

Upon examining said leases, I find that the same have been properly executed, and that as to the form and provisions of said leases, they conform to the provisions of Sections 13965 et seq. and of other sections of the General Code relating to leases of this kind. Said leases are accordingly hereby approved as to legality and form, as is evidenced by my authorized signature on said leases and on the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2358.

RESIDENCE—COUNTY SCHOOL DISTRICT—BOARD MEMBERS THERE—
OF MUST RESIDE IN TERRITORY COMPOSING SUCH DISTRICT—
NECESSARY FOR MEMBERS OF BOARD TO ESTABLISH THEIR RES—
IDENCE IN JURISDICTIONAL TERRITORY WITHIN REASONABLE
TIME—VACANCIES—HOW FILLED.

SYLLABUS:

1. *Members of a county board of education residing in a district which by virtue of the action of the board of education of that district becomes exempt from the jurisdiction of the county board of education do not thereafter reside in any part of the territory composing the county school district. Such members may continue to serve as members of the county board of education if they establish their residences in territory composing the county school district within a reasonable time thereafter.*

2. *If such members do not establish a residence in this territory composing the county school district within a reasonable time, vacancies are thereby created in the county board of education.*

3. *Vacancies in a county board of education shall be filled by a majority vote of the remaining members of said board.*

COLUMBUS, OHIO, September 18, 1930.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—This will acknowledge a request for my opinion, written during your absence and signed by your partner, as follows:

“The three members of our county board of education live in Millersburg, Ohio, which is located in Hardy Township. These were elected last November and took office in January, 1930, and in May, 1930, the Millersburg Hardy Village District decided to withdraw from the county school district and no longer be under the control of the county board of education and the county superintendent of schools.

How long do the three members of the county board that have so withdrawn continue to act as such, until the expiration of their term for the county outside of this township or were they put out of office by the withdrawal of the local district? If they were put out of office, have the remaining two members of the county board the right to fill these vacancies?

I think I have made it clear that these three members of the county board of education live in Millersburg, Ohio, and Millersburg village and Hardy Township are no longer a part of the county school district.”

It is quite apparent from your letter that three members of the county board of education of Holmes County School District no longer reside in the territory composing such district but reside in another school district which is no part thereof. Your first question, therefore, relates to whether or not these three members continue as members of the Holmes County Board of Education or whether there are three vacancies on said board.

Section 4728, General Code, provides that :

“Each county school district shall be under the supervision and control of a county board of education composed of five members, who shall be electors residing in the territory composing the county school district and who may or may not be members of local boards of education. The members of such county board in office when this act goes into effect shall continue in office until their successors are elected and qualified.”

It will be noted that the provisions of this section are to the effect that the county school district shall be under the supervision and control of a board of education composed of five members who shall be electors residing in the territory composing the county school district.

The legislature evidently intended when enacting this section that the members of the board must at all times be electors residing within the county school district, and that when that status ceased to exist, such officers no longer had the qualifications to act as members of said county board or have anything to do with the supervision and control of the business of said board. This conclusion is also sustained by the provisions of Section 4748, General Code, which section reads as follows :

“A vacancy in any board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all remaining members of the board may fill any such vacancy.”

That section, therefore, provides that a vacancy in *any* board of education may be caused by “non-residence.” This language is general and applies to the members of any board of education. The section is found in the chapter of the General Code relating to “Boards of Education.” Therefore, I have no trouble in reaching the conclusion that if three persons, elected to be members of the board of education of Holmes County, are no longer residents of the territory composing the Holmes County School District, they no longer possess the qualifications required by Section 4728, and by virtue of Section 4748 vacancies exist in the membership of such board of education by reason thereof.

This conclusion is in accord with an opinion previously rendered by me and found in the Opinions of the Attorney General, 1929, page 1327, wherein it was held :

“The permanent removal of a member of a board of education from his school district creates a vacancy in the office. Temporary removal, does not. The intention of the member, to be gathered from all the circumstances at-

tendant upon his removal, is the controlling factor in determining whether a removal is temporary or permanent."

