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TUITION RATES—FINAL QUARTER OF 1956; THOSE IN EFFECT DURING PRECEDING SCHOOL MONTHS OF 1956—MAY BE DIFFERENT FOR HIGH SCHOOL AND ELEMENTARY SCHOOL — 3317.08 RC.

SYLLABUS:

The tuition rates determined and paid pursuant to Section 3317.08, Revised Code, as amended, for the final quarter of 1956, will be those rates which were in effect for the preceding school months of 1956, and the tuition rate for that period may be different for pupils attending high school from the rate for pupils attending elementary school in the same district.

Columbus, Ohio, March 5, 1957

Hon. John H. Barber Prosecuting Attorney
Fulton County, Wauseon, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“The State Department of Education has figured the rate of tuition for non-resident pupils for the last quarter of 1956 in accordance with Section 3317.08, ORC, which provides in part as follows, ‘* * * Where a district maintains a high school as well as an elementary school, such operating cost shall be divided, for the purpose of determining the distribution of cost between such types of schools, in the same manner in which the money is spent. The amount so allocated to high school shall not exceed the relationship expressed by multiplying the number of elementary pupils in average daily membership by one, and the number of high school pupils in average daily membership by one and a half * * *’.

“Section 3317.08 was revised effective October 1, 1956 and now reads in part as follows, ‘* * * and the remainder shall be divided by the number of pupils in average daily membership in grades one to twelve inclusive, * * *’.

“Apparently, it is the Department’s contention that it cannot change the tuition rate during the year.

“The several local Boards of Education having elementary schools only have requested that I seek your informal opinion on whether the State Department of Education has followed legal procedure in arriving at two rates of tuition, one for elementary pupils and one for high school pupils, instead of one rate for the months of October, November, and December 1956.”

Section 3317.08, Revised Code, which is part of the school foundation program, was amended by Amended Substitute Senate Bill No. 321, enacted by the 101st General Assembly.

While your inquiry is directed only toward the problem of determining the actual rate of tuition to be paid under authority of Section 3317.08, Revised Code, there is implicit therein the question of determining the operating cost of the schools of a district which has in attendance pupils whose school residence is not in that district; such operating cost is

used as the basis for calculating the tuition to be paid by the district of school residence.

Prior to its amendment on October 1, 1956, Section 3317.08, Revised Code, read in pertinent part as follows:

“Pursuant to law, a pupil may attend school outside his district of school residence, and his board of education shall pay tuition in an amount not more than that which shall be computed from the total expenditures for conducting the schools of the district attended after deducting the amounts expended for capital outlay; permanent improvements; debt service; transportation; operation of school lunch rooms; tuition to another school district; operation of summer schools, part-time schools, and evening schools; and maintenance of playgrounds. There shall also be deducted that portion of the salary of a vocational teacher for which the district receives state and federal funds. The result so obtained shall represent the operating cost to be recognized in the calculation of tuition rates. *Where a district maintains a high school as well as an elementary school, such operating cost shall be divided, for the purpose of determining the distribution of cost between such types of schools, in the same manner in which the money is spent. The amount so allocated to high school shall not exceed the relationship expressed by multiplying the number of elementary pupils in average daily membership by one, and the number of high school pupils in average daily membership by one and a half.* To the operating cost thus determined, there may be added depreciation charges not to exceed three per cent per annum, based on the actual cost to the district, plus the amount of private donations or grants but less the amount of any federal grants, of all property used in conducting such school. *The elementary cost plus the depreciation charge shall be divided by the number of pupils in average daily membership in grades one to eight and the high school cost plus the depreciation charge shall be divided by the average daily membership of pupils in grades nine to twelve, the average daily membership figures so used to be the same as those used as a basis for the distribution of state funds, as provided for by sections 3317.02 and 3317.05 of the Revised Code. From the gross tuition rates so computed there shall be deducted the proceeds of all moneys apportioned to such district from state funds exclusive of interest on the irreducible debt and income from school trust and land rental funds, and in the case of attendance from within the same county school district there shall be deducted also the moneys apportioned to the district from county funds.*” (Emphasis added.)

Section 3317.08, Revised Code, now provides in part:

“Pursuant to law, a pupil may attend school outside his district of school residence, and his board of education shall pay

tuition in an amount not more than that which shall be computed from the total expenditures for conducting the schools of the district attended after deducting the amounts expended for capital outlay; permanent improvements; debt service; transportation; operation of school lunch rooms; tuition to another school district; operation of kindergarten classes; operation of summer schools, part-time schools, and evening schools; and maintenance of playgrounds. The result so obtained shall represent the operating cost to be recognized in the calculation of tuition rates. To the operating cost thus determined, there may be added depreciation charges not to exceed three per cent per annum, based on the actual cost to the district, plus the amount of private donations or grants but less the amount of any federal grants, of all property exclusive of land used in conducting such school. From the operating cost plus the depreciation charge there shall be deducted the proceeds of all moneys apportioned to such district from state funds, exclusive of interest on the irreducible debt and income from school trust and land rental funds, and the remainder shall be divided by the number of pupils in average daily membership in grades one to twelve, inclusive, the average daily membership figures so used to be the same as those used as a basis for the calculation of approved teacher units, as provided for by Section 3317.05 of the Revised Code.”

