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FOUNDATION PROGRAM—SCHOOL DISTRICTS—COMPUTATION CONTEMPLATED BY SECTION 4848-6 G. C.—ANY SCHOOL DISTRICT WHERE SUM, SEVENTY-FIVE PER CENT IS TO BE APPLIED IS TOTAL AMOUNT OF DISTRICT'S FOUNDATION PROGRAM—SECTION 4848-4 G.C.—COMPUTATION IS EXCLUSIVE OF ANY ALLOWANCE FOR TUITION OR TRANSPORTATION COSTS—PARAGRAPHS e, f OF SECTION 4848-4 G.C.

#### SYLLABUS

In making the computation contemplated by Section 4848-6, General Code, as to any school district, the sum to which seventy-five per cent is to be applied is the total amount of such district's foundation program, as set forth in Section 4848-4, General Code, exclusive of any allowance for transportation as provided in paragraph (e) thereof, and exclusive of any allowance for tuition costs as provided in paragraph (f) thereof.

Columbus, Ohio, June 4, 1952

Hon. J. L. MacDonald, Prosecuting Attorney  
Columbiana County, Lisbon, Ohio

Dear Sir:

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

"Your opinion is respectfully requested on the following question, in which nine school districts in Columbiana County, which do not have high schools, are vitally concerned.

"Sections 4848-1, 4848-3, 4848-4 and 4848-9 of the Ohio General Code provide for various amounts to be paid by the State of Ohio to the school districts, under what is known as the 'foundation program.' Section 4848-4, paragraph (f), as amended June 29, 1951, provides in part, as follows:

'For districts with pupils in approved attendance in the schools of other districts, an amount equal to the total of the approved budget of *tuition cost*, less an amount equivalent to a computed yield of one and one-half mills on the general tax duplicate of the districts, provided, however, the amount so deducted shall not exceed fifty per cent of the total approved budget of *tuition cost* .....

(Emphasis added.)

"Section 4848-6 provides in effect that no school district wherein the total of the salaries paid the teachers of the district, for any school year, is less than seventy-five per cent of the total amount of the foundation program of such district, *exclusive of transportation and tuition costs*, shall be entitled to participate in the distribution of funds authorized by Sections 4848-1, 4848-3 and 4848-9 of the General Code.

"The question presented is, how to treat the 1½ mills deducted from the general tax duplicate of the school district, as provided in Section 4848-4(f), in figuring the amount to be used to determine what must be paid in teachers' salaries, in order to make a school district eligible to participate in the foundation program. It is submitted that the philosophy behind the law providing for the 1½ mill deduction is to make school districts, without high schools, bear the tuition costs of sending their high school pupils to other districts, with which there is no quarrel.

"The State Department of Education has ruled that the amount represented by the  $1\frac{1}{2}$  mills is not a tuition cost, which precludes subtracting this amount from the amount the district receives under the foundation program, before figuring the 75% that must be paid in teachers' salaries, in order to be eligible to participate in the foundation program. Section 4848-6, providing for the exclusion of transportation and tuition costs was effective in 1947 and was unchanged by the last session of the legislature, but seems to have been changed by the ruling of the Department of Education.

"It is submitted that the school districts having high schools collect the various allowances, under the foundation program, for these high school pupils coming into their districts, and consequently must pay in teachers' salaries 75% of the amount received. To refuse to permit school districts to subtract the amount withheld from them to pay tuition for their high school pupils has the practical effect of forcing these districts to pay 75% of the  $1\frac{1}{2}$  mills in teachers' salaries, without receiving the  $1\frac{1}{2}$  mills.

"As a result of this ruling, our nine school districts, affected in this county will be forced to pay a bonus this year to their teachers of several hundred dollars each, amounting to several thousands of dollars per district. All school districts in the county are already meeting the minimum salary schedule for teachers, provided for by Section 4848-4(a), but they simply do not have the money to meet the 75% requirement, as interpreted by the Department of Education.

"This question is of state wide importance to school districts, and your opinion at your earliest convenience is respectfully solicited."

The answer to your question turns upon the construction of Sections 4848-4 and 4848-6, General Code. These sections form a part of what is known as the public school foundation program act, comprising Sections 4848 to 4848-10, inclusive. The purpose of this act, as expressed in Section 4848 is for the "support and maintenance of the public school system, and for the equalization of educational advantages throughout the state." The effect of the act in general, is to provide for the payment out of the state treasury of certain sums to the several school districts of the State.

Section 4848-4, General Code, in so far as pertinent, reads as follows:

"The total amount of a district's foundation program shall include the following amounts:

“(a) An amount equal to one hundred twenty-five dollars for each pupil in average daily membership in grades one to eight inclusive.

“(b) An amount equal to sixty-two dollars and fifty cents for each pupil five years of age or over in average daily membership in kindergarten classes.

“(c) An amount equal to one hundred fifty dollars for each pupil in average daily membership grades nine to twelve inclusive.

“(d) For each elementary school and (d) each high school having an average daily membership of less than one hundred eighty pupils, such amount as will be sufficient to meet the increased cost per pupil due to small classes, to be determined as follows:

\* \* \*

“(e) For districts in which transportation of pupils is necessary, an amount approved by the superintendent of public instruction for this purpose.

\* \* \*

“(f) For districts with pupils in approved attendance in the schools of other districts, an amount equal to the total of the approved budget of tuition cost, *less an amount equivalent to a computed yield of one and one-half mills on the general tax duplicate of the district, provided, however, the amount so deducted shall not exceed fifty per cent of the total approved budget of tuition cost*, which shall be in addition to the amounts specified in the preceding paragraphs of this section, \* \* \*”

(Emphasis added.)

This section was amended by the 99th General Assembly in Amended Substitute House Bill No. 48. The only change effected by the amendments, which has any possible bearing on your question, was the insertion in paragraph (f) of the words which I have emphasized.

Turning to Section 4848-6, General Code, I quote the following, which is directly pertinent to your question:

“A school district, the board of education of which has not conformed with all the requirements of law and the rules and regulations pursuant thereto, shall not participate in the distribution of funds authorized by the provisions of sections 4848-1, 4848-3 and 4848-9 of the General Code, except for good and sufficient reason established to the satisfaction of the superintendent of public instruction and the state controlling board; provided

further, that no school district wherein the total of the salaries paid the teachers of the district for any school year is less than seventy-five per cent of *the total amount of the foundation program* of such district, *exclusive of transportation and tuition costs*, for the two half fiscal years which compose such school year, shall be entitled to participate in the distribution of funds authorized by sections 4848-1, 4848-3 and 4848-9 of the General Code. \* \* \*  
(Emphasis added.)

The reference in the section just quoted, to Sections 4848-1, 4848-3 and 4848-9, General Code, necessitates a brief discussion of those sections.

Section 4848-1, General Code, provides for a flat payment to each school district in each calendar year, of a certain amount for each pupil in average daily membership. Section 4848-3, General Code, grants to school districts which have a tax levy for current school operation of at least six mills for the calendar years 1951 and 1952, and eight mills for 1953 and thereafter, certain additional aid. Section 4848-9, General Code, refers to re-calculation by the superintendent of public instruction of the amount due any school district, when it appears that the average daily membership has changed to such an extent as to render the original calculation either excessive or inadequate.

The effect of Section 4848-6, General Code, is a declaration that any district which fails to measure up to the stated standard in the payment of its teachers, loses its right to participate in the benefits of the foundation program act. It therefore becomes necessary to determine what is the basis on which the seventy-five per cent is to be figured.

Section 4848-4, General Code, undertakes to determine the "total amount of a district's foundation program." This total amount is comprised in paragraphs (a) to (f) inclusive. It will be noted that paragraphs (a), (b), (c) and (d) form what may be styled the basic total of the district's foundation program. Paragraph (e) provides in addition for an allowance for transportation where necessary, and paragraph (f) provides for an additional allowance for tuition costs for a district which has pupils in approved attendance in the schools of other districts, and prescribes the method for determining that amount.

Section 4848-6, General Code, makes it very clear that only the items covered in paragraphs (a), (b), (c) and (d) in Section 4848-4, supra, are to be considered in determining the total amount upon which the 75%

is to be calculated; and that the amounts that may be allowed under paragraph (e) relative to transportation, and under paragraph (f), relative to tuition costs, are to be *excluded*, and therefore do not enter into the problem in any respect. If, for example, the total amount of the foundation program of the district, granted under paragraphs (a), (b), (c) and (d) should be \$60,000, that would be the sum upon which the 75% is to be calculated, regardless of the amount of additional allowances that may be made under paragraphs (e) and (f), and it would make no difference, therefore, in the computation, whether the tuition allowance under paragraph (f) was \$5,000 or \$25,000 or that there was no tuition allowance.

It should be noted that the provisions of Section 4848-6, *supra*, remain as they were when that section was enacted, in 1947. However, Section 4848-4, *supra*, was amended effective June 29, 1951. The effect of this amendment has nothing to do with the calculation required by Section 4848-6, General Code. All that it did accomplish was to shift the burden of tuition costs, to a certain extent, from the shoulders of the State to the local district. Nothing in paragraph (f) of Section 4848-4, General Code, either before or after the amendment, has any possible bearing on the basis of the 75% computation for the obvious reason that all the matters involved in paragraph (f) as well as paragraph (e) are *expressly excluded* from the computation.

It appears to me that your entire letter and question are based on a misconception of the provisions of Section 4848-6, General Code. Your letter suggests that from the total amount of a district's foundation program exclusive of the amount allowable for tuition there shall be *subtracted* an amount equal to that part of the total budget of tuition cost that the district must bear as a result of the 1951 amendment to paragraph (f). Plainly, the statute does not contemplate any such process of subtraction. Rather, it is plain that in making the 75% calculation, we are to apply it to a sum arrived at by excluding all tuition costs.

Accordingly, I do not see any purpose in giving consideration to the question which you suggest, as to whether or not the 1½ mills referred to in paragraph (f) is or is not a tuition cost. The formula for calculating the total budget of tuition cost is found in Section 4848-5, General Code. The formula for determining the portion of that tuition cost which the

state will contribute as a part of the total foundation program of the district, is clearly set forth in Section 4848-4, General Code, paragraph (f), supra, and it has no relation to the problem which you present.

Accordingly, it is my opinion and you are advised that in making the computation contemplated by Section 4848-6, General Code, as to any school district, the sum to which seventy-five per cent is to be applied is the total amount of such district's foundation program, as set forth in Section 4848-4, General Code, exclusive of any allowance for transportation as provided in paragraph (e) thereof, and exclusive of any allowance for tuition costs as provided in paragraph (f) thereof.

Respectfully,

C. WILLIAM O'NEILL

Attorney General