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EDUCATION, BOARD OF, CLERK—LOCAL EXEMPTED VIL-
LAGE OR CITY SCHOOL DISTRICT—RESIGNATION—DURING
TERM FOR WHICH ELECTED—BOARD AUTHORIZED TO
APPOINT CLERK—OFFICE HELD ONLY UNTIL FIRST MON-
DAY IN JANUARY NEXT ENSUING.

SYLLABUS:

Where a clerk of a board of education of a local, exempted village or city school district resigns during the term for which he has been elected, the board of education is authorized to appoint a clerk to hold office only until the first Monday in January next ensuing.

Columbus, Ohio, June 8, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen :

I have before me your request for my opinion, reading as follows :

"Section 4841, General Code, provides that the board of education of a city, exempted village or local school district, at an organization meeting, shall elect a clerk for a term not to exceed four years.

At the organization meeting of a board of education held on the first Monday of January, 1947, a clerk was elected for a four-year term beginning on that date.

In June, 1947, this clerk resigned, effective July 1, 1947.

May we respectfully request your opinion upon the following question :

In electing a successor to fill this vacancy, may the board elect a clerk for the unexpired term of the former clerk; or for a one, two, three or four-year period beginning July 1; or should such employment be for the period to the date of the next organization meeting of the board?"

By the provisions of Section 4832-8, General Code, being a part of the new school code of 1943, the terms of office of members of each board of education are to begin on the first Monday in January after their election, and each such member is to hold office for four years and until his successor is elected and qualified. Section 4832, General Code, provides that the board of education shall consist of five members elected at large in their respective districts. Both by constitutional and statutory provisions this election is to be in the odd numbered years. I find no provision of the law providing for staggering the membership of the board of education except in the case of a newly created local district, and also in city districts where such arrangement may be made under special provisions involving a vote of the electors.

Under former Section 4709, General Code, which was repealed in the adoption of the new school code, it was provided that in each district two of the five members should be elected for two years and three for four year terms and, at the proper municipal election held thereafter,

their successors should be elected for terms of four years. In the absence of any new provision corresponding to this in the new code, the election of members of boards of education appears to have followed this course and the membership is in fact changed every two years without any specific existing legislation to that effect.

Prior to the passage of the present school code, it was provided by Section 4747, General Code, that each board of education should organize "on the first Monday of January after the election of members of such board", and that one member should be elected as president and one as vice president, to hold for a term of one year and a clerk should be elected for a term not exceeding two years. While that statute was in force the case of *State ex rel. Downs v. Barger*, 67 O. App., page 221 was decided, in which the question was raised as to the right of a board of education to elect a clerk for a term of two years. This election was held in January, 1939, which was, as the court said, in the "off year" since the regular "organization meeting" would occur in the even numbered year. This resulted in extending the term of the clerk into and through the year following a change in the personnel of the board by reason of an intervening election. It was held that the board was without power to elect the clerk for such term. The court in construing Section 4747 supra, held that the intent of the statute was to forbid an officer or body clothed with the power of appointment to forestall the rights or prerogatives of its successor by making an appointment which would extend beyond the term of the appointing board. The court concluded its opinion with this statement:

"There is ample authority in Ohio and other jurisdictions supporting the common-law rule on the subject which, since we have determined the question on a construction of the statute alone, we deem unnecessary to cite."

The present laws relating to the organization and operation of boards of education differ in several important respects from those in effect prior to the enactment of the new school code of 1943.

Section 4833, General Code, now in force, provides that the board of education of each city, exempted village and local school district shall meet on the first Monday of *each year* and shall organize by electing one

of its members president and another vice president, for terms of one year. Section 4841, General Code, provides as follows:

“The board of education of each local, exempted village and city school district at an organization meeting shall elect a clerk who may or may not be a member of the board and in the case of a local school district such clerk may be a teacher regularly employed as a teacher by such board. Such clerk shall be elected for a term not to exceed four years. In the case of a county board of education, the county superintendent shall act as clerk of such board.”

Here, it will be noted that it is expressly provided that an organization meeting shall be held each year and, further that at such meeting the board is authorized to elect a clerk for a term whose maximum would necessarily extend beyond the term of office of some members of the board. To that extent, the general rule above referred to forbidding an appointment that would extend beyond the terms of the appointing officers, is manifestly superseded by the statute.

It should, however, be further observed that this authority to elect a clerk for a possible term of four years is limited to action had at a regular annual organization meeting. Where a vacancy occurs at some time in the year between the regular organization meetings, it would appear that the board, in so far as it has the right to fill such vacancy, would not have the right to elect a clerk for a term of four years, and certainly not for a term of four years to begin with the date when such vacancy is filled.

It is further significant that there is no provision in the statutes authorizing a board of education to fill a vacancy in the office of the clerk, and we are obliged to draw on implied power for such action. Manifestly, in view of the important duties imposed by statute and which may be imposed by the board on the clerk, it is absolutely necessary that someone be appointed temporarily, until such time as a clerk can be elected as the law provides.

This, in my opinion, results in limiting the right of appointment or election of a clerk to fill a vacancy, to the time of the next following organization meeting which, under the law, is to be held on the first Monday in January next ensuing. This conclusion is in accord with

an opinion found in 1934 Opinions of the Attorney General, page 167, where it was held:

“1. Each board of education, upon its organization on the first Monday of January after the election of members of such board, in accordance with Section 4747, General Code, should elect a clerk.

“2. A board of education is without authority to elect a clerk for a term extending beyond the life of the board.

“3. Regardless of the length of term for which a board of education elects a clerk, that term will not extend beyond the time when the succeeding board of education organizes in compliance with Section 4747, General Code.”

To like effect, see 1932 Opinions of the Attorney General, page 88. In both of these opinions the “life of the board” was referred to as expiring on the first Monday in January following an election.

It is accordingly my opinion and you are advised that where a clerk of a board of education of a local, exempted village or city school district resigns during the term for which he has been elected, the board of education is authorized to appoint a clerk to hold office only until the first Monday in January next ensuing.

In the case you present, the situation is complicated by the fact that the election of the clerk was in January 1947, that he resigned as of July 1, 1947, and that the clerk temporarily appointed could only have held until January, 1948, at which time the board should have elected a clerk as provided by law. What was done is not disclosed by your letter. If no new appointment was made it would appear that the clerk who was temporarily appointed is now holding at the pleasure of the board.

Respectfully,

HUGH S. JENKINS,
Attorney General.