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CONTRACT—NON-PERFORMANCE BY CONTRACTOR—NON-COMPLIANCE WITH STATE ORDER BY BOARD OF EDUCATION AND FAILURE OF FURNACE TO SATISFACTORILY OPERATE—NOT DEEMED “PUBLIC CALAMITY”—SECTION 4848-1 G. C.

SYLLABUS:

Non-performance of a contract by a contractor, non-compliance with a state order by a board of education and failure of a furnace to operate satisfactorily are not deemed “public calamity” under the provisions of Section 4848-1, General Code.

Columbus, Ohio, April 19, 1949

Hon. G. L. Fenton, Prosecuting Attorney  
Williams County, Bryan, Ohio

Dear Sir :

This will acknowledge receipt of your letter wherein you request my opinion on the following questions which were submitted to you by the county superintendent of schools of Williams County :

“Question One: Could the fact that the Stryker Schools were delayed by failure of the contractors to secure supplies and by the fact that the State ordered work that was already completed on the sewage system to be torn up and another system to be installed be classed as a public calamity? If not, what is a public calamity in the meaning of the law as set forth in Section 4848-1, General Code?”

“Question Two: If a furnace would not be in condition to be used after a school term is started, could this be ruled as a public calamity or a man made situation?”

Section 4848-1, General Code, to which reference is made, reads as follows :

“There shall be paid to each school district of the state in each fiscal year an amount equal to twenty-five cents a day for not to exceed 180 days for each pupil of school age in average daily membership in part-time, continuation and evening schools, and, for regular day school, an amount equal to fifty-three dollars and twenty-five cents for each pupil in average daily membership in grades 1 to 8, inclusive, an amount equal to twenty-six dollars and sixty cents for each pupil five years of age or over in average daily membership in kindergarten classes, and an amount equal to sixty-four dollars for each pupil in average daily membership in grades 9 to 12, inclusive, during the school year next preceding such payments, except that no payments shall be made under the provisions of this section for one-teacher and two-teacher elementary schools maintained in local school districts.

“The payments as herein provided shall be made only for a school year of not less than 160 days nor more than 180 days, inclusive of such legal school holidays established by section 4838-1 of the General Code as occurred during regular school weeks and on which days schools were not in session; inclusive of such other days, not exceeding two, approved by the superintendent of public instruction for the professional meeting of

teachers when such days occurred during a regular school week and the schools were not in session; and inclusive of all days that schools were not in session because of disease epidemic or other public calamity. If the board of education of any school district maintains a school year of less than 180 days, the payments under this section and the amounts computed under paragraphs (a), (b), (c), and (d) of Section 4848-4 of the General Code shall be such fraction of the amounts specified therein as is determined by using the number of days of the district's school year as the numerator and 180 as the denominator."

This section requires that funds shall be apportioned based upon the actual number of days, plus the number of days the school was closed during that year because of "disease epidemic or other public calamity."

The word "calamity" is defined at page 1116 of Volume IX, Corpus Juris, and is applicable to the meaning of the law as set forth in Section 4848-1, General Code. This definition is as follows:

*"Any occurrence, especially when sudden and unexpected, that causes great or wide-spread distress, trouble or affliction to individuals or to the community, as the failure of crops, an earthquake, the devastation of war or plague, or an extensive fire or flood. By context, mischance or misfortune."*

(Emphasis added.)

The present situation, as I understand it, was brought about by the failure of the contractor to obtain materials and a state order requiring the contractor to rebuild the sewage disposal plant. This condition is not such that could not have been reasonably ascertained by the contractor and such contingencies provided for in his contract.

It is, therefore, my opinion that no public calamity exists.

My opinion as to the first question undoubtedly answers your second question.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.