

and issue evidences of indebtedness in performing that duty, except as above stated. In my opinion, considering the statutes above referred to, that power cannot be implied.

The legislature, particularly in the last two general assemblies, has provided means for securing funds to be used by the township trustees in providing poor relief. Provision has been made for the borrowing of money in anticipation of tax settlements which may be used for poor relief. Additional funds have been made available by the provisions for the issuing of poor relief bonds. By expressly providing these means of borrowing money and issuing evidences of indebtedness, the legislature has impliedly withheld from the township trustees the authority to issue other evidences of indebtedness for poor relief purposes. *Expressio unius est exclusio alterius*.

While the acts above considered were passed at a later date than section 3476, they relate to the same subject and should be construed *in pari materia* with it. The following statement appears in 2 Lewis' Sutherland Statutory Construction, page 845:

"Statutes which are not inconsistent with one another, and which relate to the same subject-matter, are *in pari materia*, and should be construed together; and effect should be given to them all, although they contain no reference to one another, and were passed at different times."

In view of the foregoing, it is my opinion that section 3476 does not by implication confer upon the board of township trustees, in providing poor relief, the authority to issue store orders which purport to be evidences of indebtedness and, therefore, that the trustees have no such authority.

Article X, Section 5 of the Ohio Constitution, reads:

"No money shall be drawn from any county or township treasury, except by authority of law."

Since I find the issuing of the evidences of indebtedness in question to be unauthorized, I am of the opinion that the drawing of money from the township treasury with which to pay them contravenes the above constitutional provision.

Respectfully,

JOHN W. BRICKER,
Attorney General.

912.

COUNTY BOARD OF EDUCATION—CONTRACT—TEACHER VOLUNTARILY TEACHING AFTER CONSENTING TO DISSOLUTION OF CONTRACT CANNOT LATER CLAIM PAY FOR SERVICES WHILE VOLUNTEER—SUSPENSION OF SCHOOL TERMINATES CONTRACT WITH TEACHER—COUNTY EDUCATIONAL EQUALIZATION FUND DISTRIBUTED HOW.

SYLLABUS:

1. *A contract of a board of education with a teacher may be dissolved by mutual consent of the parties. If a teacher employed for a school year voluntarily*

consents to a dissolution of the contract, and it is thereupon dissolved, and he continues thereafter to teach voluntarily, he cannot later repudiate his consent to the dissolution of the contract and claim pay for services during the time he rendered service as a volunteer.

2. A contract of a board of education with a teacher, to teach a particular school, may be terminated by the board of education by suspending the school in accordance with Section 7730, General Code. A lack of funds to operate the school is a valid cause for the suspension of the school.

3. The distribution of that portion of the county educational equalization fund attributable to teachers and employes is governed by the salary schedule as determined by the county board of education prior to the beginning of the school year, and is not based on the amount actually received by the teachers or employes.

4. The annual distribution of the county educational equalization fund attributable to expense of transportation of pupils shall be in accordance with a schedule to be determined by the county board of education. This schedule should be so formulated as to make this distribution as uniform as possible under the circumstances.

5. In the distribution of the county educational equalization fund all the balance of said fund, after the portion attributable to teachers and transportation is distributed, should be distributed according to the ratio which the aggregate days of attendance of pupils in each district bears to the aggregate days of attendance of pupils in the entire county outside of exempted village and city school districts.

6. The distribution of the county educational equalization fund should be made by a county board of education in the manner provided by Section 7600, General Code. The distribution of the portion of that fund attributable to teachers is not based on the majority of teachers in any district receiving \$800.00 or more for the school year, but upon the number of teachers in each district which, according to the salary schedule adopted by the board of education prior to the beginning of the school year are to receive a salary of at least \$800.00 for the school year.

7. No penalty is provided by law for the failure on the part of a county board of education to distribute the county educational equalization fund according to law.

COLUMBUS, OHIO, June 2, 1933.

