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1. CHILDREN'S HOME — INMATES IN COUNTY, SEMI-PUBLIC OR DISTRICT — WHERE BEFORE ADMISSION TO HOME, CHILDREN ATTENDED SCHOOL IN DISTRICTS OTHER THAN WHERE HOME SITUATED, SUCH CHILDREN MAY ATTEND SCHOOL IN DISTRICT WHERE HOME LOCATED — HOW COUNTY AUDITOR SHOULD CHARGE TUITION TO SCHOOL DISTRICTS AND ALLOCATE FUNDS.
2. SECTIONS 7677, 7678 GENERAL CODE, AMENDED — INSTALLMENTS DUE UNDER FOUNDATION PROGRAM NOT AFFECTED.
3. DIRECTOR OF EDUCATION, SHALL APPROVE AND PAY ALLOWANCES FOR SUCH NON-RESIDENT INMATES — 1942 AND THEREAFTER — SECTIONS 7595-1c, 7595-1d GENERAL CODE.

SYLLABUS:

1. Where there are inmates in a county, semi-public or district children's home who were, before admission therein, residents of school districts in the county other than that in which such home is situated, such children are entitled to attend the school in the same district in

which the home is located. For the year 1941 it was the duty of the county auditor, after receipt of the report required by former Section 7677, General Code, before making a semi-annual distribution of taxes collected, to charge the various districts of former residence for tuition of such inmates and transfer such amounts to the proper school funds.

2. Although Sections 7677 and 7678, General Code, were amended, effective August 14, 1941, and Sections 7595-lb, 7595-lc and 7595-ld, General Code, were amended, effective September 5 and 6, 1941, the November, 1941, installment due such districts under the foundation program as provided in Section 7595-lg, General Code, was not affected by such amendments.

3. For 1942 and thereafter, allowances under the foundation program for such non-resident inmates are to be approved and paid by the Director of Education to the district in which such home is located in the same manner as tuition is credited and paid for non-resident pupils as provided in Sections 7595-lc and 7595-ld, General Code.

Columbus, Ohio, March 12, 1942.

Hon. John B. Hill, Prosecuting Attorney,
Washington C. H., Ohio.

Dear Sir:

Your request for my opinion reads as follows:

"At the request of the County Superintendent of Schools and the County Auditor I am submitting to your department some questions which are of vital importance on School Financing.

Sec. 7595-1b as originally enacted provided that: 'The amount of such additional aid which such a district shall be entitled to receive in any year shall be the difference between the cost of maintaining the foundation program, as hereinafter defined, and an amount equivalent to a computed yield of three mills on each dollar of the taxable property on the tax duplicate of such district, less the deductions made by the county auditor pursuant to sections 288, 7678, 1465-66, 7828 and 7834 of the General Code, and plus the total income of such district received from all other state sources,' etc.

In compliance with the provisions of this section the County Auditor each year after making the final distribution of tax monies, certified to the Department of Education the amounts as shown on the enclosed form marked exhibit A.

The Department of Education in computing the additional aid to be paid the various school districts in the following year used the amounts certified by the County Auditor as shown in exhibit B items 16 and 17.

Sec. 7677 as effective until August 14, 1941, provided that: 'On or about the first day of February and of August the superintendent of the school district in which the inmates of a county, semi-public or district children's home, is located shall furnish the county auditor a detailed report showing the average per capita cost, of conducting a school at such home,' etc.

Sec. 7678 as effective until August 14, 1941, provided that: 'The County Auditor upon receipt of the above report from the board of education shall, before making a semi-annual distribution of taxes collected, estimate the amounts chargeable to the various school districts for tuition of inmates of such home, and shall transfer to the proper school funds such amounts.'

Sec. 7677 as amended provides that: 'The clerk of the school district in which a county, semi-public or district children's home is located shall furnish the director of education a report of the names and former residence of all inmates of such homes in attendance in the schools of the district,' etc.

Sec. 7678 as amended provides that: 'The director of education upon receipt of the above report from the board of education shall approve and pay said expense of education for such non-resident pupils in the same manner as tuition is credited and paid for non-resident pupils as provided in sections 7595-1c and 7595-1d of the General Code.'

