

course, he need not advertise in newspapers published outside of the county seat.

In conclusion, it should be stated that the discretion reposed by the statute in the officials enumerated is not to be abused. Courts have frequently and unanimously held that where the legislature has conferred discretion on public officers, such discretionary authority is to be exercised within reasonable bounds, and where circumstances indicate the discretion has been abused, such a remedy as injunction will lie in the courts to prevent such abuse of discretion. The statute under construction herein, as shown by the Supreme Court case cited, does not undertake to limit the number of publications that may be made of the advertisement, nor does such statute place any limits on the size or length of the subject-matter of the advertisement. However, the number of publications, the size or length of the subject-matter of the advertisement must not be unreasonable; otherwise, a court might be inclined to grant injunctive relief on the ground of abuse of discretion.

In view of the foregoing, and in specific answer to your question, I am of the opinion that a county treasurer has authority, under Section 6252, General Code, to enter into a contract to publish a display advertisement explaining the three different plans of payment of real estate taxes and requesting the payment of those real estate taxes which are delinquent, providing such advertisement is published in two newspapers of opposite politics in the county, at the county seat, if there are such.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5210.

SUPERINTENDENT OF SCHOOLS—EXEMPTED VILLAGE
SCHOOL DISTRICT—TERM OF CONTRACT—MUST COM-
MENCE DURING TERM OF PRESENT MEMBERS OF
BOARD.

SYLLABUS:

1. *A superintendent of schools in an exempted village school district should be employed.*
2. *The length of term for which a superintendent of schools may be employed in an exempted village school district is left by the law to the discretion of the board of education of the district, which discretion of course must not be abused.*
3. *The term for which a superintendent of schools in an exempted village school district may be employed may be for any reasonable length:*

of time under all the circumstances if made in good faith and without fraud or collusion.

4. There is no limitation as to the time when a contract for the employment of a superintendent of schools in exempted village school districts may be entered into other than that it must be entered into at such time as to go into full effect during the term of all the members of the board of education which makes the contract.

5. A board of education in an exempted village school district is without power to enter into a contract for the employment of a superintendent of schools for the district, which contract does not go into full effect until after the expiration of the term of a part of the members of the board.

6. The powers and duties of a superintendent of schools in an exempted village school district, in so far as they are fixed by the terms of Section 7703, General Code, are identical with those of a superintendent of schools in a city school district.

COLUMBUS, OHIO, MARCH 3, 1936.

HON. MELTON BOYD, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR: I have your inquiry concerning the employment of a superintendent of schools in exempted village school districts, which reads as follows:

"A request is made of me to procure your opinion as to the earliest date when a board of education of an Exempted Village School District may employ a superintendent of public schools of the district.

May I inquire first, under what authority and for what period of time may such board employ such official?

If a superintendent cannot be employed, what provision can such board make for the supervision of the public schools of its district?"

There is no express statutory authority for the employment of superintendents of schools in exempted village school districts such as there is for the employment of superintendents in city school districts in Section 7702, General Code.

Section 7690, General Code, which formerly was Section 4517, Revised Statutes, contains provisions authorizing boards of education to employ superintendents in city, rural and village school districts. This authority, so far as rural and village school districts which are a part of a county school system are concerned, was repealed or at least limited by

implication upon the enactment in 1914, of the law creating county school districts and providing for the supervision of the schools in such districts by county superintendents of schools. (104 O. L., 135). See Ohio Jurisprudence, Vol. 36, page 164; Lee v. School District, 29 O. N. P. (N. S.), 155. At that time, and not until 1921, did "exempted village school districts" exist as a separate classification of school districts, although provision has been made a number of years earlier by Sections 4688 and 4688-1, General Code, for the exempting of certain village school districts from county supervision. No express provision had ever been made for the employment of superintendents in such districts. Inasmuch, however, as such districts were to be exempted from county supervision it was necessary that they be locally supervised, and the authority extended by Section 7690, General Code, had always been regarded as sufficient authority to employ such superintendents. In fact, it was the only express authority for doing so.

In 1921, Section 4679, General Code, which had formerly classified school districts as city, village, rural and county districts, was amended, and "exempted village school districts" were added at that time as a specific class of districts.

In the same act of the legislature in which Section 4679, General Code, was amended, as noted above, Section 7703, General Code, was amended. (109 O. L., 533.) This statute had to do formerly with the powers and duties of superintendents in city school districts. As amended, it contained this provision:

"But any city or exempted village board of education, upon a three-fourths vote of its full membership, may re-employ any teacher whom the superintendent refuses to appoint."

It is clear that by amending this statute as it did, the legislature recognized the existence of superintendents of schools in exempted village school districts and recognized by indirection at least, that authority existed for their appointment. It is also clear that the legislature meant the expression "such superintendent," as used in the statute as amended, to apply to a superintendent in an exempted village school district as well as to a superintendent in a city school district. This intention might have been more definitely expressed if Section 7702, General Code, which related specifically to the employment of superintendents in city school districts had been amended at that time to include superintendents in exempted village districts. This was not done, however, and it probably was thought to be unnecessary.