HON. GLENN P. BRACY, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion, which reads as follows:

“I have been asked to secure your opinion on the following questions growing out of the present school financial situation, and relating themselves to Section 7600, General Code, of Ohio:

A district has a teachers' salary schedule which would exceed \$800.00 per teacher but due to financial conditions, decreased valuations and delinquent taxes, said district is able to pay its teachers for only six months. Said teachers were hired by the month with a written contract. The teachers, however, volunteered to teach eight months even though paid for only six months. Said six months pay in many cases falls below \$800.00. Five districts of the same county encounter a few cases like the above.

Question No. 1: Can a teacher, though hired by the month, when notified that funds will be exhausted at the end of six months time, col-

lect more than six months pay if he volunteers to teach an added two months or an eight month term?

Question No. 2: May a contract signed by the teacher for employment by the month be terminated by the board of education when the funds for the current year have been exhausted even though thirty-two week term has not been completed?

Question No. 3: In above cited case where the teacher receives six months pay only, though teaching eight months thus receiving less than \$800.00 (through no fault of his) is the County Board of Education permitted to pay into the local district funds from the County Equalization fund accruing from the collection of the 2.65 M. levy, any contribution?

Question No. 4: Is the County Board of Education permitted to return a flat amount to local district from this fund on its transportation expense or must it formulate a uniform plan to apply alike to all similar types of transportation used in the county?

Question No. 5: Is not the County Board absolutely required to distribute all surplus after teacher and transportation portions, on aggregate days?

Question No. 6: Are there any cases in the state where the County Board has directed the return of the full amount of the 2.65 M. collection to the local board of education, without respect to aggregate days, transportation or teachers salary?

Question No. 7: Would a County Board of Education, because the majority of teachers in five districts within its jurisdiction, receive less than \$800.00 pay, be permitted to distribute all of the 2.65 M. collection back to (1) those districts? (2) to all the districts? (3) or to any of the districts of the county?

Question No. 8: Should a County Board or a County Superintendent direct the full amount of collection from the 2.65 M. levy returned to the local district without regard to the wage paid to teachers or the costs of transportation or aggregate days, what penalty would they suffer?"

The above questions will be considered in their order:

(1) You state that the teacher in question, was hired "by the month." You do not state, however, the number of months for which he was hired. A contract with a teacher, when properly entered into according to law, is binding upon both parties thereto, until such time as it may be dissolved, expires, or the teacher is dismissed for cause. (See §7699, General Code.) So long as a contractual relation thus created, exists, the parties are governed by the terms of the contract and their rights and duties thereunder are governed by rules applicable to contracts generally.

No authority exists for the hiring of teachers "by the month." It is provided in Section 7691, General Code, that teachers shall be appointed for not "less than one year." The terms of this statute clearly contemplate that teachers shall be hired by the year.

While I do not have before me the precise terms of the contract in question, I assume that because of the terms of Section 7691, General Code, and the fact that the law provides in Section 7644, General Code, that elementary schools shall be continued for not less than thirty-two weeks of the school year, the contract would be construed as being a contract hiring the teacher for an eight month

period within a school year at a stipulated monthly salary. If it be a contract with a teacher in a high school, it would be construed so far as the number of months is concerned in the light of the grade of high school and the orders of the Director of Education as to the number of months school must be maintained for the particular grade of high school. It is not stated whether a high school or an elementary school teacher's contract is involved.

Upon this assumption as to the import of the contract in question, the teacher would have a valid claim for services in accordance with the terms of the contract at least so long as those services were rendered, unless, as provided by the statute, the contract should be terminated or dissolved or the teacher be dismissed for cause, as provided by Section 7701, General Code.

Of course, the contract may be dissolved at any time during the term for which a teacher is hired, just as any contract may be dissolved. When this is done, both parties are released from further obligation under the contract, the discharge of each by the other serving as consideration for the mutual releases. This principle of law is stated in Page on Contracts, Second Edition, Section 610, as follows:

"If a contract is existing between two parties, under which each party has rights and liabilities unperformed, a modification of such contract is supported by a sufficient consideration in the mutual waiver of the rights arising under the old contract."

When a teacher's contract is dissolved by mutual consent and the teacher volunteers to continue to teach, and does so continue, he does so without a contract, and the mere permitting him to teach, or the acceptance of his services as a teacher does not create a liability to pay him.

