

is a condition precedent, which must be complied with in order to entitle a claimant to enter his claim for damages. The reasons for such notice are obvious, the purpose being to enable the county commissioners to have an investigation of the damage sustained made by the proper officer without delay, and I deem it unnecessary to comment upon the same herein.

Answering your question specifically, it is my opinion that, by the terms of Section 5840, General Code, in order to entitle any owner of horses, sheep, cattle, swine, mules and goats, which have been injured or killed by a dog not belonging to such owner or harbored on his premises, to enter a claim for the damages sustained, such owner must notify a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered. A board of county commissioners is without authority to allow a claim for damages, presented under the provisions of Section 5840, General Code, unless the claimant notifies a county commissioner in person or by registered mail within forty-eight hours after such loss or injury has been discovered.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1931.

SUPERINTENDENT OF SCHOOLS—NOT ELIGIBLE TO APPOINTMENT
ON COUNTY BOARD OF SCHOOL EXAMINERS.

SYLLABUS:

A superintendent of schools appointed under authority of Section 4740, General Code, is not eligible to appointment on a county board of school examiners as a representative of the class designated as "one other competent teacher."

COLUMBUS, OHIO, April 3, 1928.

HON. PAUL V. WADDELL, *Prosecuting Attorney, Saint Clairsville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"At the direction of the Belmont County Board of Education I am submitting to you the following question: Under the provisions of Section 7811, General Code, is a superintendent of a 4740 district, (so-called) teaching more than half time, eligible to appointment as a member of the county board of examiners when the other two members of the board consist of the county superintendent and one assistant county superintendent?"

Section 4740 and 7811, General Code, read as follows:

Section 4740. "Any village or wholly centralized rural school district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent upon the nomination of the county superintendent shall upon application to the county board of education before June first of any year be placed under the supervision of the county superintendent. Such superintendents shall be employed by

the local boards of education upon the nomination of the county superintendent, but the local board of education, by a majority vote of its full membership, may employ a superintendent not so nominated. Such superintendent shall perform the duties prescribed by law for assistant county superintendents, but shall teach for such part of the day as the board of education of the district or districts may direct."

Section 7811. "There shall be a county board of school examiners for each county, consisting of the county superintendent, one superintendent, high school principal, or assistant county superintendent and one other competent teacher, the latter two members to be appointed by the county board of education. The teacher so appointed must have at least two years' experience as teacher or superintendent, and be a teacher or supervisor in the public schools of the county school district or of any exempted village school district. Should he remove from the county during his term, his office thereby shall be vacated and his successor appointed."

This department has in two previous opinions considered the question of whether or not a superintendent of schools in what is popularly spoken of as a 4740 district, in other words, a superintendent such as is provided for by Section 4740, General Code, may be appointed as the teacher member of a county board of school examiners as provided in Section 7811, General Code.

The first of these opinions was rendered in 1920 and is reported in the Opinions of the Attorney General for that year in Vol. 1, page 747, and the other is reported in Opinions of the Attorney General for 1923, at page 389.

The first of these opinions holds:

"A superintendent of a supervision district (commonly known as a 4740 district) may serve upon the board of county school examiners as the teacher member thereof to be appointed by the county board of education."

The opinion of 1923 above referred to holds:

"Persons designated as assistant county superintendent under Section 4740, G. C., or as principal under 7705, G. C., being thereby placed in a higher or different grade or class than a teacher, would be ineligible to appointment to the county board of examiners as 'one other competent teacher.'"

Subsequent to the date of the opinion of 1920, and before the opinion of 1923 was rendered, both Sections 4740 and 7811, General Code, were amended by what is known as the Kumler-Gorrell Act (109 v. 242) enacted in 1921, the purpose of which was to abolish district supervision of schools and also the election by popular vote of the members of the county board of education.

The act of 1921 above referred to repealed former Sections 4738 and 4738-1, General Code, providing for the division of county school districts into supervision districts under the direction of district superintendents and amended former Section, 4739, General Code, which had provided for the election of district superintendents in supervision districts; the act of 1921 providing that the county school district should be the unit of supervision for school districts and that the supervision thereof should be under the direction of the county superintendent and assistant county superintendents elected by the county board of education.

Sections 4740 and 7811, General Code, before amendment in 1921, read as follows:

Section 4740. "Any village or wholly centralized rural school district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent shall upon application to the county board of education before June 1st of any year be continued as a separate district under the direct supervision of the county superintendent until the board of education of such district by resolution shall petition to become a part of a supervision district of the county school district. Such superintendents shall perform all the duties prescribed by law for a district superintendent, but shall teach such part of each day as the board of education of the district or districts may direct."

Section 7811. "There shall be a county board of school examiners for each county, consisting of the county superintendent, one district superintendent and one other competent teacher, the latter two to be appointed by the county board of education. The teacher so appointed must have had at least two years' experience as teacher or superintendent, and be a teacher or supervisor in the public schools of the county school district or of an exempted village school district. Should he remove from the county during his term, his office thereby shall be vacated and his successor appointed."

