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DISAPPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENTS, HIGHLAND COUNTY, I. C. H. No. 261.

COLUMBUS, OHIO, April 16, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of final resolution with county auditor's certificate attached thereto for the following improvement:

Highland County—I. C. H. No. 261, Section O.

It will be observed that the date that the motion was made for the adoption of the resolution is lacking.

The resolution of the board of county commissioners provides for an appropriation of \$441.20 as the cost of the improvement, less that part assumed by the state. The total cost of the improvement is estimated at \$883.20. The total amount to be expended by the county and the state is less than the total estimated cost.

It will be observed that on the reverse side of said resolution there is no certificate on the part of the president of the board of county commissioners or the clerk of said board to the effect that said resolution was duly passed, and there is no reference made to the volume and page in which said resolution is recorded.

I would further call your attention to the fact that the appropriation made by the Department of Highways and Public Works, Division of Highways, as certified to by the auditor of the highway department, is not the same as the sum mentioned as appropriated in the resolution of the board of county Commissioners of Highland county.

It will be further observed that the amount as certified by the county auditor in his certificate as being available for said improvement does not agree with the amount appropriated by the board of county commissioners in its resolution.

For these further reasons I am returning this final resolution without my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

337.

TEACHERS' RETIREMENT BOARD—SECTION 7786, GENERAL CODE, CONSTRUED.

SYLLABUS:

Section 7786, General Code, relates only to reports pertaining to school records and to the management and conduct of schools, and does not include reports containing information required by the Teachers Retirement Board, such as Form A, adopted by such board.

COLUMBUS, OHIO, April 18, 1927.

Ohio State Teachers' Retirement System, Retirement Board, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your letter of recent date reading as follows:

"Section 7896-26 requires teachers, upon becoming a member of the retirement system, to file a detailed statement of all his previous service as a teacher and that he shall furnish such other facts as the retirement board may require. The information required under this section is set forth on Form A, a copy of which is enclosed.

We have a few teachers in the state who continually neglect to file Form A and as you will notice, this section, while requiring the filing of such information, does not provide a penalty.

Section 7786 provides that 'No clerk of a board shall draw an order on the treasurer for the payment of a teacher for services until the teacher files with him such reports as are required by the superintendent of public instruction and the board of education, * * *'. Would this section cover the failure on the part of the teacher to file Form A with the retirement System? If it does not specifically cover the filing of Form A, would the Superintendent of Public Instruction have the power to designate Form A as one of the reports that must be filed with the clerk?"

"Form A" transmitted with your letter is a blank form which when properly executed would furnish the retirement board with such information as is required by the board for the proper operation of the retirement system, including such facts as name, age and address of the member, date of birth, sex, marital condition, prior service as a teacher, whether or not the member was a member of a city pension system, the name of the beneficiary designated and other pertinent information.

Section 7896-26, to which you refer, reads as follows:

"Each teacher, upon becoming a member, shall file a detailed statement of all his previous service as a teacher and shall furnish such other facts as the retirement board may require for the proper operation of the retirement system."

This section was enacted as a part of the act entitled "An Act—to provide a state-wide retirement system for teachers in schools supported wholly or in part by public funds," passed on April 16, 1919 (108 O. L., Part 1, p. 195, 202).

Section 7786 of the General Code provides:

"No clerk of a board of education shall draw an order for the payment of a teacher for services until the teacher files with him such reports as are required by the director of education, by the board of education and the superintendent of schools, and a written statement from the county, city or exempted village, superintendent of schools that the teacher has filed with him a legal teacher's certificate (or true copy thereof) to teach the subjects or grades taught, with the dates of its validity. The director of education shall prescribe the record and administration for such filing of certificates in county school districts.

Upon notice to the clerk of a board of education given by the director of education or any superintendent of schools having jurisdiction that reports required of a teacher have not been made, the clerk shall withhold the salary of the teacher until the required reports are completed and furnished."

This section was originally Section 4051 of the Revised Statutes, and was amended on three different occasions, the last amendment being contained in an act to amend certain sections "relating to teachers examinations, qualifications and certificates and the filing of certificates * * *," passed on April 25, 1923.

The other amendments were made in acts contained in 75 O. L., 195, and 104

O. L., 225, in both of which acts Section 7784, General Code, was also amended. This section provides as follows:

“Boards of education shall require all teachers and superintendents to keep the school records in such manner that they may be enabled to report annually to the county auditor and superintendent of public instruction as required by the provisions of this title and shall withhold the pay of such teachers and superintendents as fail to file the report required of them. The records of each school, in addition to all other requirements shall be so kept as to exhibit the names of all pupils enrolled therein, the studies pursued; also indicate the character of the work done, standing of each pupil, and must be as near uniform throughout the state as is practicable.”