While that opinion related to the removal by a member of the board of education, the principle involved in the question in this instance is quite similar.

A more difficult question is presented in determining whether or not these three persons are non-residents; and if so, when that status attaches. The fact that their residence was changed by the actions of the board of education of the local school district, would not, of itself, deprive these three individuals of their office. If they desire to continue to be members of the county board of education, they can meet the qualifications required by the statute by moving into that territory which is still a part of said county school district. In that case, their non-residence would only be temporary.

A very similar question was considered by my predecessor in an opinion found in the Opinions of the Attorney General, 1928, Vol. II, page 984, the syllabus of which opinion is as follows:

"Where the county commissioners of a county, acting under the provisions of Section 3249, General Code, create a new township out of that part of the territory of an existing township included within the limits of a municipal corporation therein, duly elected and qualified justices of the peace of such existing township, residing in such municipal corporation do not become justices of the peace of the new township. They continue to be justices of the peace of the prior existing township in and for which they were elected, and they may perform the duties and exercise the jurisdiction of their respective offices therein, provided they establish their residences within such township within a reasonable time after the creation of the new township. If they do not establish their residences in said prior existing township within a reasonable time, vacancies will be created in said offices which the trustees of such township will be authorized to fill."

My predecessor was considering therein the status of justices of the peace, who, by virtue of the action of the county commissioners in transferring territory from one township to another, were no longer residents of the township in which they had been elected. The then Attorney General held that the transfer of this territory did not deprive them of the office provided that within a reasonable time they established their residences in the territory of the old township. This same principle would apply to members of a county board of education. It might be said that they could continue to serve as members of such board, performing the duties of such office, provided they established residences within the territory composing such county school district within a reasonable time after the action of the local board of education.

At the close of that opinion, it was stated:

"However, I am further of the opinion that said justices of the peace may continue to perform the duties and exercise the jurisdiction of their respective offices in Bedford Township by moving into said township within a reasonable time after action is taken after the detachment of the territory of Bedford village and the creation of the new township."

The principle therein stated would apply to the members of a board of education; and it could be said of the parties involved in your question that they could continue to perform the duties of members of the county board of education by moving into the territory of said county school district within a reasonable time after the action of the local board of education.

What a reasonable time would be is a question of fact dependent upon all of the circumstances in each particular case, and I do not attempt to express an opinion thereon. I can state, however, that if they have no present intention of removing from this territory into the territory now composing the county school district, the vacancies would exist at once.

This conclusion leads to a consideration of your second question, in which you inquire if "the remaining two members of the county board have the right to fill these vacancies." The statute is quite plain upon this subject. Section 4731, General Code, which relates to boards of education of county school districts, provides:

"Any vacancy on the board shall be filled in the same manner as is provided in Section 4748 of the General Code."

Said Section 4748 clearly states that:

"A majority vote of all the remaining members of the board may fill any such vacancy."

This language is so clear that it scarcely needs any interpretation, but I find that the question has been considered by a former Attorney General in an opinion found in the Opinions of the Attorney General, 1924, Vol. I, page 137, wherein it was held:

"A vacancy in a county board of education can only be filled in accordance with the provisions of Section 4748, which provides that such vacancy shall be filled by a majority vote of all the remaining members of the board."

Therefore, if the three members no longer reside in the territory composing the county school district and have no present intention of removing to said district or do not so remove to said territory within a reasonable time, vacancies exist on the county board of education, which vacancies may be filled by the two remaining members.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2359.

LEGAL SETTLEMENT—MARRIED WOMAN MAY LAWFULLY ACQUIRE WHEN JUSTIFIED IN SEPARATING FROM HUSBAND—NOT LIMITED TO SETTLEMENT IN THAT COUNTY IN WHICH HUSBAND RESIDES.

SYLLABUS:

When a married woman is justified in separating from her husband, she may lawfully acquire a legal settlement in another county from that in which her husband resides.

COLUMBUS, OHIO, September 18, 1930.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion on the following: