

2140.

BOARD OF EDUCATION—HOW TO DISPOSE OF REAL ESTATE VALUED IN EXCESS OF \$300—SEE SECTION 4756 G. C.—IN NOTICE OF SALE MAY RESERVE RIGHT TO REJECT ANY OR ALL BIDS.

A board of education desiring to dispose of real estate valued in excess of three hundred dollars at public auction under the provisions of section 4756 G. C., is not compelled to dispose of the property offered to the highest bidder, and the board of education in its notice of sale may reserve the right to reject any or all bids.

COLUMBUS, OHIO, June 6, 1921.

HON. E. STANTON PEARCE, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department on the following statement of facts:

"The board of education of the village of Toronto, this county, is desirous of disposing by sale of an obsolete school building in the village, the erection of a new and better located school building having been provided for. The board has consulted me with reference to the proper procedure in the matter.

Section 4756 seems to be the statute governing this matter. After providing how notice of proposed sale shall be given, it says that such property may be sold at public auction and, to accomplish such sale, it may be twice offered at public auction and, if not thereby sold, "the board may sell it at private sale" * * *.

For your further information, will say that the property sought to be disposed of exceeds in value three hundred dollars, and the deed for it in the name of the board is an ordinary warranty deed conveying a fee simple.

Query: Has the board the right to reject any and all bids at either or both of such public auctions if, in the exercise of its best discretion, the best bid offered is wholly inadequate? In other words, has the board the authority, under said section, to exercise any discretionary powers, or, having so offered it at public auction, must it accept the highest and best bid whether the amount offered is sufficient or grossly insufficient?"

Section 4749 G. C. reads as follows:

"The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state."

Section 4756 G. C., as amended in 103 O. L., 536, provides in part:

"When a board of education decides to dispose of real or personal

property, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell such property at public auction after giving at least thirty days' notice thereof by publication in a newspaper of general circulation or by posting notices thereof in five of the most public places in the district in which such property is situated. When the board has twice so offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at private sale, either as an entire tract or in parcels, as the board deems best."

It is understood in the case which you submit that the school building to be disposed of is in a district where a new and better located school building has been provided, and hence there has been no abatement of school activity in the district in question, and therefore, the provisions of sections 7730 and 7730-1 G. C., as amended in 108 O. L. Part II, pages 1172, 1173, do not apply.

Upon the question of school property at public auction where the board of education owns in fee and the conditions set forth in sections 7730 and 7730-1 G. C. do not obtain, your attention is invited to the syllabi of two former opinions issued by this department as follows:

"The board of education of a school district, acting under authority of section 4749 G. C., may determine by resolution that certain real property which said board owns in fee is not needed for school purposes and that it is for the best interest of the school district to sell the same, and if the value of said property is less than three hundred dollars the provisions of section 4756 G. C., as amended in 103 O. L., 536, are not applicable to the sale of said property and the same may be disposed of at private sale." (Opinions of Attorney-General, Vol. I, 1915, p. 877.)

"Section 4756 General Code, providing for the sale of real estate valued in excess of \$300 at auction does not compel the board of education to dispose of the property to the highest bidder and the board in its notice of sale may reserve the right to reject any and all bids." (Opinions of Attorney-General, Vol. I, 1912, p. 493.)

In the latter opinion addressed to the state commissioner of common schools, now the superintendent of public instruction, the then Attorney-General said:

"The word 'auction' is defined in Century Dictionary as: 'A public sale in which each bidder offers an increase on the previous bid, the highest bidder becoming the purchaser.'

The word 'auction' is defined by Webster as: 'A public sale of property to the highest bidder as where successive increased bids are made.'

While the word 'auction' has been defined to be a public sale to the highest bidder I can find no statement in the law that the property must at all events be knocked down to the person making such highest bid. When the board of education determines that the property which it seeks to sell under section 4756, *supra*, exceeds in value \$300 it shall sell such property at public auction after giving the requisite notice provided for in such section. Such section, however, does not contain any provision for appraisalment of such property so

sought to be sold, nor does it specify any price at which such property must be sold. However, section 4749, *supra*, provides that the board of education shall be a body politic and corporate and is given the power of disposing of real and personal property belonging to it. Being such body politic and corporate, and there being no provision in section 4746, *supra*, defining the terms under which the property shall be sold, I am of the opinion that the board of education may provide in its notice for sale that it reserves the right to reject any and all bids, and if it does so in its said notice, it can, if in its judgment the amount paid for such property is trivial and does not represent the true value of the property to be sold, reject such bid and re-advertise said property."

As to the discretion vested in the board of education on matters under its control, a very recent decision of the Ohio supreme court, reads, in its second and third branches of the syllabus as follows:

"2. A court has no authority to control the discretion vested in a board of education by the statutes of this state, or to substitute its judgment for the judgment of such board upon any question it is authorized by law to determine.

3. A court will not restrain a board of education from carrying into effect its determination of any question within its discretion, except for an abuse of discretion or for fraud, or collusion on the part of such board in the exercise of its statutory authority." *Branon et al. vs. Bd. of Ed.* 99 O. S., 369.

An examination of the statutes shows that neither section 4749 or 4756 G. C. have been amended since the issuing of Opinion No. 417 by the Attorney-General on June 3, 1912, and the opinion announced at that time on this question is herewith concurred in, and you are advised in answer to your question that a board of education offering school property for sale under the provisions of section 4756 G. C. is not required to accept the highest and best bid at such public auction, but it is within the discretion of the board of education to decide whether such amount offered is sufficient or grossly insufficient, and the board in its notice of sale may reserve the right to reject any and all bids.

Very respectfully,

JOHN G. PRICE,
Attorney-General.