

789.

DIRECTOR OF EDUCATION MAY NOT APPORTION FROM
PUBLIC SCHOOL FUND, WHEN.*SYLLABUS:*

The Director of Education may not legally apportion money out of the state public school fund to any school district on the basis of average daily attendance for more than one hundred eighty days during a single school year.

COLUMBUS, OHIO, Jun 28, 1937.

HON. E. L. BOWSER, *Director of Education, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

"We have been requested by the Cincinnati school officials to secure a ruling from your office relative to the allocation of state public school funds to the vocational high schools operated in that school district.

These high schools are offering a four year program of studies. They are in session for two terms each calendar year. Each term is one hundred twenty days in length. There is a distinct break at the end of each term when pupils are promoted, promoted on trial, graduated or failed, which presumes, at least, the completion of a school year's work since pupils are promoted from one grade to another. Due to this type of organization the successful pupil completes the four year high school course in two calendar years rather than in the four calendar years regarded as the time necessary to complete the regular four year high school course of studies.

Prevailing statutes require a board of education to operate a minimum term of one hundred sixty school days. Section 7595-1 of the General Code provides, in part, that:

' * * * No apportionment of money out of the state public school fund shall be made to any school district for a school year of more than one hundred eighty days.'

In view of these facts, may the director of education legally apportion money to a school district on the basis of average daily attendance for two school years during a single calendar year?"

I assume that the vocational high schools that you refer to, are established and maintained by virtue of the provisions of Section 7722, General Code, which are as follows:

“Any board of education may established and maintain manual training, domestic science, and commercial departments; agricultural, industrial, vocational and trades schools, also kindergartens, in connection with the public school system; and pay the expenses of establishing and maintaining such schools from the public school funds, as other school expenses are paid.”

Section 7689, General Code, provides that the school year shall begin and end, as follows:

“Beginning on July 1, 1925, the school year shall begin on the first day of July of each calendar year and close on the thirtieth day of June of the succeeding year; provided that reports for the school year beginning September 1, 1924, shall be for the ten months ending June 30, 1925. A school week shall consist of five days and a school month for four school weeks.”

In Ohio, the length of the school term of elementary day school is fixed by the provisions of Section 7644, General Code, as not less than thirty-two nor more than forty weeks in each school year. There is no specific statutory provision fixing the length of the school term of high schools. The only reference to term or school year of a high school is contained in Sections 7651 and 7652, General Code, which provide as follows:

“Sec. 7651. The high schools of the state shall be classified by the director of education into high schools of the first, second and third grades and junior high schools upon such standards consistent with Sections 7652, 7652-1 and 7653, General Code, as he may formulate. He shall issue certificates of grade to such schools when their ratings are determined after inspection and such shall by the grades of such schools until the grade is changed or certificate revoked after a subsequent inspection or evident failure to meet standards.

Provided, however, that no certificate of any high school shall be revoked or denied or grade changed because the board of education of such school does not provide a course of instruc-

tion of more than thirty-two weeks in any school year, or because of inadequate gymnasium facilities.”

“Sec. 7652. A high school of the first grade is a school in which the courses normally require for completion four years beyond the eighth grade of the elementary school.

High schools of the second and third grades are schools in which the courses require normally three and two years respectively beyond the eighth grade.”

It is to be observed: that, by the provisions of Section 7652, supra, the high schools of the state shall be classified by the director of education and that he cannot revoke or deny a certificate or change a grade of a high school because a board of education did not provide a course of instruction of more than thirty-two weeks in any school year; that, by the provisions of Section 7652, supra, a high school of the first grade *normally* requires four years for completion of the course, and a second and third grade high school require normally, three and two years respectively.

Therefore, it can be said: that, since the provisions of Section 7652, supra, permit the director of education to revoke or deny a certificate in the case of a high school having less than *thirty-two* weeks in any school year, that the minimum of the school term of a high school is thirty-two weeks; that, by the provisions of Section 7652, supra, a first grade high school may normally require four years for completion of the courses; but that, since no maximum term for a high school is set, there is no provision preventing a school term of such a length so that the four year course may be completed in two calendar years, consisting of forty-eight weeks or two hundred forty days. Sections 7722, 7689, 7651 and 7652, supra, were enacted previous to the year 1935.

On June 12, 1935, the “School Foundation Program Law”, or, what are now Sections 7595 et seq., of the General Code, became effective. The purpose of the “School Foundation Program Law” was *to create*, as set forth in Section 7595, General Code, “*a state public school fund in the state treasury, for the support and maintenance of the public school system and for the equalization of educational advantages throughout the state.*” (Italics the writer’s.)

