

2715.

APPROVAL, BONDS OF CLEVES-NORTH BEND VILLAGE SCHOOL DISTRICT, HAMILTON COUNTY—\$20,000.00.

COLUMBUS, OHIO, October 15, 1928.

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

2716.

APPROVAL, BONDS OF ELMWOOD PLACE VILLAGE SCHOOL DISTRICT, HAMILTON COUNTY, OHIO—\$20,000.00.

COLUMBUS, OHIO, October 15, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2717.

BOARD OF EDUCATION—NEWLY CREATED VILLAGE SCHOOL DISTRICT—MEMBERS EITHER APPOINTED BY COUNTY COMMISSIONERS OR ELECTED AT SPECIAL ELECTION—LENGTH OF TERMS NOTED.

SYLLABUS:

Members of boards of education for newly created village school districts may be appointed by the board of county commissioners of the county, or may be selected at a special election held in said village pursuant to General Code Section 3536, in which case their respective terms will date from the first Monday in January after the last preceding regular election for such offices in November of odd numbered years, as provided by General Code Section 4838.

COLUMBUS, OHIO, October 16, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which reads as follows:

“We are enclosing herewith a letter from the Board of Deputy State Supervisors and Inspectors of Elections of Butler County, requesting your opinion.

Will you kindly communicate directly with the Board, advising them?"

I also have the attached enclosure from the Clerk of the Board of Deputy State Supervisors and Inspectors of Elections of Butler County, Ohio, which reads in part as follows:

" * * * The Village of New Miami in St. Clair Township of this county has recently been incorporated and it has a tax duplicate of over five hundred thousand. Under Section 4681 of the General Code this automatically makes this village an independent school district and under Section 4709 of the General Code it is necessary to elect members of the board of education, two for two years and three for four years. Section 4710 of the General Code also governs this situation.

We are expecting to hold an election on November 6th for the new officers in this village together with the board of education but as this is an even numbered year, it would make the terms of the members of the board of education expire in even numbered years hereafter, and, of course, the election laws provided that board of education shall be elected in the odd years. The regular village officials, as I understand the law, can be elected this fall to serve until the next year when the regular municipal election occurs but it seems, under the sections of the General Code above noted, that this situation is not taken care of in the case of members of the board of education. I am at a loss, therefore, how to proceed in this case and would appreciate an opinion at an early date. * * * "

The election proposed to be held in the newly incorporated village of New Miami, although it is to be held on the date of the general election in November of this year, is really a special election held by virtue of Section 3536, General Code, which reads as follows:

"The first election of officers for such corporation shall be at the first municipal election after its creation, and the place of holding the election shall be fixed by the agent of the petitioners. Notice thereof, printed or plainly written, shall be posted by him in three or more public places within the limits of the corporation, at least ten days before the election. The election shall be conducted, and the officers chosen and qualified, in the manner prescribed for the election of township officers, and the first election may be a special election held at any time not exceeding six months after the incorporation, and the time and place of holding it shall be fixed by such agent, and notice thereof shall be given as is required herein for the municipal election."

Regardless of the fact that the time fixed for holding the election coincides with the date of the general election for the selection of county and state officers, notice should be given as of a special election, in so far as the village of New Miami is concerned, pursuant to the requirements of the above section.

General Code Section 4709 provides as follows:

"At the first election in such district, a board of education shall be elected, two members to serve for two years and three to serve for four years. At the proper municipal election held thereafter, their successors shall be elected for a term of four years."

The "first election" appearing in this section, in my opinion, refers to the first regular election held in November of odd numbered years, as provided by General Code Section 4838.

When a village is newly incorporated in an even numbered year, as in the case which you present, a board of education can be provided in either of two ways, as provided by General Code Section 4710. The first part of this section provides for an appointment by the commissioners of the county, in which case the appointees will serve until their successors are elected and qualified, at the first regular election for such officers. The last of the section provides as follows:

" * * * If the members of such board are elected at a special election held in such district the members so elected shall serve for the term indicated in the preceding section, from the first Monday in January after the preceding election for members of the board of education and the board shall organize on the second Monday after such election."

In my opinion the special election referred to in this part of the section refers to the special election provided by General Code Section 3536, *supra*, calling for the election of officers of the newly formed municipal corporation, and will, therefore, apply to the election which it is proposed to hold on November 6th of this year for the village of New Miami. It is to be noted that the last part of this section further supplies the answer to the question with which you are concerned in this case. It provides that in cases where election of such boards occurs other than in November of odd numbered years, the terms for which such boards are elected shall extend from the preceding January; or the January following the last regular election provided by said Section 4838 for such officers. Applying this provision to the present case, two members of the board of education for New Miami will be elected November 6th for a period of two years from the first Monday in January, 1928. The terms of these two members will, therefore, expire on the first Monday of January of the year 1930, when their successors, who will be elected at the regular election next year, will have been elected and qualified. Likewise three members of the board will be elected November 6th of this year for terms of four years, which terms will likewise extend from the first Monday in January, 1928. Their terms will expire on the first Monday in January, 1932, when their successors, elected at the regular election of such officers, in November, 1931, will be properly qualified.

It may be proper to further caution you that an opinion of this office has previously been rendered to the effect that an election of members of a board of education is invalid unless the terms of office (that is, two or four years) for which each candidate seeks to be elected, appears upon the ballot (Opinions Attorney General 1919, Vol. 2, p. 1603).

Answering your questions specifically, you are therefore advised to proceed under Section 3536 of the General Code to conduct the proposed election on November 6, 1928, in so far as it applies to municipal officers and boards of education, as though it were entirely a special election, giving notice thereof in the manner prescribed by that section. The candidates for the board of elections must also signify the term for which they seek to be elected and these respective terms must appear upon the ballots. The terms of two of these candidates must be for two years, and the same will expire on the first Monday in January, 1930, and three of them must be for terms of four years, which will expire on the first Monday in January, 1932.

Respectfully,
EDWARD C. TURNER,
Attorney General.