

1244.

APPROVAL, NOTE OF NEWPORT FIRST RURAL SCHOOL DISTRICT,  
WASHINGTON COUNTY, OHIO—\$2,090.00.

COLUMBUS, OHIO, November 8, 1927.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

1245.

STATE EDUCATIONAL EQUALIZATION FUND—DIRECTOR OF EDUCATION CANNOT PRESCRIBE CONDITIONS FOR DISBURSEMENT OTHER THAN THOSE PROVIDED BY STATUTES—DISTRICT MUST ADHERE TO UNIFORM SALARY SCHEDULE—SECTION 7595, GENERAL CODE, DISCUSSED—AUTHORITY TO APPOINT SUPERINTENDENTS AND TEACHERS—PART TIME TEACHERS.

## SYLLABUS:

1. *The director of education has no authority to prescribe any conditions other than those provided by the statutes, for the disbursement of the state educational equalization fund.*

2. *All school districts desiring to participate in the state educational equalization fund must as a condition to such participation, rigidly adhere to the uniform tentative salary schedule for teachers, as fixed by the state director of education.*

3. *School districts are not permitted to participate in the state educational equalization fund provided for by Section 7595, General Code, unless the revenue resources of the district, with the addition of receipts from any county educational equalization levy and after the exhaustion of all sources of revenue, are insufficient to enable the district to conduct its school in accordance with law without such participation.*

4. *There is no authority for the appointment of superintendents and teachers in the public schools by any one other than the board of education of the district for which schools the superintendents and teachers are employed.*

5. *Teachers in the public schools may be employed for part time only, and if so employed, they may devote their remaining time to other activities.*

COLUMBUS, OHIO, November 9, 1927.

HON. EUGENE S. OWEN, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

“We wish to ask your interpretation of law on the following questions—questions that deeply concern several school districts in this county and perhaps other counties in Ohio.

Brown Township and Ashley are receiving money from the state equalization fund on condition that they allow Ohio Wesleyan University to take

over the management and control of these schools for practice teaching by Ohio Wesleyan students. Prof. Nutt of Ohio Wesleyan appoints the superintendents and teachers above the sixth grade and fixes their salaries. The highest salary permitted by state aid districts by the schedule fixed by the state department is \$1,360. The average salary paid to teachers above the sixth grade in these schools is over \$1,900. Brown was promised \$4,000, and Ashley approximately \$10,000 for this year by Mr. Ulery of the state department. Ashley received about one-half of this amount for the second semester of last year. The salary budget for Brown this year is about double that of any other school of similar size in this county.

The Brown Township school is designated as Ohio Wesleyan's Brown Township Demonstration School and the teachers of these schools are listed in Ohio Wesleyan's catalogue as their instructors.

The per capita valuation on school enumeration in Brown is about \$11,000; in Ashley, more than \$8,000. Several districts in this county have a valuation of less than \$8,000 per pupil enumerated and one (Harlem) has a valuation of less than \$6,000.

As the 2.65 mills levied by the state is distributed on the basis of teachers' salaries, personal service expenses and aggregate days of attendance, these schools will receive more than \$6,000 this year from what other and poorer districts in this county pay as school taxes. Some of these teachers are teaching regularly Friday afternoon and Saturday classes in Ohio Wesleyan though their salaries are paid from public funds.

1st question: Is the payment of money to rich school districts from state aid funds a violation of Sec. 7596-2?

2nd question: Is the appointment of superintendents and teachers in a public school by an employee of a private, denominational school a violation of Sec. 7705?

3rd question: Is it legal for public school teachers paid from public funds to give part of their time to the instruction of college students when that institution is charging tuition for such instruction?"

Sections 7575, 7595, 7596-2, 7597, 7690, 7690-1, and 7705, General Code, read as follows:

Section 7575. "For the purpose of affording the advantages of a free education to all youth of the state, there shall be levied annually a tax of two and sixty-five hundredths mills, the proceeds of which shall be retained in the several counties for the support of the schools therein. In addition thereto, there shall be an 'educational equalization fund' which shall consist of such sums as the General Assembly may appropriate from the general revenue fund."

