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TAXATION: Swamp Tax.

SCHOOLS: Intermediate School Districts.

Intermediate school districts are entitled to receive a pro rata share of the swamp tax.

Opinion No. 4852

January 16, 1975.

Honorable Joseph S. Mack
State Senator—38th District
The Senate
Lansing, MI

You have requested an opinion on whether intermediate school districts are entitled to a pro rata share in the proceeds of the so-called swamp tax subsequent to the amendment provided by 1973 PA 151; MCLA 211.581 et seq; MSA 7.871 et seq.

Prior to the 1973 amendment, the tax paid by the state on state tax homesteads or swamp lands of 20 cents per acre was shared by township and school districts in proportion to their respective tax levies. Specifically, § 1 of 1917 PA 116; MCLA 211.581; MSA 7.871 provided:

“* * * The amount shall be further prorated in each township and school district, according to the amount of township and school taxes levied in such township and school district during the preceding year not including, however, taxes levied for state and county purposes.
* * *”

1973 PA 151, *supra*, while increasing the swamp tax to 50 cents per acre, provided for proration as follows:

“* * * 30%, 15 cents per acre, to county general fund; 30%, 15 cents per acre, to township general fund; 40%, 20 cents per acre, to school operating fund. * * *”

The specific question is whether the category “school operating fund” can be interpreted to include a distribution to the intermediate school district. A review of the school code of 1955, 1955 PA 269; MCLA 340.1 et seq; MSA 15.3001 et seq, the school district equalization act, 1972 PA 258; MCLA 388.1101 et seq; MSA 15.1919 et seq, and other school related acts reveals no specific mention of a “school operating fund.” The phrase school operating fund is not defined by statute; it has no apparent specific meaning.

On the other hand, in chapter 8 of the school code of 1955, pertaining to intermediate school districts, I find explicit provisions that budgeting and tax allocation procedures are to be the same as for other school districts. Section 298a of the school code of 1955, MCLA 340.298a; MSA 15.3298(1) provides that the intermediate school district board of education shall:

“Prepare an annual general budget which shall be in the same form as that provided for other school districts. * * *”

Similarly, the county clerk

"* * * shall deliver it (budget) to the tax allocation board in the same manner as other school district budgets are handled. * * *"

The tax allocation board likewise must treat the intermediate school budgets as other school district budgets and the city and township tax collecting officials must collect intermediate school district taxes as other taxes are collected.

Thus, while the statute provides no guidance as to the meaning of the phrase "school operating fund," reference to applicable statutes involving schools and education indicates that the budget and tax levying procedures of intermediate school districts are closely related to regular school districts. Intermediate school districts have operating funds as do regular school districts. Had the legislature intended by 1973 PA 151 to change the well established procedure whereby intermediate school districts share with regular school districts in swamp tax proceeds, it would have chosen a more direct method. Therefore, it is apparent the expression "school operating fund" embraces intermediate school districts and said districts are participants in the swamp tax.

The question of how the swamp tax is to be allocated between the intermediate and regular school districts remains for resolution. Prior to the amendment authorized by 1973 PA 151, the intermediate, regular school districts, and the townships shared in the swamp tax in relation to the amount of their tax levies. Inasmuch as I feel the 1973 amendment did not disturb the prior sharing in the tax by the intermediate school districts, an equitable sharing will be achieved if the intermediate and regular school districts share the 20 cents per acre in proportion to their total operating millage.

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