

1476.

CONTRACT—CO-OPERATIVE, STATE WITH CITY OF
FINDLAY, IMPROVEMENT, S. H. 220, SECTION FINDLAY,
PART, HANCOCK COUNTY.

COLUMBUS, OHIO, November 27, 1939.

HON. ROBERT S. BEIGHTLER, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a cooperative contract between the State of Ohio and the City of Findlay covering the following improvement:

Section Findlay (Part).
State Highway No. 220.
City of Findlay.
Hancock County.

Finding said contract correct as to form and legality, I have accordingly endorsed my approval thereon and am returning the same herewith.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1477.

COUNTY OR EXEMPTED VILLAGE BOARD OF EDUCATION
—“SERVICE FUND” SET ASIDE UNDER SECTION 7704,
G. C., AMENDED SENATE BILL 99, 93RD GENERAL AS-
SEMBLY—AVAILABLE ONLY AFTER CLERK OF BOARD
HAS MADE OFFICIAL CERTIFICATION OF PUPIL EN-
ROLLMENT—STATUTORY PROVISION, THIRD MONDAY
IN JANUARY, 1940, OR MONDAY PRECEDING CLOSE OF
SCHOOL YEAR 1939-1940.

SYLLABUS:

A “service fund” for a county or exempted village board of education set aside in pursuance of Section 7704, General Code, as amended by the 93rd General Assembly, can not lawfully be made available until after an official certification of pupil enrollment is made by the clerk of such board as provided by the statute, on the third Monday in January,

1940 or the Monday preceding the close of school for the school year 1939-1940.

COLUMBUS, OHIO, November 27, 1939.

HON. JOHN B. MEISTER, *Prosecuting Attorney, Fulton County, Wauseon, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your request for my opinion which reads as follows:

"The County Board of Education requests that I secure an opinion from you in regard to the following matter:

Section 7704, Ohio General Code, as enacted in S. B. 99, sets up a 'service fund' for the County Board of Education.

The County Board of Education of Fulton County had received the report of the Clerk of the County Board of Education on the third Monday of January, 1939, indicating the number of pupils enrolled in the schools of Fulton County School District.

Under these conditions and the law as it became effective under Section 7704 will it be legal and permissible for the Fulton County Board of Education to make use of the 'service fund' for expenses incurred during the months of September, October, November and December, 1939?"

Section 7704 of the General Code, as amended and enacted in Amended Senate Bill No. 99 of the 93rd General Assembly, provides as follows:

"On the third Monday of every January or on the Monday preceding the close of school each year, the clerk of the board of education of a city, county, or exempted village school district shall certify to the board of education of which he is clerk, the number of pupils enrolled in the public schools of that district, whereupon the board of such school district may by resolution set aside from the general fund a sum not to exceed five cents for each child so enrolled, or \$200, whichever is greater, such sum of money to be known as the 'service fund' to be used only in paying the expenses of such members actually incurred in the performance of their duties, or of their official representatives when sent out of the school district for the purpose of promoting the welfare of the schools under their charge; such payments to be made only on statement of the several members, or their official representatives, furnished at the last meeting held in each month."

Said Amended Senate Bill No. 99 was passed by the 93rd General

Assembly on May 31, 1939, approved by the Governor, and filed in the office of the Secretary of State on June 7, 1939. Thereupon it became effective on September 6, 1939.

Prior to the amendment of Section 7704, General Code, in Amended Senate Bill No. 99, as stated above, substantially the same provisions, at least so far as they are pertinent to your inquiry, were contained in the said statute excepting that it applied to city school districts only. The words "county and exempted village" following the word "city" in the third line of the statute, were inserted by way of amendment, in the 1939 enactment of the statute, thereby extending to county and exempted village school districts the same rights and privileges so far as the creation and use of a "service fund" is concerned, as had formerly been enjoyed by the members and representatives of boards of education in city school districts.

Inasmuch as the applicability of the statute to county and exempted village districts did not take place until the effective date of the Act to-wit, September 6, 1939, and there is no language in the statute or the Act of the General Assembly of which it is a part, to indicate the legislative intent that the provisions of the statute should be retroactive, it is obvious that the clerk of a county or exempted village board of education was not empowered prior to September 6, 1939, to make the certification of pupil enrollment which, by the terms of the statute is the basis upon which the "service fund" provided for is founded, and which certification is a prerequisite to the passage of a resolution by the board of education setting aside a sum of money based on this enrollment as a service fund.

You state in your inquiry that the county board of education of Fulton County School District had received a report of its clerk indicating the number of pupils enrolled in the schools of the Fulton County School District on the third Monday of January, 1939. Granting that such a report was received at that time, it could not possibly have been an official report for the purposes of this statute, as no power vested in the clerk at that time to make such a report upon which the county board of education could predicate a resolution setting aside moneys from the general fund to constitute a "service fund", as provided by the statute. Said Amended Senate Bill No. 99 was not even introduced in the General Assembly until February 8, 1939.

I direct your attention to an opinion of my immediate predecessor, being Opinion No. 3441, addressed to the Bureau of Inspection and Supervision of Public Offices, rendered under date of December 22, 1938, at which time Section 7704, General Code, applicable to city school districts was in force in the same form as now, so far as the question here under consideration is concerned, wherein it was held as stated in the second branch of the syllabus of the said opinion:

"The board of education of a city school district may pay

from its service fund the expenses of the city solicitor on trips occasioned by his duties as legal advisor of the board of education if:—(1) the clerk of the board of education of the city school district on the third Monday of January or on the Monday preceding the close of the school year, certified to the board of education the number of pupils enrolled in the public schools in the city school district; (2) the board of education duly adopted a resolution that set aside a sum that did not exceed five cents for each child enrolled and earmarked such amount of money as the 'service fund'; (3) the city solicitor actually incurred the expenses when he was sent out of the city school district for the performance of duties imposed upon him by the provisions of Section 4761, *supra*, and that the duties performed by him were for the purpose of promoting the welfare of the schools of the city school district; (4) the city solicitor furnished a statement to the board of education at its last meeting of the month held by the board of education after the expenses were incurred."

In my opinion a "service fund" for a county or exempted village board of education in pursuance of Section 7704, General Code, as amended by the 93rd General Assembly, cannot lawfully be made available until after an official certification of pupil enrollment is made by the clerk of such board for the purpose indicated, on the third Monday of January, 1940, or the Monday preceding the close of school for the school year 1939-1940.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1478.

JUVENILE COURT CREATED WITHIN PROBATE COURT UNDER SECTION 1639-7 G. C. SUBJECT TO PROVISIONS OF SECTION 3056-2 G. C.—CERTAIN MONEYS COLLECTED BY PROBATE COURT—REQUIRED TO BE PAID TO TRUSTEES OF COUNTY LAW LIBRARY ASSOCIATION.

SYLLABUS:

A juvenile court created within a probate court by virtue of Section 1639-7, General Code, is subject to the provisions of Section 3056-2, General Code, which requires the payment to the trustees of a county law