

<i>Lake Loramie</i>	<i>Valuation</i>
The Pleasure Island Club, cottage site.....	\$400 00

I have carefully examined the above leases, and finding them correct in form and legal, I hereby approve the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1410.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN ALLEN AND COLUMBIANA COUNTIES, OHIO.

COLUMBUS, OHIO, December 21, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

1411.

COUNTY BOARD OF EDUCATION—APPOINTMENT OF LOCAL BOARDS FOR NEWLY CREATED DISTRICTS—APPOINTEES HOLD OVER IF ELECTION OF NEW MEMBERS IS INVALID.

SYLLABUS:

Where a county board of education appoints a local board of education for a newly created school district, and thereafter, at the first election for members of boards of education, no successors to such appointees are elected, for the reason that the said election is declared to be invalid, the members of said board who had been appointed by the county board of education hold office until their successors are legally elected and qualified.

COLUMBUS, OHIO, December 22, 1927.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, as follows:

“The county board of education of Washington County created several new districts in accordance with Section 4736, G. C. The present members of the boards of education of these districts were appointed by the county board in accordance with this section. The 1927 election was the first one held after such appointment. Candidates were nominated and elected in all these dis-

tricts, but the ballots did not specify which were to serve for two years and which for four years. The deputy supervisor of elections has reported 'no election' in these districts. There are plenty of court decisions and Attorney Generals' opinions to support this.

The question is: Shall the members of the old boards, appointed by the county board, serve until the next regular election, or shall members of these boards be appointed by the county commissioners in accordance with the provisions of Section 4736-1?"

Section 4736, General Code, reads in part as follows:

Section 4736. "The county board of education may create a school district from one or more school districts or parts thereof, * * * Members of the board of education of the newly created district shall be appointed by the county board of education and shall hold their office until the first election for members of a board of education held in such district after such appointment, at which said first election two members shall be elected for two years and three members shall be elected for four years, and thereafter their successors shall be elected in the same manner and for the term as is provided by Section 4712 of the General Code. * * * "

Section 4736-1, General Code, reads as follows:

"In rural school districts hereafter created by a county board of education, a board of education shall be elected as provided in Section 4712 of the General Code. When rural school districts hereafter so created or which have been heretofore so created, fail or have failed to elect a board of education as provided in said Section 4712, or whenever there exists such school district which for any reason or cause is not provided with a board of education, the commissioners of the county to which such district belongs shall appoint such board of education, and the members so appointed shall serve until their successors are elected and qualified. The successors of the members so appointed shall be elected at the first election for members of the board of education held in such district after such appointment, two members to serve for two years and three members for four years. And thereafter their successors shall be elected in the manner and for the term as provided by Section 4712 of the General Code. The board so appointed by the commissioners of the county shall organize on the second Monday after their appointment."

Section 4736-1, *supra*, was enacted in its present form on May 20, 1915, approved by the governor, June 4, 1915, and filed in the office of the Secretary of State, June 5, 1915, (106 O. L. 550.)

At or near the same time, Section 4736, General Code, was amended so as to include the provision authorizing county boards of education to appoint the members of boards of education in newly created districts. The act of the General Assembly containing said amended Section 4736 was enacted May 20, 1915, approved by the governor, May 27, 1915, and filed in the office of the Secretary of State, May 28, 1915, thus being the earlier of the two enactments. In this situation the Hon. Joseph McGhee, while Attorney General, had occasion to consider the question of the manner of appointment or election of boards of education for newly created school districts and in connection therewith the authority of county commissioners and county boards of education in making such appointments. He states:

"It is somewhat difficult to ascertain whether or not the language of said acts is so contradictory that the latter will repeal the former by implication, or whether effect can be given to both. Effect must be given to both if the same can be done, and I am of the opinion that if at the time the county board of education creates a new district it appoints a board of education for such district, said board of education thereby becomes the legally constituted board for such district, but if, for any reason or cause the county board of education fails to appoint a board of education for such newly created district, then I am of the opinion that the board of county commissioners have the right to appoint such board, thus giving effect to both of the above mentioned sections." (Opinions of the Attorney General for 1917, page 991.)

Section 4736, General Code, was again amended in 1919, to read as it now does. In view of said section there can be no question at present but that the county board of education in the first instance makes the appointment of boards of education in newly created school districts.

In the case of *State vs. Houpt*, 98 O. S., 451, the Supreme Court said :

"Members of the board of education of a newly created school district are to be appointed by the county board of education under General Code Section 4736 * * * and the successors of such members * * * are to be elected under General Code Section 4712."

Section 4712, General Code, reads as follows :

"In rural school districts, the board of education shall consist of five members elected at large at the same time township officers are elected and in the manner provided by law, for a term of four years."

Section 4745, General Code, reads as follows :

"The terms of office of members of each board of education shall begin on the first Monday in January after their election and each such officer shall hold his office for four years except as may be specifically provided in Chapter 2 of this title (G. C. 4698 to 4707), and until his successor is elected and qualified."

Chapter 2, which is referred to in Section 4745, supra, relates to city school districts.

In 1919 a situation arose in Morrow County similar to the one which prompts your inquiry. In that case the county board of education of Morrow County School District on April 19, 1919, had created a new school district and had appointed a board of education for said district. In the following November an election was held in consequence of which several questions relative to the legality of said election were submitted to the Attorney General. Question No. 3 reads as follows :

"If the November, 1919 election was not valid, will the board of education appointed by the county board hold over until such time as a proper and valid election is held selecting their successors?"

In response to this inquiry the Attorney General in an Opinion reported in Opinions of the Attorney General for 1920, at page 452, after holding that the elec-

tion in November, 1919, for members of the board of education for the said newly created school district was invalid, said on page 456:

"Your third question is whether the members of the board of education, appointed by the county board, hold over until such time as a proper and valid election is held, selecting their successors on the basis that the November, 1919, election was not valid. The answer to this is in the affirmative, it being provided in the school laws that members of boards of education hold over until their successors are legally elected and qualified, which, in this instance, has not taken place up to this time. * * * "

The syllabus of the above opinion reads as follows:

1. Members of the board of education in a school district newly created by the county board of education shall be appointed by the county board of education and shall hold office until their successors are legally elected and qualified.

2. The successors to the appointed board of education in a newly created district shall be elected in the manner provided in Section 4736, G. C., that is, two members shall be elected for two years and three members shall be elected for four years, and thereafter in accordance with the provisions of Section 4712, G. C. Where the ballots used in a school election in a newly created district are not in conformity with the mandate contained in Section 4736, there is no valid election for members of the board of education."

I am in accord with the holding of the Attorney General in the above mentioned opinion of 1920, and you are therefore advised that the members of the local boards of education, appointed by the board of education of the Washington County School District for the several newly created districts, hold over until their successors are duly elected and qualified. You are further advised that the county commissioners are not authorized to appoint their successors.

Respectfully,
EDWARD C. TURNER,

Attorney General.

1412.

MOTOR VEHICLE—EXCLUSIVE USE BY U. S. POSTOFFICE DEPARTMENT—MUST BE REGISTERED—NOT SUBJECT TO LICENSE FEE—PROPER OFFICIAL MUST APPLY FOR REGISTRATION.

SYLLABUS:

1. *Where postoffice department has the exclusive right to the use of a motor vehicle for a period of greater than thirty consecutive days, the United States government may be considered the owner of such motor vehicle and entitled to the registration thereof without charge upon the application of any officer, department or agent of the federal government.*

2. *Contractor leasing motor vehicle to postoffice department must register said motor vehicle and pay the tax thereon unless application for registration of such motor vehicle be made by an officer, department or agent of the federal government.*