It will be observed that the only pertinent change made by the amendment of Section 7811, General Code, is to the effect that the personnel of the county board of school examiners shall consist, in addition to the county superintendent, of "one superintendent and one other competent teacher" whereas, before the amendment, the board was composed of "one district superintendent and one other competent teacher", in addition to the county superintendent. It is necessary to determine, therefore, what the status of a superintendent as spoken of in Section 4740, General Code, really is. It will be observed that Section 7811, supra, requires the county board of examiners to be selected from three classes of persons: First, the county superintendent, second, one superintendent, high school principal or assistant county superintendent, and third, one other competent teacher. The question arises whether or not a superintendent of the kind or class spoken of in Section 4740, supra, would be eligible to appointment on the board of examiners as being one of the second class, that is, a "superintendent, high school principal or assistant county superintendent." If so, clearly he could not be within the third class even though he meets the requirements that the teacher member must have at least two years experience, and be "a teacher or supervisor in the public schools of the county school district or of an exempted village school district", as obviously the Legislature intended the personnel of the county board of school examiners to be representative of three separate and distinct classes of persons. As stated at the conclusion of the opinion of 1923 above referred to (O. A. G., 1923, p. 389, 391):

"It is further suggested that upon careful consideration of the sections herein discussed, it is believed the Legislature intended that the third member of the board of county examiners should be chosen from the ranks and have the viewpoint of such teachers."

Without reviewing the history of Section 4740, General Code, it is sufficient to say, for the purposes of this opinion, that the only difference, under the present law, between a so-called 4740 district and any other village or wholly centralized school district is that the so-called 4740 district is supervised by a superintendent

employed by its own board of education, which superintendent is under the supervision of the county superintendent and performs the same duties with respect to his district as does an assistant county superintendent for other districts, and may be required to teach a part of the time, while the other districts are supervised by an assistant county superintendent elected by the county board of education.

Authority was given to school districts to appoint a superintendent as early as the school code of 1873 (70 v. 195), wherein is found on page 209 the following provision:

“The board of education of each school district shall have the management and control of the public schools of the district which are or may be established under the authority of this act with full power in respect to such schools to appoint a superintendent * * * and fix their salaries * * * .”

This law was not changed until after it became a part of Section 4017 of the Revised Statutes of 1880. It was amended a number of times after that and was carried into the code in 1910 as Section 7690, General Code. After subsequent amendments it now appears as Section 7690, General Code, and reads in part as follows:

“Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district, except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employees, including, if deemed best, a superintendent of buildings, and may fix their salaries. * * * .”

During the entire period of the existence of the above provision of law, substantially as now contained in Section 7690, supra, its terms were permissive. That is to say, boards of education were not required to appoint superintendents, but might do so if they saw fit.

Upon the adoption of the first law providing for county supervision of schools (104 v. 133), it was provided that the county school district, as the unit of supervision, should be divided by the county board of education into supervision districts, each to contain one or more villages or rural school districts. Each supervision district was to be under the direction of a district superintendent, who was elected by the president of the village or rural boards of education within the district, or by the joint action of the boards of education upon the nomination of the county superintendent, in the smaller supervision districts as the case might be. (104 v. 140)

As a part of this act there was enacted Section 4740, General Code (104 v. 141), which gave to village or rural school districts, or to a union of school districts for supervision purposes, which had previously taken such interest in their schools as to provide supervision when the same had not been required and had continued to do so up to the date of the enactment, the right to continue as a supervisory unit from the supervision districts designated by the county board, and to be supervised by a superintendent of its own selection, instead of being subject to being made a part of some supervision district at the will of the county board of education, and thus being required to join with some other one or more school districts in the selection of its supervising officer.

Section 4740, General Code, has been amended a number of times since, but the principle embodied in the original statute has been preserved in the several amendments, and is now contained in the present statute as above quoted.

In the amendments of this section since 1914, the provision was made that the duties of a superintendent employed by virtue of its provisions should perform the same duties with respect to his district as did district superintendents in their districts; and in the last amendments thereof in 1921, when supervision districts were abolished and assistant county superintendents provided for, the duties of a superintendent employed under Section 4740, General Code, are set out in the following language:

“Such superintendent shall perform the duties prescribed by law for assistant county superintendents, but shall teach for such part of the day as the board of education of the district or districts may direct.”

The fact that the superintendent in a so-called 4740 school district may be required, by the board employing him, to teach a part of the time does not in my opinion make him any the less a superintendent. He may not be required to teach at all, and probably would not if in the opinion of the board his time would be taken up in supervision. In fact, the teaching is secondary to the supervision, and while he may be classed as a teacher for some purposes he nevertheless is a superintendent.

It is therefore my opinion that a superintendent of schools in a so-called 4740 district is eligible to appointment on the county board of school examiners as a representative of the second class of persons enumerated in Section 7811, General Code, that is, “a superintendent, high school principal or assistant county superintendent” and can not be appointed as “one other competent teacher.”

Respectfully,
EDWARD C. TURNER,
Attorney General.

1932.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE SHAMP ELECTRIC COMPANY, WOOSTER, OHIO, FOR EXTENDING POWER LINE TO ANIMAL INDUSTRY LABORATORY BUILDING AND AGRONOMY BUILDING, OHIO AGRICULTURAL EXPERIMENT STATION, WOOSTER, OHIO, AT AN EXPENDITURE OF \$2,222.40.

COLUMBUS, OHIO, April 4, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—you have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for Ohio Agricultural Experiment Station, Wooster, Ohio, and J. D. Shamp and M. A. Shamp, co-partners doing business as Shamp Electric Company, of Wooster, Ohio. This contract covers the construction and completion of general contract for renewing and extending power line to Animal Industry Laboratory Building and Agronomy Building, Ohio Agricultural Experiment Station, Wooster, Ohio, and calls for an expenditure of two thousand two hundred and twenty-two and 40/100 dollars (\$2,222.40).