

turity of bonds issued by authority of section 3298-15e G. C. in anticipation of such assessments, rate of interest to be the same as that named in the bonds.

COLUMBUS, OHIO, January 6, 1920.

HON. WATSON H. GREGG, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading as follows:

“Section 3298-15b, road laws of Ohio, provides, relative to assessments for road purposes, that ‘the principal shall be payable in not more than twenty semi-annual installments, extending over a period of not more than ten years, as determined by the township trustees.’ May the trustees, under this section, provide for the payments in cash, or must the assessments extend over a period of time?”

The section of the General Code to which you refer is part of a series (3298-1 to 3298-15n) providing for road construction by township trustees. Said series of sections is in large part a *verbatim* adaptation of the county road improvement statutes (sections 6906 to 6948) to township purposes.

Said county road improvement statutes were the subject of a recent opinion of this department (No. 886) directed to Hon. Benton G. Hay, prosecuting attorney, Wooster, Ohio, under date December 24, 1919, dealing with the same question as applied to the county statutes which is submitted in your letter as to the township statutes. A copy of that opinion is enclosed together with copy of Opinion No. 887, to which it makes reference.

The similarity existing between two sets of statutes is so marked that the principles discussed in said opinion furnish the answer to your question, which answer may be stated as follows:

The road improvement assessments mentioned in section 3298-15b, G. C., may be paid in installments only and not as a lump sum, unless the tender of payment in lump includes interest on the assessments in full from date of issue to date of maturity of bonds issued by authority of section 3298-15e, G. C., in anticipation of such assessments, rate of interest to be the same as that named in the bonds.

Respectfully,

JOHN G. PRICE,
Attorney-General.

917.

BOARD OF EDUCATION—WHERE CANDIDATE FOR MEMBER RECEIVES NEXT TO HIGHEST NUMBER OF VOTES IN ELECTION—NOT RESIDENT OF DISTRICT—CANNOT QUALIFY—VACANCY—WHERE NOMINATION PAPERS DO NOT CONTAIN SUFFICIENT SIGNATURES OF CANDIDATES FOR MEMBER OF VILLAGE BOARD OF EDUCATION—NO OBJECTION RAISED—ELECTION NOT THEN INVALID.

1. *Where a candidate for a member of a board of education receiving next to the highest number of votes in the election was not a resident of the district, he cannot legally qualify and a vacancy exists.*
2. *Where the nomination papers of a candidate for a member of the village*

school board did not contain a sufficient number of signatures, no objection being raised, and said candidate having been certified as nominated and elected, his election will not be invalid on account of the irregularity in his nomination.

COLUMBUS, OHIO, January 6, 1920.

HON. LEWIS F. STOUT, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—Your communication of recent date requesting the opinions of this department, reads as follows:

“At the last election for members of the board of education of the Buckland village school district there were five or seven candidates voted for. Two members were to be elected. After the election it was discovered that the candidate receiving the second highest number of votes was not a resident of the school district, and had not been such a resident at any time prior to the election.

1. Is it necessary that a member of the board of education reside in the district?

2. If so, would the next highest candidate be held to have been elected?

3. If the next highest candidate was not elected, would there be a vacancy in the board to be filled by appointment, or would one of the old members hold over?

4. If one of the members held over and there were two members whose term expired, which one of those two members would hold over?

5. If the nomination papers of certain of the candidates at this election were not signed by the requisite number of electors, would this fact prevent the election of such candidate?”

Article XV, section 4, of the constitution, provides:

“No person shall be elected or appointed to any office in the state unless possessed of the qualifications of an elector; provided that women who are citizens may be appointed as members of boards of, or to positions in, those departments and institutions established by the state or any political subdivision thereof involving the interests or care of women or children or both.”

Section 4863 G. C. provides:

“No person shall be permitted to vote at any election unless he shall have been a resident of the state for one year, resident of the county for thirty days, and except as provided in the next section, resident of the township, village or ward of a city or village for twenty days next preceding the election at which he offers to vote.”

Section 5055 G. C. provides:

“Each qualified elector shall vote at the polls of the precinct in which he has a legal residence, unless otherwise directed by special provision of law.”

