

oaks); thence S. 72 deg. W. 70 poles to a stake in the line of Dun's land; thence with the same S. 45½ deg. E. 196 poles to the beginning, containing Eighty (80) Acres of land, more or less, and being a part of Survey No. 13440-16063:

Excepting therefrom however, 27 acres, more or less thereof, heretofore conveyed by John DeVore and wife to J. B. Ray, by deed dated September 26th, 1878, and recorded in Volume 86 at pages 655 and 656 of the Ross County, Ohio, Deed Records, to which deed and the record thereof reference is hereby made for a more full and complete description of said 27 acres, more or less, hereby excepted."

Upon examination of the abstract of title submitted, I find that said Frances Alexander has a good and indefeasible fee simple title to the above described real property, free and clear of all incumbrances except the taxes for the year 1930, amounting to the sum of six dollars and eight cents, which taxes are unpaid and are a lien upon the property.

The warranty deed tendered to the state by said Frances Alexander has been properly executed by her and by her husband, William H. Alexander, and the form of said deed is such that it is sufficient to convey said property to the state of Ohio by fee simple title, free and clear of the dower interest of said William H. Alexander, and free and clear of all incumbrances whatsoever.

Encumbrance estimate No. 803, which has been submitted as a part of the files relating to the purchase of the above described tract of land, has been properly executed and approved and the same shows that there is a sufficient unincumbered balance in the proper appropriation account to pay the purchase price of said property, which is the sum of four hundred and twenty-four dollars.

It further appears from the certificate of the board of control submitted, that the purchase of the above described real property has been approved by said board and that the moneys necessary to pay the purchase price of the property has been released for said purpose.

I am herewith returning to you said abstract of title, warranty deed, encumbrance estimate No. 803, controlling board certificate and other files relating to the purchase of the above described tract of land.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2883.

BUDGET — COUNTY BOARD OF EDUCATION — WHEN AMOUNT REQUESTED OF COUNTY AUDITOR IS INSUFFICIENT, SUCH CERTIFICATE MAY LATER BE AMENDED—TIME LIMIT ON SUCH ACTION NOTED.

SYLLABUS:

Where through unanticipated expenditures or because of a mistake in calculation, the amount requested is insufficient to meet the obligations of the county board of education in its certificate to the county auditor made in compliance with Section 4744-2, General

Code, said certificate may later be amended, if done before the next semi-annual settlement of the county auditor with the several taxing subdivisions. The said county auditor may lawfully retain, in making his next semi-annual apportionment of the school funds to the various village or rural school districts, such an amount as is necessary to meet the obligations of the county board of education in accordance with the amended certification.

COLUMBUS, OHIO, January 29, 1931.

HON. GEORGE MCDOWELL, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR:—This will acknowledge receipt of a letter from your predecessor, Mr. Predmore, in which he submitted for my consideration, the following proposition:

“Under Section 4744-2, G. C., the County Board of Education of Highland County certified to the County Auditor in August, 1930, the amount of money to be appropriated by each school district of the county for the payment of its share of salaries and contingent expenses of the County Board of Education.

Through unanticipated expenditures and partly because of a mistake in calculations the amount requested is insufficient to meet the obligations of the County Board of Education.

Question: Can an amendment to the application, in order that an additional amount, above that formerly requested in August, be made by the County Board of Education, which may be cared for at the February distribution of school money?”

Sections 4744-2 and 4744-3, General Code, read as follows:

Sec. 4744-2. “On or before the first day of August of each year the county board of education shall certify to the county auditor the number of teachers to be employed for the ensuing year in the various rural and village school districts within the county school district, and also the number of assistant county superintendents employed and their compensation and the compensation of the county superintendent for the time appointed; and such board of education shall also certify to the county auditor the amount to be apportioned to each district for the payment of its share of the salaries of the county superintendent and assistant county superintendents and of the local expense of the normal school in each county, and the contingent expenses of the county board of education.”

Sec. 4744-3. “The county auditor when making his semi-annual apportionment of the school funds to the various village and rural school districts shall retain the amounts necessary to pay such portion of the salaries of the county and assistant county superintendents and for contingent expenses, as may be certified by the county board. Such amount shall be placed in a separate fund to be known as the ‘county board of education fund.’

The county board of education shall certify under oath to the state auditor the amount due from the state as its share of the salaries of the county and assistant county superintendents of such county school district for the next six months. Upon receipt by the state auditor of such certificate, he shall draw his warrant upon the state treasurer in favor of the county treasurer for the required amount, which shall be placed by the county auditor in the county board of education fund.”

It will be observed from the foregoing statutes that the revenues necessary for the payment of the salaries of county and assistant county superintendents of schools and for the payment of the contingent expenses of the county board of education are re-

tained by the county auditor in proportionate amounts from revenues accruing to rural and village school districts within a county school district at each semi-annual apportionment of those funds. The amount so retained by the auditor is fixed by the amount certified by the county board of education as being necessary for its uses.

Inasmuch as the retention by the county auditor of moneys necessary for county board of education purposes is done at each semi-annual apportionment there is no reason in my opinion why the amounts retained at each semi-annual apportionment must necessarily be the same or why, if it is found that the first certification is incorrect, another certification may not be made by the county board of education if done in time to permit the county auditor to make the proper adjustment before the next semi-annual apportionment.

This question has received the consideration of two former attorneys general. Although the statutes have been amended in some particulars since the rendition of the two opinions hereinafter referred to, those amendments were not such as to affect this question. In 1916, the Attorney General in an opinion reported in the Opinions of the Attorney General for that year, at page 1964, said:

“If an erroneous certification has been made to the county auditor by the county board of education pursuant to the provisions of Section 4744-2 G. C., 104 O. L., 133, such error may be corrected to make the certification speak the truth as of the time at which the compensation of a district superintendent is finally determined according to law.

If the county auditor has made his semi-annual apportionment of school funds upon the basis of an erroneous certification, prior to the correction thereof, the erroneous apportionment necessarily resulting therefrom may be adjusted at the next semi-annual settlement upon the correction of the certification.”

In 1918, the then Attorney General in an opinion reported in the Opinions for that year, at page 1668, held as stated in the syllabus of the opinion:

“Where a county superintendent has resigned the county board of education may pay a larger amount as salary to his successor from that which the county superintendent would have received had he served the remainder of his term.

The certificate of the county board to the county auditor under Section 4744-2 may be amended to cover the increased amount of said salary.”

I am therefore of the opinion, in specific answer to your question, that, where through unanticipated expenditures or because of a mistake in calculation, the amount requested is insufficient to meet the obligations of the county board of education in its certificate to the county auditor made in compliance with Section 4744-2, General Code, said certificate may later be amended, if done before the next semi-annual settlement of the county auditor with the several taxing subdivisions, and that the said county auditor may lawfully retain, in making his next semi-annual apportionment of the school funds to the various village or rural school districts, such an amount as is necessary to meet the obligations of the county board of education in accordance with the amended certification.

Respectfully,
GILBERT BETTMAN,
Attorney General.