In Section 7785 General Code, authority is given to boards of education to “require superintendents and teachers to report matters that boards deem important or necessary for information *in regard to the management and conduct of the schools*, and to make such suggestions and recommendations as they deem advisable relative to the methods of instruction, school management or other matters of educational interest.”

By its legislative history and by the plain import of the terms used in Section 7786, *supra*, which must be read in connection with Sections 7784 and 7785, *supra*, only such reports are contemplated in the section as pertain to school records and to the management and conduct of the schools required to be filed (1) by the director of education, (2) by the board of education and (3) by the superintendent of schools.

While Section 7786, *supra*, is not a penal section in the sense that it imposes punishment for a crime or offense committed against the state, it does impose a penalty or forfeiture for omitting to do what the law requires; that is, a failure or refusal on the part of a teacher to file the reports which any of the officials enumerated in the section under consideration is authorized to require, penalizes the teacher to the extent of forfeiting, until such reports are filed, his right to receive the pay duly earned by such teacher. Statutes of this nature must be strictly construed, and before one may be penalized for non-compliance therewith, the acts complained of must come clearly within the statutes. See 36 Cyc., 1183.

In 36 Cyc., 1173, it is stated:

“On the other hand, statutes in derogation of common rights * * * should be construed strictly against those specially favored; while all statutes of a penal nature, whether civil or criminal, must be construed strictly in favor of those whom they affect.”

As stated above, Section 7786 has reference only to reports relating to school records and the management and conduct of schools. Nowhere is there any authority given to either the director of education, the board of education or the superintendent of schools to require teachers to make reports on other subjects, or to require teachers to file with the clerk of the board of education information which might be required by or be advantageous to the Teachers' Retirement Board. The terms of the section cannot be enlarged, and before the penalty authorized to be imposed may be invoked, the offending teacher must come squarely within the statute, which as above pointed out must be strictly construed.

In answer to your questions, for the reasons stated, I am of the opinion that (1) Section 7786, General Code, relates only to reports pertaining to school records and to the management and conduct of schools, and does not include reports containing information required by the Teachers' Retirement Board, such as Form A, adopted by such board, and that (2) the Superintendent of Public Instruction (Director of Edu-

cation) is not authorized to require reports containing information required by the Teachers' Retirement Board, such as Form A, adopted by such board, to be filed with the clerk of the board of education, so that the provisions of Section 7786, General Code, to the effect that the salary of a teacher may be withheld until such teacher files with the clerk reports required to be filed by the director of education, boards of education and the superintendent of schools, may be invoked.

Respectfully,

EDWARD C. TURNER,
Attorney General.

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ROSTER OF OHIO WORLD WAR SOLDIERS—COPIES OF SAME TO BE
DELIVERED TO PRESENT GENERAL ASSEMBLY.

SYLLABUS:

The ten copies or sets of the roster of Ohio soldiers, sailors and marines engaged in the war with the Central Powers of Europe, directed by Section 4 of the Act providing for the publication and distribution of such roster, (108 v. Part I, 191) to be distributed to each member of the General Assembly, should be delivered to the present members of the General Assembly, who are at this time public officers, and not the individuals who were members of the Eighty-Third General Assembly, which passed said act.

COLUMBUS, OHIO, April 18, 1927.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of April 14, 1927, reading as follows:

"The 83rd General Assembly on May 7, 1919, approved an appropriation providing for the preparation, publication and distribution of a complete roster of all Ohio soldiers, sailors and marines who entered the service of the United States in the war 1917-1919 with the Central Powers of Europe. Section 4 of the Act providing for the distribution, allows to each member of the General Assembly ten copies or sets.

Your opinion is requested whether or not the distribution at this time should be made to the present members of the General Assembly or to the members comprising the 83rd General Assembly."

Section 4 of the act to which you refer is a part of "An Act—Providing for the publication and distribution of the roster of Ohio soldiers, sailors and marines engaged in the war with the Central Powers of Europe" passed on April 17, 1919 (1082, Part 1, 191). This section reads in part as follows:

"The distribution of said volumes shall be under the direction of the secretary of state and shall be as follows: To each member of the general assembly, ten copies or sets; to the adjutant general, for distribution to the adjutants general of each state and territory, and proper officials of the navy and war departments of the United States, one hundred copies or sets; to each elective state officer of Ohio, to be kept as a part of the official records of his office, one copy; to the state library, one hundred copies for exchange and ten copies to be retained permanently therein; to the Ohio Archaeological