Sec. 7595-1b as amended provides that: 'The amount of such additional aid which such a district shall be entitled to receive in any year shall be the difference between the cost of maintaining the foundation program, as hereinafter defined, and an amount equivalent to a computed yield of three mills on each dollar of the taxable property on the tax duplicate of such district, plus the total income of such district received from all other state sources, but exclusive of federal and state aid for vocational education, state aid for special classes, and interest on the irreducible debt and income from school trust and land rental funds,' etc.

Under amended Sec. 7678 the budget of the sending districts will include the tuition costs of resident pupils who are inmates of a children's home as provided in 7595-1c paragraph E.

Under 7678 as effective to August 14, 1941, the county auditor withheld from the various districts \$1,814.16 at the February settlement and credited the amount so withheld to the Bloomingburg Village School District. The superintendent of the Bloomingburg Village School District filed with the county auditor on August 8, 1941, a report covering the first half of the calendar year 1941 in which the amount to be withheld is \$2,321.34.

It was obviously the intent of the legislators to continue to

reimburse the district of residents for the tuition costs of children's home pupils. However, if the reports are submitted to the county auditor and he withholds these tuition costs from the districts of residents at the settlements made in 1941, and the amounts so withheld are not considered by the department of education in determining the foundation programs for the year 1942 the districts of residents will not be reimbursed as heretofore.

Shall the county auditor withhold from the various school districts, and transfer to the Bloomingburg Village School District the amount of \$2,321.24 as shown by the report now on file in his office?

If he does withhold shall the districts from which such amounts are withheld be reimbursed?"

Section 7676, General Code, provides that inmates of a county, semi-public or district children's home shall have the advantage of the privileges of the public schools. It further provides that so far as possible such children shall attend the school or schools in the district in which the home is situated. It was apparently realized that children from such homes would in many instances be a burden upon the district receiving them if they came from other districts. Provisions were therefore made to apportion their tuition by charging it to the various districts from which such children came. Authorization for the apportioning of such costs is found in Sections 7677 and 7678, General Code. These sections, prior to August 14, 1941, were as follows:

Section 7677.

"On or about the first day of February and of August the superintendent of the school district in which the inmates of a county, semi-public or district children's home is located shall furnish the county auditor a detailed report showing the average per capita cost, of conducting a school at such home, or the average per capita cost, except for improvement and repairs, of all the elementary schools in such district in case such inmates attend such a school, for the preceding six months. Such report shall also give the names and former residence of all inmates in attendance at school, the duration of attendance, and such other information as the county auditor may require to carry out the provisions of the next section."

Section 7678.

"A child who is an inmate of a county, semi-public or district children's home and who was previously a resident of the school district in which such home is located shall be entitled

to an education at the expense of such school district, but any child who was not a resident of such school district shall be educated at the expense of the school district of its last residence. Any child who was not a resident of the school district within which such home is located prior to admission or commitment to such home, shall be educated at the expense of the district of its last residence. The county auditor upon receipt of the above report from the board of education shall, before making a semi-annual distribution of taxes collected, estimate the amounts chargeable to the various school districts for tuition of inmates of such home, and shall transfer to the proper school funds such amounts.

In case there are inmates from another county, the county auditor of the county in which the home is located shall certify the amount to the auditor of the county of such children's residence who shall forthwith issue his warrant on treasurer of the same county for such amount, and shall proceed to apportion the proper amounts to the various school districts of such county in the manner described above."

It appears that, acting under authority of the foregoing provisions, the superintendent of the Bloomingburg Village School District on August 8, 1941, reported to the county auditor for the preceding six months. Although the report was not furnished on the first day of August, it may be noted that the statute provided "on *or about* the first day of * * * August" the superintendent should furnish his report. Respecting the time when such reports should be filed, in my Opinion No. 3187, reported in Opinions of the Attorney General for 1940, Volume II, page 1142, the syllabus states:

"By force of Section 7677, of the General Code of Ohio, the duty imposed upon the superintendent of schools in a school district wherein is located a county, semi-public or district children's home to file certain reports with the county auditor relative to the education of children in such home is mandatory. The provision of the statute as to the time of the filing of the reports is directory and not mandatory and the superintendent has the power and it is his duty to make such reports at some later time if he neglects to make them at the time designated in the statute."