(2) Section 7730, General Code, provides that a board of education may suspend a school because of disadvantageous location "or any other cause" in which event "teachers' contracts shall thereby be terminated after such suspension."

The Supreme Court in the case of *Board of Education vs. Waits*, 119 O. S. 310, construed the phrase "or any other cause" as used in Section 7730, General Code, very broadly. I am of the opinion, in the light of the holding of the Supreme Court in the case mentioned that a lack of funds to operate a school is such a "cause" as to justify a board of education in suspending a school by authority of said Section 7730, General Code. When that is done in accordance with the statute, the teacher's contract is thereby terminated.

(3) The distribution of that part of the 2.65 mills tax levy attributable to teachers is governed by the salary schedule adopted by a county board of education made in pursuance of its survey as directed by Section 7600, General Code, and not by the salaries actually paid to teachers. The survey mentioned and the salary schedule adopted by a county board of education for a school year are concluded before the beginning of the school year, and become the basis of the several distributions of the said tax levy during the entire ensuing school year.

This matter is quite fully considered in two former opinions of this office. In Opinion 220 rendered by me under date of March 17, 1933, it is held:

"1. The distribution of the 'county educational equalization fund' as directed by Section 7600 of the General Code of Ohio, in so far as

the distribution attributable to teachers and other educational employes in a school district during any school year is concerned, should be based on the salary schedule adopted by the county board of education, and the number of teachers and employes fixed by said board, in pursuance of its survey conducted by authority of said Section 7600, General Code, prior to the preceding first day of April, and certified to the several school districts of the county school district.

2. The basis of the distribution of the 'county educational equalization fund for any school year, as fixed by the determination of the county board of education in pursuance of its survey conducted for that purpose prior to the beginning of the school year, is not changed or in any wise affected by reason of the fact that during the school year it is found necessary to suspend all or a part of the schools in some districts on account of lack of funds to operate them, in consequence of which suspension certain teachers and employes will receive less than eight hundred dollars per year."

See also Opinions of the Attorney General for 1930, p. 46, and Opinions of the Attorney General for 1920, p. 394.

(4) The pertinent portion of Section 7600, General Code, relating to the distribution of that portion of the 2.65 mills tax levy attributable to the transportation of pupils, reads as follows:

"On or before the first day of April of each year, the county board of education shall make a survey of the county school district to determine the number of teachers and other educational employes, and the number of transportation routes necessary to maintain the schools of the county school district. * *

The proceeds of the county educational equalization fund shall be apportioned by the county board of education to each school district and part of district within the county outside of city and exempted village school districts on the basis of the number of teachers and other educational employes employed therein, and the expense of transporting pupils as determined by the above educational survey, and the balance according to the ratio which the aggregate days of attendance of pupils in such districts, respectively, bears to the aggregate days of attendance of pupils in the entire county outside of exempted village and city school districts. * *

The annual distribution attributed to expense of transportation of pupils shall be in accordance with a schedule to be determined by the county board of education. * *"

Upon consideration of the terms of the foregoing statute, as contained in the quotation set out above, it clearly appears that the distribution attributable to transportation of pupils shall be in accordance with a schedule adopted by the county board of education. As the very purpose of the county educational equalization fund is to promote the equalization of educational opportunities within the county, it would seem to follow that the schedule adopted, or the plan adopted, should be as nearly uniform as possible, although a great deal of discretion is reposed in a county board of education in the formation of the schedule mentioned.

It is difficult to say just what is meant by a "uniform plan" as the term is used in your inquiry. In the adoption of the transportation schedule the county board of education would not be expected to discriminate in favor of any particular districts, as such discrimination would no doubt be regarded as an abuse of discretion. However, circumstances must be taken into consideration in the adoption of this schedule and I am unable to state definitely that it is necessary for a county board of education to adopt a precise uniform plan applicable to all districts. This would probably be difficult to do as the condition of the roads, length of transportation routes and the topography of the county would necessarily be elements which would have to be considered by the board in adopting the transportation schedule spoken of in the statute.

