

1813.

BOARD OF EDUCATION—DIRECTOR OF SCHOOLS—HOW ELECTED—
CLERK—TREASURER OF BOARD OF EDUCATION IS MINISTERIAL
OFFICER OF SAID BOARD—OFFICES INCOMPATIBLE—DIRECTOR
OF SCHOOLS—CLERK—TREASURER OF BOARD OF EDUCATION.

1. *Under section 7694 G. C. the board of education in a city school district, creating the position of director of schools, should elect such director by roll call, for a definite term, rather than place the statutory duties of such director of schools, by resolution, upon some other employe of the board.*

2. *The clerk and treasurer of a board of education is the ministerial officer of the board of education itself and a provision that such clerk-treasurer "shall at all times be under the direction and supervision of the public schools" would be null and void.*

3. *A person elected to or who performs the duties of director of schools, as set forth in sections 7695 and 7696 of the General Code, cannot at the same time be the clerk and treasurer of the board of education because of the inhibition appearing in section 7695 G. C., that the director shall not have the care and custody of the moneys of the district.*

COLUMBUS, OHIO, January 26, 1921.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your request for an opinion upon the following question:

"Can a person who has been elected clerk-treasurer of a city school district by a board of education legally be employed by such board of education as director of schools of the same district?"

Accompanying your request you submit a copy of the contract entered into between the person in question and the board of education, which contract reads in part as follows:

"That Whereas L. O. W. has been elected to the office of clerk-treasurer for a period of two years, it is therefore agreed between the board of education of the W. city school district and L. O. W. that in consideration of a yearly salary of \$5,000 the said L. O. W. shall perform all the duties provided by the statutes of Ohio for the office of clerk-treasurer of the city school districts and in consideration of the said sum of \$5,000 the said L. O. W. shall further perform all the duties imposed by the statutes of Ohio upon the office of director of schools, said duties being enumerated in 7695 and 7696 of the General Code of Ohio, provided, however, that the said L. O. W. shall at all times be under the direction and supervision of the superintendent of the public schools."

Pertinent sections of the statutes are as follows:

"Section 4747. The board of education of each city * * * school district shall organize on the first Monday of January after the election of members of such board. One member of the board shall be elected president, one as vice president and a person who may or may not be a member of the board shall be elected clerk. The president and vice presi-

dent shall serve for a term of one year and the clerk for a term not to exceed two years. The board shall fix the time of holding its regular meeting." (104 v. 133).

"Section 4782. * * * The clerk of the board of education of such district shall perform all the services, discharge all the duties and be subject to all the obligations required by law of the treasurer of such school district." (108 O. L., p. 708).

"Section 7694. A board of education in a city school district *may* elect a director of schools, who shall serve as such for a term of two years, unless earlier removed. A vacancy in this office shall be filled for the unexpired term thereof." (97 v. 360.)

"Section 4752. * * * Upon a motion to * * * elect or appoint an officer * * *, the clerk of the board shall publicly call the roll of the members composing the board and enter on the records the names of those voting 'aye' and the names of those voting 'no'. * * *"

From a reading of the above sections, it appears that where a city board of education provides for the creation of the office of director of schools, there shall be a roll call, and such director shall be *elected* by the board rather than that the duties of a director, as set out in the statutes, should be placed upon some other person by a resolution or contract, as appears in the case at hand. As indicated above, the clerk of the board of education is also the treasurer of such board, and therefore has charge of all moneys in the treasury to the credit of the school district. The duties of the clerk-treasurer of a school board are set forth in Chapter 7 of Title XIII (public school districts) of the General Code, in addition to being referred to in various other sections of the school law. The duties of the director of schools are set forth in sections 4752-1, 7690, 7695 and 7696 of the General Code, as amended in 107 O. L., pp. 47, 48.

In answering the question before us it is necessary to consider only section 7695, which contains an express provision that the director of schools shall at no time have the care and custody of the moneys of the school district, such section reading in part as follows:

"As director of school, he shall execute for the board of education, in the name of the school district, its contracts and obligations, except that bonds issued must be signed by the president of the board, and attested by the clerk. He shall see that all contracts made by or with such board are fully and faithfully performed. * * * He shall have the care and custody of all property of the school district, real and personal, *except moneys*, oversee the construction of buildings in the process of erection, and the repairs thereof, and advertise for bids and purchase all supplies and equipment authorized by the board."

Inasmuch as the clerk of the board of education is also treasurer of such board, as heretofore pointed out, the express language appearing above in section 7695, providing that the director of schools shall not have the care and custody of moneys, would prevent such director or the person occupying such position from being at the same time the clerk and treasurer of the board of education.

It is noted in the contract submitted that direct reference is made to all the duties of the director appearing in section. 7695 G. C., supra. The clerk of the

board of education in a school district is the ministerial officer and agent of such board. The director of schools is also an agent of the board of education, limited in his authority to do those things which are expressly set out in the sections of the statutes defining his powers. Both of these officers are presumed to be at all times under the direction and supervision of the board of education, for, as regards the director of schools, section 7696 provides:

“Such director shall report to the board monthly, and oftener if required, as to all matters under his supervision, and report to the board a statement of its accounts, * * *. Such director shall attend all meetings of the board and perform all of its executive functions not herein-before excepted in defining the duties of the director of schools. * * *”

No where is there any reference in the statutes that the director of schools (performing “executive functions”—section 7696) may be at any time “under the direction and supervision of the superintendent of the public schools,” as appears in the contract submitted. The effect of this, as regards this contract, is that if the director of schools was under the superintendent of public schools in the district, and such director was at the same time the clerk of the board of education, then the clerk of the board of education, a ministerial officer and agent of such board, would be “under the direction and supervision of the superintendent of public schools” rather than the board of education, a condition which is not contemplated by the statutes.

As regards school affairs in a district, there is no higher authority than the board of education itself, which creates a number of these employments or agencies, chooses persons to perform and provides for their pay. Under this contract submitted, the clerk, as a ministerial officer, would receive a mandate from the board of education to carry out some official matter authorized by law, which the superintendent of public schools might nullify if the clerk-treasurer was under the direction and supervision of the superintendent of public schools in the district. The duties of the clerk-treasurer of a board of education are many and important and he is responsible to the board of education of his district and to no one else.

It is therefore the opinion of this department upon the question submitted, after considering the sections cited, in conjunction with the contract examined, that:

1. Under section 7694 G. C. the board of education in a city school district, creating the position of director of schools, should elect such director by roll call, for a definite term, rather than place the statutory duties of such director of schools, by resolution, upon some other employe of the board.

2. The clerk and treasurer of a board of education is the ministerial officer of the board of education itself and a provision that such clerk-treasurer “shall at all times be under the direction and supervision of the superintendent of public schools” would be null and void.

3. A person elected to or who performs the duties of director of schools, as set forth in section 7695 and 7696 of the General Code, cannot at the same time be the clerk and treasurer of the board of education because of the inhibition appearing in section 7695 G. C., that the director shall not have the care and custody of the moneys of the district.

Respectfully,
 JOHN G. PRICE,
Attorney-General.