

1. A board of education is not authorized by law to pay the expense of furnishing basket-ball uniforms for a high school basket-ball team.

2. A board of education is not authorized under the law to pay the expense of transporting a basket-ball team to a distant point for the purpose of holding a basket-ball contest between that team and another high school team.

Respectfully,

JOHN W. BRICKER,

Attorney General.

636.

CLERK OF BOARD OF EDUCATION—ENTITLED TO FIXED REMUNERATION FOR APPOINTED TERM ALTHOUGH WITHOUT DUTIES BECAUSE BOARD OF EDUCATION SUSPENDED — DUTIES OF CLERK DISCUSSED.

SYLLABUS:

A clerk of a board of education appointed for a definite term, who lawfully occupies the position and holds himself in readiness to perform the duties incident thereto is entitled to the remuneration fixed by the board for the position during the full term for which he was appointed, even though all the members of said board of education may have been suspended for a portion of that term during which time the board did not function and the clerk had no duties to perform.

COLUMBUS, OHIO, April 18, 1933.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion, which reads as follows:

“Mr. W. F. is the Clerk of the Board of Education of Russellville-Jefferson School District, also a member of the Board of said District. He was duly appointed and qualified. Upon petition of qualified electors of said district duly filed in accordance with law, the said Board of Education of Russellville-Jefferson School District was suspended by the Common Pleas Court of Brown County, Ohio. Thereupon, under the law the county board of education assumed their duties. However, there was no order of court suspending W. F. as said Clerk but since there is no Board functioning he has no duties to perform as said clerk.

I wish to have answered the question of the county superintendent as to whether his salary for the period during which the Board of Education of Russellville-Jefferson School District is suspended should be paid by the County Board of Education or whether his employment as said Clerk lapses during such time as the board from whom he holds the appointment is suspended.”

By the terms of Section 4747, General Code, each board of education is directed to organize on the first Monday in January after the election of the members of said board, by the election of a president, vice president and clerk

who may or may not be a member of the board. The president and vice president so elected are to serve for a period of one year, "and the clerk for a term not to exceed two years."

The clerk of the board of education is required by the terms of Section 4774, General Code, to give a bond conditioned upon the faithful performance of his official duties. As such clerk, he should keep the minutes of the meetings of the board and he is expressly charged by law with the duty of keeping the accounts and records of the financial transactions of the board and of countersigning warrants. In some respects and under some circumstances he is charged with the duties and obligations of a treasurer. (Sections 4768, 4769, 4770, 4777, 4778, 4779, 4780, 4782 and 4783, General Code.) In the operation of the Uniform Bond Act (Sections 2293-1 et seq. General Code) and the Uniform Tax Levy Law, commonly known as the Budget Law (Sections 5625-1, et seq. General Code) the clerk of a board of education is the fiscal officer of the school district. See Sections 2293-1 and 5625-1, General Code. He is charged with the duties and obligations of such fiscal officer in the issuance of bonds and the making of tax levies as provided by these acts. It is apparent that a clerk of a board of education holds a position separate and distinct from membership on the board even though he may be one and the same person and under such circumstances his suspension as a member of the board does not serve to suspend him as clerk. Whether that position rises to the dignity of a public office is questionable and for the purposes of this opinion need not be decided. It at least is a public position or employment the occupant of which is appointed for a definite term, is required to give a bond as such occupant and is charged by law with the performance of distinct onerous duties for and on behalf of the public, to which there attaches definite remuneration which the board is directed to fix by the terms of Section 4781, General Code. The mere fact that a member of the board is the clerk thereof makes no difference so far as the obligations are concerned and, in my opinion, he has the same right of compensation as would a clerk who was not a member of the board.

It is a familiar principle of law that a person rightfully holding a public office is entitled to the compensation attached thereto. This right does not rest on contract. The compensation provided by law for the office is said to be an incident of the office, and the occupant of the office, so long as he rightfully holds the office is entitled to the compensation provided by law for the office regardless of whether or not he has any duties to perform as such officer. If a clerk of a board of education is to be regarded as a public officer he is clearly entitled to the salary attached to the office for the full term for which he is elected or appointed thereto, unless he is lawfully removed or the office is abolished.

If a clerk of a board of education is not a public officer his right to remuneration is based on contract, and until that contract is abrogated for some cause or other, and so long as he holds himself in readiness to perform the duties and obligations of the contract he is entitled to the remuneration provided by the terms of the contract, even though the other contracting party may not require of him the service which he has contracted to perform or may not be in a position to, or be able to require the performance of those services. Section 7699, General Code, reads as follows:

"Upon the appointment of any person to any position under the control of the board of education, the clerk promptly must notify such person verbally or in writing of his appointment, the conditions thereof,

and request and secure from him within a reasonable time to be determined by the board, his acceptance or rejection of such appointment. An acceptance of it within the time thus determined shall constitute a contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause."

The situation described in your letter is unique, to say the least. I know of no instance in this state or in any other state where a simliar question has arisen. In fact, I know of no instance where an entire board of education has been suspended. Clearly, under those circumstances, the clerk of the board whose members had all been suspended, would have very little, if anything to do as such clerk. Inasmuch as the clerk is not suspended he presumably holds himself in readiness to perform the duties attached to his position during the term for which he was appointed and I am of the opinion that he is entitled to his regular salary as fixed by the board for his full term, even though the board itself does not function for a portion of that term and he may not have any duties to perform.

Respectfully,

JOHN W. BRICKER,
Attorney General.

637.

APPROVAL, NOTES OR BETHESDA VILLAGE SCHOOL DISTRICT, BELMONT COUNTY, OHIO—\$2,172.00.

COLUMBUS, OHIO, April 18, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

638.

APPROVAL, NOTES OF NAPOLEON EXEMPTED VILLAGE SCHOOL DISTRICT, HENRY COUNTY, OHIO—\$8,000.00.

COLUMBUS, OHIO, April 18, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

639.

APPROVAL, NOTES OF BRADFORD VILLAGE SCHOOL DISTRICT, MIAMI COUNTY, OHIO—\$1,029.00.

COLUMBUS, OHIO, April 18, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.