At the same session of the legislature Section 7690, General Code, was also amended in some respects (109 O. L., 377), and here again express provision might have been made for the appointment of superin-

tendents in exempted village districts or at least some mention might have been made of them, but it was not done, and apparently the legislature did not think it was necessary. Prior to that time a school district that was exempted from county supervision was none the less a village school district. It was exempted from county supervision only because of action taken by its board of education upon its attaining the required population as provided by Sections 4688 or 4688-1, General Code. And that is still true except that upon becoming exempted after the amendment of Section 4679, General Code, as noted above, it acquired the name "exempted village school district." After all, it must be a village district else it cannot become an exempted village district. At any rate, the legislature did not see fit to expressly provide for the appointment of superintendents in such districts as it did with respect to city districts although it recognized that superintendents were to be appointed in those districts and that their powers and duties as such superintendents are identical with those of superintendents in city school districts. Further recognition was given by the same legislature to the fact that superintendents of schools were to be employed in exempted village school districts by the enactment of Section 7838-1, General Code, in the same act in which Sections 4679 and 7703, General Code, were amended as noted above. (109 O. L., 554.)

Said Section 7838-1, General Code, as then enacted, created a board of school examiners in exempted village school districts and provided among other things that the superintendent of schools in the district should be a member of such board.

Inasmuch as no provision is made by statute as to the length of time for which a superintendent in an exempted village district may be appointed or when he may be appointed, either by express statutory provision with respect thereto as is contained in Sections 7691 and 7705, General Code, with respect to the employment of teachers or by general provisions in Section 7690, General Code, it follows that there is no statutory limitation either as to when such appointments may be made or for how long a term they may be made.

It is a general rule of law applied in most jurisdictions that when a public board appoints an officer or contracts for services and the duties of the officer or the services to be rendered are duties delegated to the supervision of the board such appointments or contracts for a period beyond the life of the board are not valid. *Corpus Juris.*, Vol. 46, page 1032; *A. L. R.*, Vol. 70, page 799; *Commissioners v. Ranck*, 9 O. C. C., 301. However, this rule is not applied to school boards with respect to the employment of superintendents and teachers. It is generally held that a school board may contract with a superintendent or teacher for a period extending beyond the term of some or all the members of the board providing the contract is made in good faith, for a reasonable length of time and without fraud or collusion. *A. L. R.*, Vol. 70, page 802; 29

L. R. A. (N. S.), 657, note; C. J., Vol. 56, page 386; R. C. L., Vol. 24, page 579.

It has been generally held in this state, although there is respectable authority in other jurisdictions to the contrary that school boards may not lawfully forestall the rights and prerogatives of succeeding boards by entering into contracts of any kind which contracts do not go into full effect until after the expiration of the terms of office of some of the members of the board. A. L. R., Vol. 70, page 805; Opinions of the Attorney General for 1934, page 429.

As the statutes make no provision with respect thereto, it is impossible to state as a matter of law, the length of time for which a superintendent of schools in an exempted village school district may be employed. As noted above, the law in the absence of statute, recognizes the validity of contracts of that kind made for a reasonable term under all the circumstances if made in good faith and without fraud or collusion. A hiring for an unusual time is strong evidence of fraud or collusion which if present would invalidate the contract. R. C. L., Vol. 24, page 579. As superintendents in city districts may be employed for as long as five years by authority of Section 7702, General Code, and there is a distinct analogy between the two positions it is likely that a contract employing a superintendent of schools in an exempted village school district for as long a term as five years would be upheld unless it were shown that it was not made in good faith or was tainted with fraud or collusion.

I am therefore of the opinion that :

1. A superintendent of schools in an exempted village school district should be employed.

2. The length of term for which a superintendent of schools may be employed in an exempted village school district is left by the law to the discretion of the board of education of the district, which discretion of course must not be abused.

3. The term for which a superintendent of schools in an exempted village school district may be employed may be for any reasonable length of time under all the circumstances if made in good faith and without fraud or collusion.

4. There is no limitation as to the time when a contract for the employment of a superintendent of schools in exempted village school districts may be entered into other than that it must be entered into at such time as to go into full effect during the term of all the members of the board of education which makes the contract.

5. A board of education in an exempted village school district is without power to enter into a contract for the employment of a superintendent of schools for the district, which contract does not go into

full effect until after the expiration of the term of a part of the members of the board.

6. The powers and duties of a superintendent of schools in an exempted village school district, in so far as they are fixed by the terms of Section 7703, General Code, are identical with those of a superintendent of schools in a city school district.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5211.

APPROVAL — PROPOSED AGREEMENT WITH NEW YORK
CENTRAL RAILROAD COMPANY, COVERING RECON-
STRUCTION OF CROSSING IN CLEVELAND, CUYAHOGA
COUNTY, OHIO.

COLUMBUS, OHIO, March 3, 1936.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my consideration a proposed agreement by and between the Director of Highways, the County of Cuyahoga and the New York Central Railroad Company, covering the reconstruction of the existing separated crossing over the tracks of said company on Triskett Road in Cleveland, Cuyahoga County, Ohio.

After examination, it is my opinion that said proposed agreement is in proper legal form and when the same is properly executed it will constitute a valid and binding contract.

Said proposed contract is being returned herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.