Section 3317.08, Revised Code, both as it formerly existed and as it now exists, provides that such tuition as is calculated and is payable pursuant to the terms of the section shall be deducted from the school foundation funds allocated to the district of school residence and added to the amount allocated to the district attended. If there are no funds allocable to the district of school residence, such district is directed to pay the tuition due.

It is apparent that the General Assembly has made certain changes in the items to be deducted from the total expenditures of a school district in determining the operating cost of such district, which operating cost is in turn used in computing tuition rates. It, however, appears to be unnecessary at this time to make a detailed examination of these specific changes. The change which is important in resolving the problem you have presented is the elimination of the former directions regarding allocation of cost between an elementary school and a high school in a district and the division of the cost so apportioned by the number of pupils in average daily membership in the grades comprising the particular type of school to which the cost has been allocated.

The amendment will result in there being only one tuition rate computed and paid for attendance of any school in a district other than the district of school residence. In reaching a solution of the question as to the exact time when such uniform tuition rate within a school district becomes effective, it is necessary to examine the following language found in Section 4 of the Amended Substitute Senate Bill No. 321, appearing in 126 Ohio Laws at page 301 :

"It is the intent and purpose of this act that in distributing funds for the fourth quarter of the calendar year 1956 the average daily membership shall be the same as that used for the first half of 1956. The certification of the name of each certificated employee, with the amount of training, the type of teaching certificate held, and the annual salary of each as required by section 3317.041, of the Revised Code, shall for the fourth quarterly distribution of the calendar year 1956 be based upon the school district's employment rolls for the first two full school weeks of the month of April, 1956, and such certification shall be made to the state board of education not later than April 30."

(Emphasis added.)

For the purpose of clarification of the language of Section 4 of the Act quoted above, it should be noted here that the section enacted in Amended Substitute Senate Bill No. 321, as Section 3317.041, Revised Code, to which this reference is made, is now Section 3317.061, Revised Code; this number was changed by the Legislative Service Commission as there was already in existence a statute numbered Section 3317.041, Revised Code.

Thus, the General Assembly in enacting Section 4 of Amended Substitute Senate Bill No. 321 clearly manifested the intention that the average daily membership figures to be used for the final quarter of 1956 are those which were used for the first half of 1956; the legislature did not, however, so define its intention concerning any recalculation of operating costs and reallocation of such costs between high schools and elementary schools, for the last three months of 1956, to conform to the formula now prescribed by Section 3317.08, Revised Code.

I am, however, impelled to the conclusion that the said Section 4 evinces an intention that the distribution of school foundation funds for such period of 1956 should be based upon a period for which actual experience had been gained. It seems improbable that the average daily membership for the last quarter of the calendar year 1956 would in fact be the

same as that for the first half of the year, yet that is the figure to be used. Such daily membership figures would, under Section 3317.08, Revised Code, as it existed prior to the amendment, be so computed as to reflect the attendance in high schools as separate and apart from that in elementary schools.

It is, then, clear that if new tuition rates are to be effective for the months of October, November and December, 1956, such new rates can result only from a recomputation of the base figure which, when divided by the average daily membership, results in the tuition rate payable. If such new base figure were to be determined, it would necessarily be that resulting from the use of the formula provided in Section 3317.08, Revised Code, as amended and as effective October 1, 1956. I cannot conclude that the General Assembly intended any such result, to-wit, a recalculation of costs under a new formula, for a period for which experience manifestly could not have been gained by the effective date of the amended section, to attain a new base figure, such new figure then to be used in conjunction with daily membership figures computed during the first half of 1956.

I am strengthened in this conclusion by my understanding of the administrative practice which has been followed prior to the recent amendment of Section 3317.08, Revised Code; I am informed that it has been the practice to calculate the tuition rates by applying the operating cost figures compiled for the preceding school year. Such tuition rates have in the past, I also understand, been determined at the beginning of the calendar year and kept unchanged throughout that year.

It is, therefore, my opinion and you are advised that the tuition rates determined and paid pursuant to Section 3317.08, Revised Code, as amended, for the final quarter of 1956, will be those rates which were in effect for the preceding school months of 1956, and the tuition rate for that period may be different for pupils attending high school from the rate for pupils attending elementary school in the same district.

Respectfully,

WILLIAM SAXBE

Attorney General