(5) Inasmuch as the statute, Section 7600, General Code, provides that the proceeds of the county educational equalization fund shall be distributed (1) on the basis of the number of teachers and other educational employes; (2) the expense of transporting pupils; and (3) and the *balance* according to the aggregate days of attendance, it would appear clearly, that after the portion attributable to teachers and transportation had been determined the rest of it, or the "surplus", as you speak of it, should be distributed on the basis of the aggregate days of attendance as provided by the statute.

(6) I do not have before me the plan of distribution adopted by the various county boards of education throughout the state, and am unable to state whether any county boards distribute the county educational equalization levy without respect to aggregate days of attendance, transportation, and teachers' salaries. The plan set out in Section 7600, General Code, should be followed by each county board of education. If this is not done, they simply are not following the law.

(7) There is no authority for a county board of education to distribute to a school district the proceeds of the 2.65 mills tax levy as collected from that district. The proceeds of the 2.65 mills tax levy collected in a county outside of city and exempted village school districts is to be placed in a county educational equalization fund and distributed in the manner provided by Section 7600, General Code. As provided by that statute, the amount to be distributed to a school district, which is attributable to teachers, is to be determined by taking into consideration the number of teachers which, according to the salary schedule adopted by the county board of education prior to the beginning of the school year are to receive at least \$800.00 salary for the school year. It is not dependent upon a majority of the teachers in the district, but each teacher is considered separately.

(8) There is no penalty provided by law for a failure on the part of a county board of education to distribute the county educational equalization fund in the manner provided for in Section 7600, General Code. If a county board of education does not follow the law in the distribution of this levy, the distribution that they do make might be enjoined and they would be required, in my opinion, to make the distribution in accordance with law, if a proper action were brought to compel them to do so.

In specific answer to your questions, I am of the opinion that:

1. A contract of a board of education with a teacher may be dissolved by mutual consent of the parties. If a teacher employed for a school year voluntarily consents to a dissolution of the contract, and it is thereupon dissolved, and he continues thereafter to teach voluntarily, he cannot later repudiate his

consent to the dissolution of the contract and claim pay for services during the time he rendered service as a volunteer.

2. A contract of a board of education with a teacher to teach a particular school, may be terminated by the board of education by suspending the school in accordance with Section 7730, General Code. A lack of funds to operate the school is a valid cause for the suspension of the school.

3. The distribution of that portion of the county educational equalization fund attributable to teachers and employes is governed by the salary schedule as determined by the county board of education prior to the beginning of the school year and is not based on the amount actually received by the teachers or employes.

4. The annual distribution of the county educational equalization fund attributable to expense of transportation of pupils shall be in accordance with a schedule to be determined by the county board of education. This schedule should be so formulated as to make this distribution as uniform as possible under the circumstances.

5. In the distribution of the county educational equalization fund all the balance of said fund, after the portion attributable to teachers and transportation is distributed, should be distributed according to the ratio which the aggregate days of attendance of pupils in each district bears to the aggregate days of attendance of pupils in the entire county outside of exempted village and city school districts.

6. I am unable to answer this question:

7. The distribution of the county educational equalization fund should be made by a county board of education in the manner provided by Section 7600, General Code. The distribution of the portion of that fund attributable to teachers is not based on the majority of teachers in any district receiving \$800.00 or more for the school year, but upon the number of teachers in each district which, according to the salary schedule adopted by the old county board of education prior to the beginning of the school year are to receive a salary of at least \$800.00 for the school year.

(8) No penalty is provided by law for the failure on the part of a county board of education to distribute the county educational equalization fund according to law.

Respectfully,

JOHN W. BRICKER,
Attorney General.

913.

BONDS—TAXING SUBDIVISIONS UNAUTHORIZED TO ISSUE COMBINED FORM INTEREST AND PRINCIPAL COUPON BONDS—EXCEPT WHEN—BOARD OF EDUCATION UNAUTHORIZED TO REQUIRE TEACHER TO ACCEPT DEFICIENCY BONDS.

SYLLABUS:

1. *In the issuance of bonds, taxing subdivisions are without authority to, issue so-called combined form interest and principal coupon bonds except when required by the Industrial Commission or the Retirement Board of the State Teachers Retirement System, as set forth in Sections 1465-58a and 7896-16a, General Code.*