

such counties are eligible for January allowances under the provisions of House Bill 627.

It should be noted that the "funds created by this act" referred to in Section 5, mean the "county relief fund," created by virtue of Section 4 of the act, and as pointed out in my opinion No. 5175, rendered February 20, 1936, this fund, by the terms of this section, was not created on January 1, 1936, but was created on the effective date of House Bill 627, such effective date being January 30, 1936. Consequently, inasmuch as there were not and could not have been any "funds * * * distributed under this act," referred to in Section 5, until January 30, 1936, it appears that the restrictive provisions of Section 5 of House Bill 627, providing for a maximum of five percent for administration and setting certain maximum salaries, had no applicability to administration or salary expenditures prior to January 30, 1936.

Consequently, in specific answer to your inquiry, it is my opinion that the payment, prior to January 30, 1936, by counties, of salary and administration expenditures for poor relief purposes in excess of the amounts now allowed by virtue of Section 5 of House Bill 627, enacted in the First Special Session of the 91st General Assembly, would not prevent the State Relief Commission from paying January allotments to such counties.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5204.

APPROPRIATION—PROCEEDS OF CERTAIN EXCISE TAXES
DISTRIBUTABLE FOR SCHOOL PURPOSES REGARDED
AS 1935 REVENUE IF ACCRUED OR IN YIELD PRIOR TO
JANUARY 1, 1936.

SYLLABUS:

1. *Proceeds of liquid fuel taxes, cigaret taxes and sales taxes which under the law are distributable for school purposes and which accrued or which were the yield of those taxes prior to January 1, 1936, should be regarded as 1935 revenue whether actually paid into the treasury of the State of Ohio prior to that date or later, and should be distributed to school districts as were other funds accruing from said taxes during the year 1935.*

2. *The appropriations made by the General Assembly to the Department of Education under the headings "State Board of Vocational Education, Regular—1936," "State Board of Vocational Education (Smith*

Hughes)—1936,” “State Board of Vocational Education (Tracy-Copps)—1936,” “Schools for Deaf, Blind and Crippled Children—1936,” “Division of School Attendance—1936,” payable from liquid fuel tax funds, in either House Bill No. 531, of the 91st General Assembly or Amended Senate Bill No. 401, of the First Special Session of the 91st General Assembly, should not be deducted from the proceeds of those taxes which accrued or which resulted from the yield of those taxes during the year 1935, prior to this distribution of the proceeds of those taxes according to law.

COLUMBUS, OHIO, March 2, 1936.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“We herewith request your official opinion in the following matter:

The 90th General Assembly in its Third Special Session, by the enactment of H. B. No. 134, has provided in Section 5546-20 thereof, that the County Budget Commission should revise the tax levies and budgets for 1935 as made necessary on account of the distribution to school districts of the additional revenue credited to the said State Public School Fund under the provisions of H. B. No. 134 and No. 136.

After having made such revision and applied the additional revenues for the year 1935 under these two acts, shall the revenue collected under said acts after January 1, 1936, be distributed to the school districts by the Auditor of State to be applied to the budget of expenditures for 1935, or should said revenues collected after January 1, 1936, be credited to the State Public School Fund and distributed under the provisions of H. B. No. 466 by the Director of Education?

Also, if said revenues collected after January 1, 1936, are to be distributed to the school districts by the Auditor of State to be applied to their budget of expenditures for 1935, should he deduct from such revenue, before crediting it to the State Public School Fund for distribution, the amount appropriated for 1936, in H. B. No. 531 for vocational education, etc., after having deducted said appropriations for 1936 from the current revenue distributed in 1935?

In other words, the question is whether the revenues collected under these acts after January 1, 1936, should be distributed to

the school districts during the current year in addition to the amounts distributable to them under the provisions of the Foundation Program, and if such is the case, whether the Auditor of State should, after having deducted the appropriations for 1935 for vocational education, etc., from the revenues of 1935, also deduct the appropriations for said purposes for 1936 from the revenues for 1935."

For the purposes of this opinion, it is not necessary to review the laws relating to the several sources of revenues available for school purposes during the year 1935. It is sufficient to say that certain portions of the proceeds of sales taxes, cigaret taxes and liquid fuel taxes were to be distributed through state agencies to school districts during the fiscal year 1935 on the basis of average daily attendance of pupils in the schools of the said districts and the needs of the said districts for additional aid as determined by the Director of Education subject to restrictions of law.

The first question presented by you is whether or not the proceeds of liquid fuel taxes, sales taxes and cigaret taxes which accrued prior to January 1, 1936, but which were not actually received by the State Treasurer until later, should be distributed as were those actually received into the state treasury prior to that time or must they be regarded as 1936 revenues and distributed as such.

That is oftentimes referred to as the School Foundation Law (House Bill 466—116 O. L., 585), enacted as an emergency measure on June 12, 1935, purports to provide for the distribution of the several taxes mentioned during the remainder of the fiscal year of 1935 and thereafter. While this act, so far as this question is concerned, is not clear in many respects, I believe the intention of the legislature with respect thereto, which after all is the determining factor, may be gathered from Section 2 of the act, which made provision for the distribution of funds to school districts during the remainder of the fiscal year 1935, and was therefore temporary in nature and was not codified. This said Section 2 will be found on page 596 of Volume 116 of the Ohio Laws.

Section 7595, General Code, as amended in the said School Foundation Law, provided that there shall be a state public school fund in the state treasury for the support and maintenance of the public school system of the state and for the equalization of educational advantages throughout the state. It provides further as to what funds shall be credited to this fund and that the fund shall be administered by the Director of Education with the approval of the State Controlling Board and subject to the restrictions of law.