Section 7595. "There shall be a state educational equalization fund for the equalization of educational advantages throughout the state. \* \* \*

The state educational equalization fund shall be administered by the director of education, subject to the restrictions of law."

Section 7596-2. "The state director of education shall fix a tentative salary schedule \* \* \* for districts which participate in the state equalization fund which schedules at no time shall be in excess of the corresponding average schedules in those villages and rural districts within the state which do not participate in the state educational equalization fund. \* \* \*

The salary schedule for districts participating in the equalization fund

shall be uniform and shall be rigidly adhered to. Any district that exceeds the salary schedule from any public funds shall be disqualified for participation in the state educational equalization fund."

Section 7597. "After his orders have been complied with, the director of education shall ascertain the probable amount required to supplement the revenue of such district after subtracting the amount to be received from the county educational equalization fund in order to enable the board of education thereof to conduct the schools of the district, and he shall certify the same to the Auditor of State. He shall thereafter from time to time, within the amount so ascertained, and so long as his orders are complied with, draw his vouchers on the Auditor of State for such sums as may be actually needed by such district. The Auditor of State shall issue his warrants therefor payable out of the state equalization fund."

Section 7690. "Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries. \* \* \* "

Section 7690-1. "Each board of education shall fix the salaries of all teachers which may be increased but not diminished during the term for which the appointment is made. Teachers must be paid for all time lost when the schools in which they are employed are closed owing to an epidemic or other public calamity."

Section 7705. "The board of education of each village, and rural school district shall employ the teachers of the public schools of the district, for a term not longer than three school years, to begin within four months of the date of appointment. The local board shall employ no teacher for any school unless such teacher is nominated therefor by the county or assistant county superintendent except by a majority vote of its full membership. In all high schools and consolidated schools one of the teachers shall be designated by the board as principal and shall be the administrative head of such school."

The administration of the free public school system of the state is vested by statute in the State Department of Education and District Boards of Education, each with jurisdiction and with powers and duties defined by law.

It has been universally held by the courts, that boards, bureaus, commissions and administrative offices created by statute have only such authority as is expressly granted to them and such as is necessarily included within the express grants to carry the express grants into effect.

In so far as the authority of the Director of Education is extended to the distribution of the state educational equalization fund, the duties of that officer are purely administrative, and the legislature has specifically directed when and how weak school districts may be aided with funds from the state educational equalization fund. The director of education has no authority to extend such aid except in accordance with law.

By the express terms of Section 7595, *supra*, it is directed that the state educational equalization fund shall be administered by the Director of Education, *subject to the restrictions of law*. The restrictions of law referred to are contained in Section 7595-1, et seq., of the General Code, wherein are provided the conditions precedent which must be complied with before school districts are entitled to share in this fund. The director of education is without authority to prescribe any conditions other than those provided by these statutes for the disbursement of the state educational equaliza-

tion fund. If the district needing to share in the fund does not meet the conditions set forth in the statute it becomes the duty of the director of education to order the conditions to be met.

Section 7597, *supra*, provides that after these orders are complied with, the director of education shall ascertain the amount needed by the district and that when the amount is ascertained he shall from time to time, so long as his orders are complied with, provide for the payment to the district from the state educational equalization fund of such sums of money as are actually needed by the district. One of the conditions precedent, which must be complied with by a school district before the director of education is authorized to permit it to share in the state educational equalization fund, is set forth in Section 7596-2, *supra*, wherein it is provided that such district must comply with the uniform tentative salary schedule fixed by the director of education. This section not only provides that the salary schedule for districts participating in the equalization fund shall be uniform and shall be rigidly adhered to, but provides further:

"Any district that exceeds the salary schedule from any public funds shall be disqualified for participation in the state educational equalization fund."

