

must be recognized by the state highway commissioner. An assignment of a part of the compensation due or a part of an installment to thereafter become due, may or may not be recognized by the state highway commissioner at his option."

The above question recognizes the definite right of a contractor to assign compensation already earned. The courts have generally extended this right to unearned compensation under an existing contract and the rule in Ohio seems to be generally that a contingent debt, founded on an existing contract, is property which is assignable.

In the absence of the possibility that any fraud may be perpetrated upon the state, I see no violation of the principle of public policy but rather recognize a saving in the cost of administration in that refunds due under several applications may be payable to one person, the assignee, and thus obviate the necessity of the preparation of several warrants and the additional expense of remitting such payments.

In view of the above considerations, and in specific answer to your inquiry, I am of the opinion first, that a written assignment of an entire amount due as refunds under section 5534, General Code, is valid; second, that the tax commission is authorized to accept written assignments of refunds due under the gasoline tax law of Ohio.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

3969.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR IN AUGLAIZE, LOGAN AND SHELBY COUNTIES—OSCAR F. SCHILLING.

COLUMBUS, OHIO, January 20, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of \$5,000.00 upon which the name of Oscar F. Schilling appears as principal and the Commercial Casualty Insurance Company of Newark, New Jersey, appears as surety, conditioned to cover the faithful performance of the duties of the principal as Resident District Deputy Director assigned to Auglaize, Logan and Shelby Counties.

Finding said bond legal and proper as to form, I have endorsed my approval thereon and return the same herewith.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General*

3970.

TEMPORARY BOARD OF EDUCATION—MAY NOT ELECT CLERK FOR TERM LONGER THAN LIFE OF BOARD.  
SYLLABUS:

*A board of education, appointed for a newly created school district, in accordance with Section 4736, General Code, is without power to elect a clerk for a term*

*which would extend beyond the time that a board regularly elected to succeed the said appointed board should qualify and organize in accordance with Section 4747, General Code.*

COLUMBUS, OHIO, January 20, 1932.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

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

“I have been asked by the Board of Education of one of the rural school districts of Brown County, Ohio, for an opinion construing Section 4747 of the General Code of Ohio, as based upon the following set of facts:

On September 30, 1929, the County Board consolidated the Fayetteville rural school district and the Perry Township rural school district into the Fayetteville-Perry District, and thereupon appointed a Board of Education for the newly created district, in accordance with law.

On October 7, 1929, the minutes of said newly appointed board show the election of one of the members of said board as clerk of said board, but said minutes are silent on the term of such employment. However, on December 9, 1929, at a subsequent meeting of the Board the said member of the board was then elected for a term of two years, however, said minutes not referring to the former appointment of October 7, 1929. The said member of the board qualified and acted as such clerk, in accordance with said resolution.

On December 4, 1931, the same board elected the same man for another term of two years, that is, from December 7, 1931, to December 31, 1933, as shown by the minutes of said board, and also voted a raise in salary to said clerk of \$50.00 per annum.

It might be noted that the entire old board was defeated at the last election and therefore the difficulty arises as to whether the appointment of the Clerk, beginning on December 7, 1931, was legally made for a period of two years. Also, in view of the fact that said appointment from December 7, 1931 to December 31, 1933, as shown by the minutes, was made on December 4, 1931, at a time prior to there being a vacancy in the said office of clerk.”

I judge from your statement, that the action of the Brown County Board of Education, as of September 30, 1929, consolidating two school districts into the Fayetteville-Perry district was taken in pursuance of Section 4736 of the General Code, which authorizes a county board of education to create a school district from one or more school districts or parts thereof, and provides, with reference thereto, as follows:

“\* \* \* \*

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. The board so appointed by the county board of education shall organize on the second Monday after their appointment."