Therefore in reply to your first inquiry, it would seem that under the provisions of the constitution and the statutes it is essential that a candidate for a

member of the village board of education be a resident of the district before he can legally be elected. He must be a qualified elector before he can legally be a candidate, and an elector must be a resident of the precinct in which he votes.

Referring to your second question, section 5120 G. C. provides:

"In school elections, the returns shall be made by the judges and clerks of each precinct to the clerk of the board of education of the district, not less than five days after the election. Such board shall canvass such returns at a meeting to be held on the second Monday after the election, and the result thereof shall be entered upon the records of the board."

The rule seems to be well established in this state that a board charged with the canvassing of the election returns performs a ministerial duty and has no power or authority to judge of the validity of the returns or votes. This principle is clearly set forth in the case of Dalton, clerk, vs. The State ex rel., 43 O. S., 652, and in the case of The State ex rel. vs. Graves, 91 O. S., 113. The court in part said:

"The duties of the secretary of state in canvassing election returns are fixed by statute and are purely ministerial. He is not authorized to try an election contest or to pass upon the validity of the election returns made to him."

Also the following is quoted from the syllabus in the case of State ex rel. vs. Tanzey, et al., 49 O. S., 656:

"1. The duties of the board of deputy supervisors of elections, in making the abstracts of the votes returned by the officers of the election precincts of the county, are purely ministerial, and are limited to compiling the votes shown by the tally sheets so returned, and setting down to each candidate the aggregate number of votes so appearing to have been cast for him, and to certifying and transmitting the abstract so made, to the proper officer.

2. The board is without authority to hear evidence to contradict or explain the tally sheets, or act upon information not appearing on their face, or to open or count ballots returned by the precinct officers, as uncounted ballots, concerning the legality of which, doubt or difference of opinion existed in the minds of the judges of election."

It therefore follows in the case at hand that the board of education in its canvass of the election returns cannot ignore the votes cast for the candidate who is not a resident of the district and the next highest man should not be held to have been elected. However, it is evident that said candidate cannot legally qualify as a member of the board on account of not being a resident of the district. Therefore, there will be a vacancy.

Section 4748 G. C. provides:

"A vacancy in any board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the

board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy."

In view of the foregoing, it is the opinion of this department that the vacancy, created by reason of the candidate, who is not a resident, being unable to qualify, should be filled by appointment by the board in accordance with the provisions of said section.

In view of the foregoing, it is not deemed necessary to specifically answer your third and fourth questions.

Sections 4997 and 5005 G. C. which relate to your fifth inquiry, are as follows:

"Nominations of candidates for the office of member of the board of education shall be made by nominating papers signed in the aggregate for each candidate by not less than twenty-five qualified electors of the school district, of either sex, in village districts and in city school districts by not less than two per cent of the electors voting at the next preceding general school election in such city school districts.

Sec. 5005. When so filed, certificates of nomination and nomination papers shall be preserved and be open, under proper regulations, to public inspection. If in apparent conformity with the provisions of this chapter, they shall be deemed to be valid unless objection thereto is duly made in writing within five days after the filing thereof."

It is assumed that there was no objection raised as to the validity of the nomination papers filed in the case to which you refer. In an opinion of the Attorney General reported in Vol. I, 1918, page 10, it was held that where no objection was raised the irregularity of the nomination papers of the candidate for a member of the board of education on account of said nomination papers not containing the required number of signatures, did not invalidate his election. The syllabus reads as follows:

"Where a person filed a nomination petition for member of the board of education, which had less than twenty-five signers thereon, and where no objections thereto were filed or considered, and the deputy state supervisors of elections, irrespective of the number of signers, placed the name on the ballot, and at the election the person received the highest number of votes, he was duly elected as a member of said board of education, and irregularities in the making of the nomination would not affect the validity of his election."

It is believed that in the case you mention if there were no objections raised, and the candidate was certified as being nominated, and his name was placed upon the ballot, his election will not be invalid on account of an insufficient number of signatures to his nomination papers.

Respectfully,
JOHN G. PRICE,
Attorney-General.