

upon the tax duplicate of the district for the preceding year. The transcript discloses that the tax duplicate of New Plymouth special school district is \$207,250. Therefore, the board of education is authorized to issue bonds in any one year up to \$414.50. It is clear therefore that the bonds under consideration, even though the board of education has adopted a resolution authorizing their issuance, which does not appear from the transcript, are in excess of the amount which the board of education can lawfully issue in any one year and that they are therefore not valid and binding obligations of the school district.

I therefore advise the industrial commission not to accept the same.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2724.

APPROVAL, BONDS OF SULPHUR SPRINGS CONSOLIDATED SCHOOL DISTRICT, CRAWFORD COUNTY, OHIO, IN AMOUNT OF \$90,000.

COLUMBUS, OHIO, December 21, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2725.

STATE LIBRARY BOARD—NO AUTHORITY TO FIX SALARY OF STATE LIBRARIAN—LEGISLATURE DID FIX AND PROVIDE SAID SALARY IN APPROPRIATION BILL (109 O. L. 467).

(1) *The state library board has no authority to fix the salary of the state librarian and he cannot legally receive any salary except as provided by the legislature.*

(2) *In the existing permanent statutes the legislature failed to provide a salary for the state librarian. However, in the appropriation bill for the biennial period beginning July 1, 1921 (109 O. L. 467), the legislature did fix and provide for said salary for the period of two years at three thousand dollars per year, and there is no legal authority for the payment of any greater amount.*

COLUMBUS, OHIO, December 21, 1921.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction as Director of Education, Columbus, Ohio.*

DEAR SIR:—In your recent communication you request my opinion as follows:

“Section 2250, prior to its amendment by the enactment of the Administrative Code, H. B. 249, fixed the salary of the state librarian at \$3,000. In amended section 2250 of the Administrative Code no provision is made for the salary of the state librarian, nor is any provision

made in sections 154-51 to 154-54, inclusive, which provide for the creation of a state library board, appointment of a state librarian, etc. The legislature appropriated \$3,000 a year for the state librarian for the biennial period from July 1, 1921, to July 1, 1923.

Has the present state library board any right or authority, under present existing statutes, to pay a newly appointed state librarian more than \$3,000?"

As suggested in your letter, section 2250 G. C. formerly fixed the salary of the state librarian at three thousand dollars per annum, and as said section was amended in the Administrative Code no salary was provided for said librarian. It will further be observed that section 154-26 of the Administrative Code abolished "the state board of library commissioners" and "the librarian appointed by the state board of library commissioners." Therefore, the new legislation must furnish all of the existing authority relative to the functions and rights of the librarian.

Section 154-51 G. C. creates a "state library board" in the department of education, to be composed of the director of education, as chairman, and four other members, appointed by the governor.

Section 154-52 G. C. provides:

"The state library board shall appoint and may remove a state librarian, who shall, under the direction and supervision of the board, be the head of the library service of the state, with power to appoint and remove all assistants and heads of departments in the state library service."

Section 154-53 G. C. authorizes the state library board to make rules and regulations for the government of the state library, etc.

Section 154-54 G. C. provides:

"The state librarian shall be secretary of the state library board. Under the direction and supervision of the state library board and subject to the rules and regulations established by it, the state librarian shall, through such departments as may be created by the board, exercise all powers and perform all duties vested by law in the state board of library commissioners, the librarian heretofore appointed by the state board of library commissioners, the library organizer heretofore appointed by the state board of library commissioners and the legislative reference department and the director thereof."

Considering the independent statutory duties imposed by existing law upon the state librarian, which involve the exercise of a part of the sovereignty of the state, it seems clear that the state librarian is an "officer" as contradistinguished from an "employee." In view of this determination it is elemental that the librarian cannot receive any salary excepting that provided by the legislature. The statutes do not authorize the library board to fix such salary; in fact, no provision has been found in the permanent statutes as they now exist for any salary whatever. However, as you indicate, the legislature provided in the appropriation bill covering the years 1921 and 1922 for the salary of said officer at three thousand dollars per annum, said provision appearing in 109 O. L., page 467.

An appropriation which is within the proper sphere is law. See opinion

found at page 513, Opinions of the Attorney-General, 1919. This opinion held that where the permanent statutes provided a certain salary and the appropriation bill provided a greater salary, the appropriation bill did not by implication repeal the provisions of the permanent statute. However, where the duties have been provided by statute, as in the case before us, and followed by such a provision of the appropriation bill, it seems clear that the legislature provided and fixed the salary of said librarian for the biennial period, as above stated. If it were not for this provision, it is believed there would be no authority to pay said salary at all.

In specific reply to your inquiry, it is the opinion of this department that:

(1) The state library board has no authority to fix the salary of the state librarian and he cannot legally receive any salary except as provided by the legislature.

(2) In the existing permanent statutes the legislature failed to provide a salary for the state librarian. However, in the appropriation bill for the biennial period beginning July 1, 1921 (109 O. L. 467), the legislature did fix and provide for said salary for the period of two years at three thousand dollars per year, and there is no legal authority for the payment of any greater amount.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2726.

MINES AND MINING—USE OF ALTERNATING CURRENT AT MINES—
HOW LIMITED—PUMPS AND OTHER MINING MACHINERY USED
IN AND ABOUT WORKING PLACES OF MINE REQUIRED TO BE
OPERATED BY DIRECT CURRENT.

1. *Under the provisions of section 948 G. C. the use of alternating current at mines equipped with electric power, is limited to the purpose of converting alternating current to direct current and such use is subject to the approval of the chief and district mine inspectors.*

2. *Pumps and other mining machinery used in and about the working places of the mine, may not be operated by alternating current, but are required by the provisions of section 948 G. C. to be operated by direct current, not exceeding in pressure or potential three hundred and twenty-five volts as shown at the nearest switchboard.*

COLUMBUS, OHIO, December 21, 1921.

Department of Industrial Relations, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date has been received, reading as follows:

“I am transmitting herewith a communication directed to me under date of November 9th by Mr. William Robinett, chief of the division of mines, in which he requests that the subject matter embodied therein be referred to the Attorney-General for an opinion.

I may add that I believe the view taken by the chief of the division of mines, relative to the use of alternating currents in mines is the correct one. I feel that you should have my judgment in the matter,