. You suggest that according to an annotation in Page’s Code, this sentence has been deleted from Section 3317.02, Revised Code. I find on examination of the latest amendment of that section as contained in House Bill 145, 102nd General Assembly, that the sentence above quoted appears as a concluding sentence in the section. You will also find it in the next preceding amendment of said section, as found in 126 Ohio Laws, 288.

In answer to your question it is my opinion and you are advised that the required tax levy of at least ten mills for current school operation for the current calendar year as contained in Section 3317.02, Revised Code, does not include any levies for the retirement of bonds which the school district may have issued for school construction or other permanent improvements.

Respectfully,  
WILLIAM SAXBE  
Attorney General