The provisions for the apportionment and payment from this state public school fund to each school district of the state are contained in Section 7595-1, General Code, which reads; as follows:

“There shall be apportioned and paid from the state public school fund to each school district of the state an amount equal to twenty cents a day for each pupil of school age in average

daily attendance in part-time continuation and evening schools and, for regular day school attendance, an amount equal to seventeen cents per day for each pupil thereof in average daily attendance in grades 1 to 8, inclusive, and an amount equal to eight and one-half cents per day for each pupil five years of age or over in average daily attendance in kindergarten classes and an amount equal to twenty-five and one-half cents per day for each pupil thereof in average daily attendance in grades 9 to 12, inclusive, during the school year next preceding such apportionment, except that in districts maintaining one or more schools, each or any of which have fewer than three teachers, the amount to be paid such districts on account of attendance in such schools shall be limited by the minimum operating cost of the foundation program as defined by law or as determined by the director of education pursuant to law. For the purpose of the apportionment for the year 1936, the school year shall be taken as the number of days which each board of education shall fix by resolution, to be duly certified by the clerk of such board to the director of education, as the number of days the schools in its district will be in actual session during said year. For all subsequent years the apportionment shall be on the basis of the actual number of days the schools of such district were in session during the school year next preceding such apportionment excepting as hereinafter provided. Prior to July thirty-first in any year, the board of education of any school district by resolution may lengthen the forthcoming school year. Upon receipt of the certification of such action, the director of education shall apportion funds to such school district on the basis of the proposed school year, unless the board of education of such district for the preceding school year shall have failed to operate the schools of the district for a school year similarly declared and specified by the board of education prior to such school year. No apportionment of money out of the state public school fund shall be made to any school district for a school year of more than one hundred eighty days."

It will be observed from a reading of Section 7595-1, *supra*, that, the import of the language therein contained is: the establishment of a uniform flat distribution of a certain amount to be paid for each pupil in average daily attendance in each school district of the state, except one and two-teacher elementary schools; that, there is imposed on the board of education of each school district the duty of fixing by resolution and certifying to the director of education the number of days the

schools in its district will be in actual session during said year; that, for all years subsequent to 1935, the apportionment shall be on the basis of the actual number of days the schools of such district were in session during the school year next preceding such apportionment, unless prior to July thirty-first in any year, the board of education of any school district lengthens the school term of the forthcoming year; that, upon the performance of the duty imposed upon the board of education of forwarding to the director of education a certification of its resolution of the length of school term, the director of education upon receipt of the same shall apportion the state public school fund to the school districts on the basis of the proposed school year, subject however, to the provisions that "*no apportionment of money out of the state public school fund shall be made to any school district for a school year of more than one hundred eighty days.*"

It is stated in plain, clear and concise language that no apportionment of money from the state public school fund can be made to any school district for a school year of more than one hundred eighty days. The meaning of the language used is obvious, plain and leaves no room for ambiguity or doubt. It clearly *shows an intention* on the part of the legislature to restrict payment from the state public school fund to not more than one hundred and eighty days in any school year.

It is a fundamental principle of law that in interpreting and construing statutes, the intent of the legislature which enacted the law must be determined from the language used. If the language of the statute is plain, clear and unambiguous so that no doubt arises as to its meaning from the language contained therein, there is no occasion for resorting to rules of construction or interpretation.

It is stated in 37 O.J., page 517, Section 279:

"There is no occasion for resorting to rules of statutory interpretation if the language of the statute is plain and unambiguous and conveys a clear and definite meaning. Therefore, where the statute on its face is free from ambiguity, it is the established policy of the courts to avoid giving it any other construction than that which its words demand. Indeed, it is not permissible to make an interpretation contrary to the plain and express words of the instrument, the meaning of which the general assembly must be credited with understanding. To the contrary, the plain provisions of the statute must control."

This principle of law was enunciated by our Supreme Court, in the case of *Slingsluff, et al. vs. Weaver, et al.*, 66 O.S., 621, when it said:

“But the intent of the lawmakers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly the sense of the lawmaking body, there is no occasion to resort to other means of interpretation. The question is not what did the General Assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

The legislature knew, or was charged with knowledge that under the provisions of the statutes, as hereinabove stated, a high school may operate for the entire year, as is being done in Cincinnati. Had the legislature intended, it could have made provisions for providing funds in case a school district desired to operate for a term of more than one hundred and eighty days. However, it limited the apportioning of money from the state public school fund to *any school district* for a school year of more than one hundred and eighty days. We are to assume: that, this was intentional on the part of the legislature in order to fulfill the purpose of the “School Foundation Program Law” “the equalization of educational advantages throughout the state.” Although it may be possible to operate a high school for two hundred and forty days in Cincinnati or other urban center it is common knowledge that in a rural school district it would be impossible to secure sufficient attendance in order to operate a high school during the summer months. It therefore can be said that probably the intention of the legislature was to create a state public school fund and give to each school district in the state the same equal and perfect right to participate in the fund for a school term in each year of a reasonable length which the legislature determined would be one hundred and eighty days.

Undoubtedly, if this high school cannot be operated for two hundred and forty days during the school year, because of lack of funds, it will impose a hardship on those pupils who are in a position that they cannot attend high school for more than two years. However, that is a matter for the General Assembly and not within the province of the Attorney General, who must take the law as he finds it and construe it in accordance with the rules of statutory construction as laid down by the courts.

It is therefore my opinion, in specific answer to your question that the director of education may not legally apportion money to a school district on the basis of average daily attendance for two school years during a single calendar year.

Respectfully,

HERBERT S. DUFFY,

Attorney General.