Thus, it appears that the district superintendent was within his rights and was acting in compliance with the requirements of Section 7677, General Code, as it then existed, when he filed his report with the county auditor on August 8, 1941. Upon receipt of the district superintendent's report, Section 7678, General Code, as it then existed, required the county auditor to make appropriate transfers of the amounts chargeable

to the various school districts before making his semi-annual distribution. Under the then existing statutes the furnishing of the report by the superintendent was the motivating requirement starting the proceedings for the reallocation of funds of the several school districts.

Sections 7677 and 7678, General Code, were amended by the Ninety-Fourth General Assembly, the amendment of each being effective August 14, 1941. These sections now read:

Section 7677.

“The clerk of the school district in which a county, semi-public or district children’s home is located shall furnish the director of education a report of the names and former residence(s) of all inmates of such homes in attendance in the schools of the district, the duration of such attendance, and such other information as the director of education may require to carry out the provisions of the next section.”

Section 7678.

“A child who is an inmate of a county, semi-public or district children’s home and who was previously a resident of the school district in which such home is located shall be entitled to an education at the expense of such school district, but any child who was not a resident of such school district shall be educated at the expense of the school district of his last residence. Any child who was not a resident of the school district within which such home is located prior to admission or commitment to such home, shall be educated at the expense of the district of his last residence. The director of education upon receipt of the above report from the board of education shall approve and pay said expense of education for such non-resident pupils in the same manner as tuition is credited and paid for non-resident pupils as provided in sections 7595-1c and 7595-1d of the General Code.”

As I understand your inquiry, you wish to know if the amendments made it necessary for the clerk of the Bloomingburg Village School District to furnish a report to the Director of Education in view of the amendment of the statutes. The rule in Ohio is found in Section 26, General Code, which provides:

“Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed,

nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

It has been held that this section should receive a liberal construction. The terms "unless so expressed" and "expressly provided" mean stated in the amending statute in clear, definite, plain and direct language and not left to implication. The legislative intention must not be left to inference or construction. *State, ex rel. Construction Company, v. Rabbitts*, 46 O.S., 178; *Kelley v. State*, 94 O.S., 331; and *State, ex rel. Andrews v. Zangerle*, 101 O.S., 235. In *State, ex rel. Toledo, v. Weiler*, 113 O.S., 443, it was said that when an amendment relates to substantive rights in the absence of an express provision pending proceedings, the amended section must be read in connection with Section 26, General Code. Numerous decisions construing the scope of Section 26, General Code, have clearly established the principle that the term "proceeding" has a broad connotation and is not limited to matters of litigation. *Raymond v. City of Cleveland*, 42 O.S., 522 at page 529; *Cincinnati v. Davis*, 58 O.S., 225; and *State, ex rel. Andrews V. Zangerle*, 101 O.S., 235.

Returning to the consideration of former Sections 7677 and 7678, General Code, it is apparent that upon the furnishing of a report, the district superintendent had taken the initial procedural step to obtain an allocation of expenses for children from other districts. Nothing further remained to be done by the district superintendent. The proceedings were commenced prior to the effective date of the amendments. By reason of the provisions of Section 26, General Code, there was no abatement and the county auditor, before making the semi-annual distribution of taxes, was required to allocate the proper allowance to the Bloomingburg School District.

You have also asked if the districts that have been charged tuition are to be reimbursed. Correctly speaking, there has never been any provision for reimbursing such districts for the tuition they have been charged nor for the expenses of operating their own schools. However, in 1935 the Ninety-First General Assembly enacted House Bill No. 466, which included Sections 7595-1 to 7595-1i, inclusive, General Code, for the purpose of providing funds for educational equalization and established what has been termed the foundation program, whereby the

state of Ohio has in effect guaranteed its school districts a minimum operating cost. The additional aid to which a school district was formerly entitled under the provisions of Section 7595-1b, General Code, included a credit for deductions made by the county auditor pursuant to Section 7678, General Code, the provision therefor being as follows:

“If, in any school district which has a tax levy for current school operation of at least three mills, the revenue resources of any district are insufficient to enable the board of education thereof to conduct the schools in such district upon the minimum operating cost of a foundation program, as defined by or established pursuant to law, such district shall be entitled to receive additional aid, to be apportioned from the state public school fund by the director of education, as hereinafter provided.

