

1917.

BOARD OF EDUCATION—NORMALLY OPERATED SCHOOLS NINE MONTHS—1939-1940 OPERATED EIGHT MONTHS OR LESS—A RESOLUTION PASSED PRIOR TO JULY 1, 1940, TO LENGTHEN TERM 1940-1941 WILL QUALIFY BOARD TO RECEIVE PUBLIC SCHOOL FUNDS ON BASIS OF LENGTHENED SCHOOL YEAR.

SYLLABUS:

Where a board of education had prior to the school year 1939-1940, normally operated its schools for nine months in the year, but failed to operate them in the school year 1939-1940 for the full nine months and instead operated them for eight months only, or less, it may pass a resolution prior to July 1, 1940, lengthening the term for the school year 1940-1941, and will thereby be qualified to receive its apportionment of the public school fund during the latter named school year on the basis of the school year as so lengthened, by force of said resolution.

Columbus, Ohio, February 26, 1940.

Hon. E. N. Dietrich, Director, Department of Education,
Columbus, Ohio.

Dear Sir:

I have your request for my opinion, which reads as follows:

“A school district normally operates its schools for a nine months school term, but during the term, due to lack of funds, it is compelled to suspend operations to the extent that only an eight months or less term is maintained.

The board, complying with the provisions of Section 7595-1, passes a resolution that it will operate a nine months term the ensuing school year. Can the Director of Education authorize payment out of the state public school fund money for a nine months period for the year shortened by action of the board, due to lack of funds?

May I have your opinion on this question at an early date?"

Section 7595-1, General Code, makes provision for the apportionment and payment of funds from the state public school fund to each school district in the state. Among other things, it provides that:

"The apportionment shall be on the basis of the actual number of days the schools of the respective districts were in session during the school year next preceding such apportionment except as hereinafter provided. Prior to July 31st 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."

The above section is clear, to the effect that when a board of education by resolution adopted prior to July 31st of any year lengthens the term for the ensuing year from what it had been in the school year in which the resolution was passed, it is the duty of the Director of Education to apportion the funds in the ensuing school year on the basis of the proposed year as shown by such resolution "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."

It will be observed that the portion of the statute quoted in the immediately preceding paragraph is an exception to the provision that the Director of Education shall apportion the funds on the basis of the preceding year and of course such exception must be strictly construed.

I do not understand that your question is predicated on a situation that comes within the exception. Your question, as I understand it, is whether or not when a district normally operates its schools for a full nine months term during each school year, but fails to do so in some particular year due to

unforeseen financial difficulties, may it lengthen the term for the ensuing school year by resolution and thereby legally qualify to have its distribution made for the ensuing year based on the term as so lengthened.

I am informed that your inquiry was prompted by a telegram which you received from the superintendent of schools in a certain city school district where the schools had for many years prior to the school year 1939-1940 been operated for a nine months term each year but during the year 1939-1940 they had been compelled on account of a shortage of funds to shorten the term to eight months. The telegram is as follows:

“If———schools operate less than nine months during present school year but at least eight months will we be penalized on foundation payments received during 1941? Wire immediate reply.

(signed)———”

The exception referred to applies where a board of education passes a resolution in one year lengthening the term for the ensuing year and then does not operate its schools in accordance with this resolution and then attempts to lengthen the term for the next year in the same manner. For instance, if in the district to which you refer, where the schools had been previously and regularly operated for nine months until the school year 1939-1940, during which year they had been operated for eight months only because of a shortage of funds, and a resolution should be adopted prior to July 31, 1940, to lengthen the term for the school year 1940-1941, it would be entitled to have its distribution for that year based on the term as so lengthened, but, suppose it again should operate for only eight months, and its board of education passed another resolution in 1941 lengthening the term for the school year 1941-1942, it would not be legal to distribute to that district in the school year 1941-1942 on the basis of the lengthened term because, as the statute expressly provides, it had “failed to operate the schools of the district for the school year *similarly declared and specified* by the board of education prior to such year.”

Where a board of education normally and continuously had operated its schools for nine months in each school year prior to the school year 1939-1940, there of course was no occasion prior to that year to lengthen the term for that year, and if it failed to operate for nine months for that year it would not be a failure to operate for a school year “*similarly declared and specified* by the board of education prior to such year,” which is the exception the

Legislature has made to the general proposition that a board of education may lengthen the term by resolution when it has failed to operate for a full term for any reason, and thereby qualify to receive its apportionment for the ensuing school year on the basis of the term so lengthened.

I am therefore of the opinion that in a situation such as you describe, that is, where a board of education had prior to the school year 1939-1940 normally operated its schools for nine months in the year but failed to operate them in the school year 1939-1940 for the full nine months and instead operated them for eight months only, or less, it may pass a resolution prior to July 1, 1940, lengthening the term for the school year 1940-1941, and will thereby be qualified to receive its apportionment of the public school fund during the latter named school year on the basis of the school year as so lengthened by force of said resolution.

Respectfully,

THOMAS J. HERBERT,
Attorney General.