

1515.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
SCIOTO AND TRUMBULL COUNTIES, OHIO.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

COLUMBUS, OHIO, August 24, 1920.

1516.

KENT STATE NORMAL SCHOOL—WHERE PRESIDENT OF SAID
SCHOOL HELD PUBLIC OFFICE TO WHICH NO TERM OF OFFICE
IS ANNEXED BY LAW CREATING POSITION—PRESIDENT HOLDS
AT PLEASURE OF BOARD OF TRUSTEES.

The president of the Kent State Normal School holds a public office, to which however no term of office is annexed by the law creating the position. The board of trustees of the institution which elects the president has no power to qualify such election by annexing a term of office thereto. The president, therefore, holds at the pleasure of the board of trustees and may be supplanted at any time by the election of another person to the office of president.

COLUMBUS, OHIO, August 24, 1920.

HON. J. E. MCGILVREY, *President, Kent State Normal School, Kent, Ohio.*

DEAR SIR:—In a recent letter to this office you say:

“Section 4 of the Act establishing the Normal Schools which were later located at Kent and Bowling Green contains the following provision:

‘Before adopting plans for the building of said normal schools each board shall elect a president of known ability for the school under its control, who shall have advisory power in determining said plans.’

This has been interpreted heretofore as giving the president of the school an indefinite term of service. Our board of trustees wish to know from the Attorney General if they have authority under this act to elect the president for a definite term of years.”

The act relating to the establishment and management of the Kent State Normal School is that found in 101 O. L., p. 320. In addition to the quotation therefrom which you make in your letter the following provision of the act is material:

“The board of trustees, in connection with the president of the Normal school, shall select and appoint an able and efficient corps of instructors
* * *.”

The two clauses which have been quoted from the act show clearly that the position of president of one of the Normal schools to which the act relates is an office and not an employment. This is true because definite powers and duties are reposed by law in the president, which, without referring to the authorities, may

be said to be infallible test of what constitutes a public office as distinguished from a public employment, inasmuch as the duties of a public employe are such as are prescribed by the employing authority rather than such as flow from the law itself. It is true that the provisions which have been quoted are very broad and a detailed delegation of specific powers is lacking. This, however, can not alter the application of the controlling principle to which reference has been made.

The establishment of the conclusion that the presidency of the Normal school is a public office and not a mere subordinate position or employment under the board of trustees furnishes the answer to your question; for if the position were an employment then all features of that employment would be subject to definition by the terms of the contract of employment. The power which would be in that event reposed in the board of trustees to employ a president would include the power to enter into a contract of employment for a definite term.

But the conclusion that the position is an office rather than an employment leads to the opposite result. Being an office created by law, none of the attributes of the office is subject to the control of an executive board, such as the board of trustees, unless the law itself which creates the office so provides. A term of office, where such term exists, is one of the attributes of the office itself just as are the powers, the qualifications, etc. In the absence of any provision of statutory law fixing the term such term simply does not exist, the silence of the legislature being equivalent to a direction that the office shall not possess this characteristic. The board of trustees is not the superior of the president in the sense that it can in any wise qualify the attributes of his office, though doubtless it is his superior in the sense that the major powers are vested in it and it may delegate to him the execution of policies which it adopts. But the mere fact that the trustees elect the president is not a sufficient foundation upon which to rest the power in them to fix a term of office for his position.

For the reasons just stated, then, it is the opinion of this department that under the statutes relative to the normal schools as they stand, the presidents of such Normal schools have no term of office and the boards of trustees thereof are without power to prescribe terms of office for their presidents. If in electing a president such board of trustees should add a stipulation with respect to the term for which the election is made, such stipulation would be mere surplusage and of no effect.

Complete answer to your question requires that you be informed as to the consequences of the legislature's failure to prescribe a term of office for the position in question and the resultant lack of power in the appointing board to elect for a definite term. It is clear enough that the consequence of such a conclusion must be one of two possibilities: Either the incumbent of an office which has no term holds for life, or he holds subject to the pleasure of the appointing power.

Choice between these two is made by the authorities in the manner stated by Throop on Public Officers, section 304, as follows:

"Where an office is filled by appointment, and a definite term of office is not fixed by a constitutional or statutory provision, the office is held at the pleasure of the appointing power, and the incumbent may be removed at any time."

(Citing cases.)

Perhaps a more accurate way of putting the exact legal situation may be hazarded as follows:

Under the statute under consideration it is the duty of the board of trustees to "elect a president." Such president when elected has no term of office. The

power to elect a president is manifestly not wholly exercised when one election has been made; it is a continuing power which may be exercised at the discretion of the board. Having elected A. to the office without definite term, the board of trustees may at its discretion elect B. to the same position, and the election of B. will of itself put an end to A.'s tenure.

I trust that these observations cover all the points involved in your inquiry.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1517.

JOINT HIGH SCHOOL—WHERE FINANCIAL RESOURCES INSUFFICIENT TO SUPPORT JOINT HIGH SCHOOL AND ELEMENTARY SCHOOLS OF DISTRICT—CANNOT COMPEL CONTRIBUTION TO FORMER NOR BORROW MONEY FOR SUCH PURPOSE—UNION DISTRICT NOT DISSOLVED—BUILDING CANNOT BE TAKEN OVER BY DISTRICT IN WHICH IT IS SITUATED.

Where the financial resources of a member district of a union of school districts for high school purposes are insufficient to permit the contribution of the share of such district toward the support of the joint high school, in addition to the support of the elementary schools of the district, such district can not be compelled to make appropriations from its funds for that purpose.

Under such circumstances, the board of education of such district is without power to borrow money in order to secure funds with which to furnish its share of the support of such high school.

The inability of a member district of such union of high school districts to furnish its share of the support of such high school does not effect a dissolution of the union for high school purposes; accordingly, the high school building in which such joint high school has been conducted may not be taken over by the district in which it is situated and used for the purpose of a high school to be established in that district, whether such building, prior to the union, belonged to such district or not.

COLUMBUS, OHIO, August 25, 1920.

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

DEAR SIR:—You have requested the advice of this department upon the following questions:

“Joint high schools have been established, maintained, and operated under the provisions of sections 7669, 7670, 7671 and 7672 G. C. The districts in some cases maintaining a joint high school are what is commonly known as weak districts and have been receiving state aid. The questions of authorizing an additional levy under the provisions of sections 5649-5 and 5649-5a G. C. were submitted to the electors at a special election held on August 10, 1920, that these districts might be eligible for state aid this year. In one or more of the districts maintaining joint high schools the issue carried, while in others that helped to maintain these same joint high schools, the issue failed. As a result those districts in which the issue