The members of a board of education appointed for the newly created Fayetteville-Perry district, upon its creation, would serve until their successors were elected and qualified. Their successors should have been elected at the November election in 1929. It appears, however, that this was not done. If it was not done in 1929 it is perfectly proper that they be elected at the November election in 1931. The board then elected to succeed the appointed board should organize in accordance with the provisions of Section 4747, General Code, which read as follows:

"The board of education of each city, exempted village, village and rural 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-president 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."

It will be observed that Section 4736, General Code, directs a board of education, appointed for a newly created district, to organize on the second Monday after the appointment of the members constituting the board. The statute, however, contains no direction as to what officers of the board should be elected upon this organization or the length of time for which they should be elected, as it does with reference to the organization of an elected board in Section 4747, *supra*. Obviously, the word "organize" as used in Section 4736, General Code, does not refer to the same sort of organization provided for by Section 4747, *supra*, in so far as the election of a president or vice-president for one year is concerned, at least, as in a great many cases the members of the appointed board provided for by the statute may or may not be members for that length of time.

Regardless of the type of organization set up by an appointed board upon their organization on the second Monday after their appointment the board elected at the next election to succeed the appointed board is authorized and required, in my opinion, to organize as directed by Section 4747, General Code, and the organization set up by the former board is succeeded by the organization of the elected board made in accordance with Section 4747, General Code.

The clear intention of the legislature in providing for the appointment of a board of education for a newly created school district is to provide temporarily, or provisionally, for the administration of school affairs within the district until a regularly elected board may be inducted into office. The policy of electing all boards of education rather than appointing them, is consistent with democratic government and in accord with the plain letter of the school code. To require this, however, upon the creation of new districts would in most cases necessitate the calling of special elections for the purpose. To save the expense and inconvenience of special elections the legislature saw fit to provide for the appointment of a temporary board for a new district until a board could, in the regular course of events, and without incurring the expense of holding a special elec-

tion, be elected. The legislature directed that such appointed board should organize so that its proceedings would be orderly, but did not provide specific terms for its officers as it did for those of regularly elected boards.

With respect to elected boards, the apparent intent of the law is that they shall elect their own officers and that they shall not elect them for terms running beyond the life of the board. This is evidenced by the provision that the term of a clerk be limited to two years at most, or for no longer time than until a new board organizes. It should be noted that the life of a board of education is two years. That is to say that the terms of some members on the board expire each two years and new members are elected, providing the scheme of electing boards of education, and of the organization of those boards, as set up by the school code of 1904, is carried out. See repealed Sections 4713, Opinions of the Attorney General for 1928, page 506.

In accordance with the policy of permitting each board to elect its own officers, I am of the opinion that a temporary board appointed for a newly created school district does not have the power to elect a clerk for a longer time than until the expiration of the life of the board, that is, until a board regularly elected in accordance with the statute, to succeed the appointed board, qualifies and organizes as provided by Section 4747, General Code.

I am therefore of the opinion, with reference to the specific matter set up in your inquiry, that the board of education appointed by the Brown County Board of Education for the Fayetteville-Perry School District created on September 30, 1929, did not possess the power to elect a clerk whose term should extend beyond the time that a board of education elected to succeed the said appointed board should qualify and organize in accordance with Section 4747, General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

3971.

BOARD OF EDUCATION—UNAUTHORIZED TO PUBLISH BULLETIN—SPECIFIC CASE.

*SYLLABUS:*

1. *School districts are political subdivisions of the state, created for the purpose of maintaining and administering a system of public education. Boards of education for these school districts, are arms or agencies of the state for the promotion of education throughout the state.*
2. *Boards of education, in their financial transactions, are limited strictly to the powers granted to them by statute.*
3. *A board of education is without authority to publish, at public expense, superintendents' bulletins or other bulletins or reports with reference to the activities of the schools under their jurisdiction.*

COLUMBUS, OHIO, January 21, 1932.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

"May the Board of Education of the Cincinnati City School District pay to 'The School Index', a paper published by teachers in the High