Section 7595-1, General Code, as therein enacted, provides for the distribution of the State Public School Fund by the Director of Education after January 1, 1936, on the basis of average attendance of pupils of

different grades. Its provisions are not material so far as the question here presented is concerned.

Section 7595-1a, General Code, defines average daily attendance as the term is used in the act in connection with the distribution of school funds.

Section 7595-1b, General Code, provides for "additional aid" to school districts, to be extended under some circumstances by the Director of Education.

Section 2 of the said School Foundation Law (House Bill No. 436) reads as follows:

"All provisions of this act shall be effective at the earliest possible date except the provisions of Section 7595-1, which shall become effective January 1, 1935.

For the fiscal year 1935 the state public school fund shall be administered and distributed as follows:

First, state public school funds, in excess of \$31.60 per pupil in average daily attendance in the school year 1933-34, shall be apportioned in proportion to and/or to the extent of the needs for 'additional aid' as provided in section 7595-1b, except that for the year 1935 the computed yield on taxable property of each such school district shall be at the rate of five mills instead of three mills and the distribution of the state public school fund, for the purpose of computing 'additional aid' shall be taken to be at the rate of \$31.60 per pupil in average daily attendance instead of the distribution specified in section 7595-1 of this act; provided, further however, that in the case of districts which prior to January 1, 1935, participated in the state educational equalization fund, the 'additional aid' for the period ending June 30, 1935, shall, together with the actual distribution from state and county school funds and the computed yield of the levy of five mills on the taxable property for such districts, be sufficient to provide the amounts required to meet the budgets of operating expenses approved by the state director of education.

Second, if the current 1935 yield of revenues designated for the state public school fund are insufficient to meet all the obligations as indicated in this section the director of education is hereby authorized to apportion according to or to the extent of the needs in the several districts requiring additional aid the estimated theoretical yield of the cigaret tax for the fiscal year 1936 as certified to him by the tax commission."

Particularly is the last paragraph of said Section 2, quoted above, significant in this connection. The purport of the provisions of said Section 2 is to the effect that revenues available for distribution during 1935, from the state public school fund which consists of the proceeds of the liquid fuel tax, sales tax and the cigaret tax in excess of a sum in the aggregate equal to \$31.60 per pupil in average daily attendance in the school year 1933-1934 shall be distributed by the Director of Education as for "additional aid" as prescribed by Section 7595-1b of the General Code.

By the last paragraph of this section it seems clear that the legislature intended that in determining the aggregate of 1935 funds, the "current 1935 yield" should be taken as the basis rather than what may have been actually received from the yield during the year. The word "yield" connotes what is earned for the fund rather than what is actually received into the fund. In contemplation of law all taxes levied and in process of collection will eventually be collected. The "yield" of these taxes, however, during any particular period of time is the amount levied and in process of collection rather than the amount actually collected. By the use of the term "current 1935 yield" the legislature apparently meant something different than actual income for receipts, and that any of this "yield" that later was transmitted to the treasury should be regarded as 1935 revenues and distributed as such.

I come now to the consideration of your second question concerning deductions to be made from liquid fuel tax funds to meet appropriations made in House Bill No. 531 of the 91st General Assembly for vocational education, etc.

House Bill No. 531, the General Appropriation Act passed by the 91st General Assembly, was in force on January 1, 1936. In it appropriations were made, among others, to "State Board for Vocational Education, Regular", "State Board of Vocational Education (Smith Hughes)", "State Board of Vocational Education (Tracy-Copps)", "Schools for Deaf, Blind and Crippled Children", and "Division of School Attendance" in the Department of Education. In each instance mentioned it is expressly provided that the sums thereby appropriated are "Appropriated from Public School Funds in accordance with the provisions of House Bill No. 136 passed December 6, 1934." Similar appropriations were made to several of the above agencies in Amended Senate Bill No. 401 of the First Special Session of the 91st General Assembly, the now current Appropriation Act. In each of these appropriations a definite amount is appropriated for each of the years 1935 and 1936 separately. It cannot be said, in my opinion, that 1935 funds arising from the proceeds of liquid fuel taxes should bear the 1936 appropriation. Of course, if there are any unpaid claims charged against the 1935 appropriation prior to January 1, 1934, a sufficient amount to meet these claims before

distributing the 1935 funds to school districts should be deducted from the 1935 funds.

I am therefore of the opinion :

1. Proceeds of liquid fuel taxes, cigaret taxes and sales taxes which under the law are distributable for school purposes and which accrued or which were the yield of those taxes prior to January 1, 1936, should be regarded as 1935 revenues whether actually paid into the treasury of the State of Ohio prior to that date or later, and should be distributed to school districts as were other funds accruing from said taxes during the year 1935.

2. The appropriations made by the General Assembly to the Department of Education under the headings "State Board of Vocational Education, Regular—1936", "State Board of Vocational Education (Smith Hughes)—1936", "State Board of Vocational Education (Tracy-Copps)—1936", "Schools for Deaf, Blind and Crippled Children—1936", "Division of School Attendance—1936", payable from liquid fuel tax funds, in either House Bill No. 531, of the 91st General Assembly or Amended Senate Bill No. 401, of the First Special Session of the 91st General Assembly, should not be deducted from the proceeds of those taxes which accrued or which resulted from the yield of those taxes during the year 1935, prior to the distribution of the proceeds of those taxes according to law.

Respectfully,

JOHN W. BRICKER,
Attorney General.