The fact that the statutes set forth when and how school districts may participate in the state educational equalization fund precludes the making of any other or different requirements for such participation. The director of education has no authority to make any different arrangements with school districts than those set forth in the statutes, and when a district meets with the specific requirements and is in need of state aid, it is entitled to it as a matter of right. As stated by Judge Newcomer in his decision of the case of *State ex rel., Weaver vs. Board of Education of Northwest Township*, 26 O. N. P. (N. S.) at page 53, (Ohio Law Bulletin and Reporter, January 25, 1926):

"Where necessary to keep schools open, the granting of state aid should be demanded as a right by the local school board, not granted as a favor by the state director of education."

The corollary of this proposition might be stated in this wise: that when it is not necessary to keep the schools open, the granting of state aid can not be demanded as a right, nor can it be granted as a favor by the state director of education, nor in consideration of the district's doing something, such as the employment of certain teachers or the granting of certain privileges to neighboring educational institutions.

It will be noted that the authority to employ teachers, principals and superintendents and fix their salaries is vested in the board of education of the district in which such employes are to serve, after nomination under certain circumstances by the county or assistant county superintendent. See Sections 7690, 7690-1, and 7705, *supra*.

There are no provisions of law which authorize or permit the employment of teachers or superintendents by anyone other than the board of education as provided by law. Of course there is nothing to prevent anyone from making suggestions or recommendations as to whom the board should employ, and the board may if it sees fit act in accordance with such suggestions or recommendations. Neither is there anything to prevent the employment of teachers for part time. If the teacher is to be employed for part time only, that fact should be taken into consideration in fixing his salary. If he only devotes a part of his time to the service of the district employing him, in accordance with his contract, he may earn money in other employment during the time he is not required to devote to the fulfillment of his contract with the board of education employing him.

Districts desiring to participate in state aid would be required to fix the salary for part time teachers in accordance with the uniform tentative schedule fixed by the director of education for districts participating in the state educational equalization fund, which schedule is fixed on the basis of full time service.

County normal schools and state normal schools are, by virtue of Sections 7654-4 and 7654-7, General Code, authorized to co-operate with different boards of education in furtherance of teachers training, but these provisions of law are limited to the schools named and have no reference whatever to private institutions.

Coming now to a consideration of your specific questions in the light of the facts submitted by you in your inquiry, and the laws applicable thereto, I am of the opinion that:

First, school districts are not permitted to participate in the state educational equalization fund provided for by Section 7595, General Code, unless the revenue resources of the district, with the addition of receipts from any county educational equalization levy and after the exhaustion of all sources of revenue, are insufficient to enable the district to conduct its schools in accordance with law without such participation. The determination of that question is for the Director of Education, who shall conduct his investigation and base his determination thereof in accordance with Sections 7595-1, 7595-2, 7596, 7596-1, 7596-2 and 7597, General Code.

Second, there is no authority for the appointment of superintendents and teachers in the public schools by any one other than the board of education of the district for which schools the superintendents and teachers are employed.

Third, teachers and superintendents in the public schools may be employed for part time only, and if so employed, they may devote their remaining time to other activities.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1246.

SCHOOL EXAMINERS—NOT ENTITLED TO COMPENSATION FOR SERVICES AT SPECIAL EXAMINATIONS AFTER AUGUST 1ST ANY CALENDAR YEAR, EXCEPT AS PART OF THEIR COMPENSATION FOR REGULAR EXAMINATIONS—SECTION 7834, GENERAL CODE, DISCUSSED.

**SYLLABUS:**

*As provided by Section 7834, General Code, members of a county board of school examiners are not entitled to compensation for services rendered in connection with the holding of special examinations after September 1st of any calendar year, except as the holding of such examinations may affect the compensation they are to receive for the holding of the regular examination in the following April as provided by Section 7834, General Code.*

COLUMBUS, OHIO, November 9, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

"You are respectfully requested to render this department your written opinion upon the following: