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FUNDS TO BE DISTRIBUTED TO SEVERAL SCHOOL DISTRICTS IN THIRD QUARTER, CALENDAR YEAR 1951—SHOULD BE CALCULATED ACCORDING TO FORMULA PRESCRIBED BY SECTION 4848-1 ET SEQ., G. C.—AM. SUB. H. B 48, SECTION 2, 99 G. A.

SYLLABUS:

Under the provisions of Section 2, Amended Substitute House Bill No. 48, 99th General Assembly, the amount of the funds to be distributed to the several school districts in the third quarter of the calendar year 1951, under the provisions of Section 4848-1 et seq., General Code, should be calculated in accordance with the formula prescribed by these sections as amended effective June 29, 1951.

Columbus, Ohio, October 3, 1951

Hon. John Rossetti, Prosecuting Attorney
Stark County, Canton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“In Re: Amended Sub. House Bill No. 48.

“We are writing you for your opinion as to a particular phase of the above legislation.

“We seek an opinion under paragraph F of the bill which went into effect June 29, 1951. Our question is, under such paragraph should the board of education have to pay the tuition mentioned for April and May, 1951? It appears here that our board of education is being charged with those two months which were prior to the effective date of the statute and we are of the opinion that the statute cannot be retroactive in this respect, and that the tuition should be paid only after the effective date of Amended Sub. House Bill No. 48.”

The question you present is concerned with the inclusion of a new deduction in the formula by which a particular school “district’s foundation program” is computed. This deduction has been provided in Section 4848-4, General Code, which, as amended effective June 29, 1951, reads in part as follows:

“The total amount of a district’s foundation program shall include the following amounts: * * *

“(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.)

The underscored language in the quotation above was added to this section by the June 29, 1951, amendment.

Tuition arising on account of attendance for the months of April and May, 1951, will constitute one factor in the computation of the amount of additional state aid to be paid to a particular school district in the third quarter of 1951, since under the provisions of Section 4848-8, General Code, the state aid payments are required to be made quarterly and the amounts of such payments are to be calculated by the superintendent of public instruction “on or prior to the last day of February, May, August and November of each year.”

In this situation your specific question is whether, in the August, 1951, calculation, the formula should be that provided in the June 29, 1951, amendment, or that which was in effect during the months of April and May, 1951.

That the new formula is required to apply in the August, 1951, calculation is quite clear from the provisions of Section 2 of Amended Substitute House Bill No. 48, effective June 29, 1951. This section reads in part as follows:

“It shall be the intent and purpose of this act that the initial distribution provided for under sections 4848-1 and 4848-3 of the General Code as herein amended, shall be as of the third quarter of the calendar year 1951 as defined in section 4848-8 of the General Code, and the state superintendent of public instruction with the approval of the state controlling board shall, immediately after the passage of this act, calculate the apportionment for each school district under section 4848-7 of the General Code in order to conform the third and fourth quarterly distributions for the calendar year 1951 with the provisions of this act.”

Here the intent of the General Assembly is so clearly stated that it cannot be ignored in any process of construction or interpretation. Such

intent can be avoided only upon the theory that the statute as written is in conflict with the constitution. In your inquiry you have specifically inquired whether the statute in question is not retroactive in effect, thus raising the question of a possible conflict with the provisions of Article II, Section 28, Ohio Constitution. Because the office of attorney general is not a judicial one, I do not conceive it to be within my province ordinarily to consider the possible unconstitutionality of statutes. In the instant case, however, because of your specific question, I am impelled to point out my reasons for concluding that the statute here involved presents no special constitutional difficulty.

Any notion that this statute is retroactive in its effect must necessarily be based on the theory that its effect is to disturb accrued substantive rights. *State ex rel. Slaughter v. Industrial Commission*, 132 Ohio St., 537. In order to ascertain whether any substantive right accrued to the school district in this case which was affected by the June, 1951, amendment, it becomes appropriate to consider the position of the state with relation to the existing educational system and with relation to school districts.

Under the provisions of Sections 2 and 3, Article VI, Ohio Constitution, the public school system in Ohio is a purely state function with respect to which the enactments of the General Assembly are controlling. *East Cleveland v. Board of Education*, 112 Ohio St., 607. A school district is a creature of legislative enactment organized as a mere agency of the state in maintaining its public schools. 36 Ohio Jurisprudence, 85, 86, Section 46.

In this state of the law, therefore, it is clear that the effect of the amended statute here is to change the proportion in which the expense of school operations is to be met by each of several funds. In this choice the enactments of the General Assembly are fully controlling and it is obvious that a substantive right cannot accrue, with respect to such funds, in favor of one arm of the state against another.

For these reasons, in specific answer to your inquiry, it is my opinion that under the provisions of Section 2, Amended Substitute House Bill No. 48, 99th General Assembly, the amount of the funds to be distributed to the several school districts in the third quarter of the calendar year 1951, under the provisions of Section 4848-1 et seq., General Code, should

be calculated in accordance with the formula prescribed by these sections as amended effective June 29, 1951.

Respectfully,

C. WILLIAM O'NEILL
Attorney General