The amount of such additional aid which such a district shall be entitled to receive in any year shall be the difference between the cost of maintaining the foundation program, as hereinafter defined, and an amount equivalent to a computed yield of three mills on each dollar of the taxable property on the tax duplicate of such district less the deductions made by the county auditor pursuant to sections 288, 7678, 1465-66, 7828 and 7834 of the General Code, and plus the total income of such district received from all other state sources, but exclusive of federal and state aid for vocational education and state aid for special classes; provided, further, however, that no school district shall be entitled to receive additional aid unless the total tax levies of the taxing district of which said school district is a part, are at least 10 mills for all purposes.

The director of education shall ascertain the amount required to supplement the revenue of such district to enable it to maintain the foundation program as hereinafter defined, and shall apportion the same to such district in the same manner and at the same time as other apportionments of the state public school fund are made to the school districts of the state, according to the provisions of this act.

All funds received from the state public school fund shall be used to pay current operating expenses only.

By additional aid is meant aid in addition to that allowed by Section 7595-1, General Code, which is sometimes referred to as the flat distribution. The distributions to the school districts, as ordered by the Director of Education, are to be made in quarterly installments as provided in Section 7595-1g, General Code, which reads:

“The amount of all apportionments made to the districts,

as provided in this act, shall be distributed to such districts in quarterly payments. On or before the last day of February, May, August, and November in each year, the director shall calculate the amounts to be paid to the respective districts as such quarterly payments of the apportionments theretofore made by him for such districts for the current year, and shall certify to the auditor of state the amounts of such quarterly payments, whereupon the auditor of state shall issue his warrants on the treasurer of state in favor of the respective districts for the amounts so certified and the treasurer of state shall forthwith pay the same to the designated districts."

Section 7595-1b, General Code, was amended by the Ninety-Fourth General Assembly, effective September 5, 1941, so that the second paragraph thereof now reads:

"The amount of such additional aid which such a district shall be entitled to receive in any year shall be the difference between the cost of maintaining the foundation program, as hereinafter defined, and an amount equivalent to a computed yield of three mills on each dollar of the taxable property on the tax duplicate of such district, plus the total income of such district received from all other state sources, but exclusive of federal and state aid for vocational education, state aid for special classes, and interest on the irreducible debt and income from school trust and land rental funds; provided further, however, that no school district shall be entitled to receive additional aid unless the total tax levies of the taxing district of which said school district is a part are at least 10 mills for all purposes."

At the effective date of the amendment of Section 7595-1b, General Code, three of the quarterly payments presumably had been made to the Bloomingburg Village School District but we are faced with the question of determining whether the old section or whether the amendment controls the payment of the November installment. The apportionment having been made by the Director of Education and three of the quarterly payments having been made, it appears that there was a pending proceeding at the time the amendment became effective and, as has been previously shown, Section 26, General Code, governs, making it the duty of the Auditor of State to issue his warrant for the November installment.

Upon payment of the November, 1941, installment the proceedings, commenced when the superintendent of the Bloomingburg Village School District furnished his report, is completed and the application of Section 26, General Code, is exhausted. The county auditor is no longer required nor permitted to reapportion and transfer funds prior to the

semi-annual distributions and the districts of residence of the inmates are no longer entitled to the credit formerly authorized by Section 7595-1b, General Code. The 1942 quarterly distributions under the foundation program should be made as detailed in the amendments. It is now the function of the clerk of the school district under Section 7677, General Code, to report to the Director of Education. The tuition allowance is now paid directly upon order of the Director to the district in which the home is located in the same manner as he credits and pays tuition for other non-residents.

In specific answer to your questions it is my opinion that:

1. Where there are inmates in a county, semi-public or district children's home who were, before admission therein, residents of school districts in the county other than that in which such home is situated, such children are entitled to attend the school in the same district in which the home is located. For the year 1941 it was the duty of the county auditor, after receipt of the report required by former Section 7677, General Code, before making a semi-annual distribution of taxes collected, to charge the various districts of former residence for tuition of such inmates and transfer such amounts to the proper school funds.

2. Although Sections 7677 and 7678, General Code, were amended, effective August 14, 1941, and Sections 7595-1b, 7595-1c and 7595-1d, General Code, were amended, effective September 5 and 6, 1941, the November, 1941, installment due such districts under the foundation program as provided in Section 7595-1g, General Code, was not affected by such amendments.

3. For 1942 and thereafter, allowances under the foundation program for such non-resident inmates are to be approved and paid by the Director of Education to the district in which such home is located in the same manner as tuition is credited and paid for non-resident pupils as provided in Sections 7595-1c and 7595-1d, General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General.