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JOINT HIGH SCHOOL—CONDUCTED BY COMMITTEE IN ACCORDANCE WITH 7670 G. C.—SUPERINTENDENT OR PRINCIPAL CANNOT BE EMPLOYED FOR SUPERVISION PURPOSES OTHER THAN SUPERVISION OF JOINT HIGH SCHOOL—EFFECT WHERE A 4740 G. C. DISTRICT AND RURAL DISTRICT UNITE UNDER SECTION 7669 G. C. FOR JOINT HIGH SCHOOL, SUPERINTENDENT EMPLOYED UNDER SECTION 7670 G. C.—WHERE RURAL DISTRICT AND EXEMPTED VILLAGE DISTRICT UNITE UNDER SECTION 7669 G. C. FOR HIGH SCHOOL PURPOSES, EXEMPTED VILLAGE DISTRICT NOT REQUIRED TO HAVE SANCTION OF COUNTY SUPERINTENDENT IN EMPLOYMENT OF SUPERINTENDENT OF EXEMPTED VILLAGE DISTRICT.

1. *Where a village school district and a rural school district unite to maintain a joint high school to be conducted by a committee in accordance with 7670 G. C. such union of districts is for high school purposes only and the superintendent or principal employed cannot be employed for supervision purposes other than the supervision of the joint high school so created. Where the provisions of section 4740 G. C. (109 O. L., 243) cannot be harmonized with section 7670 G. C., and the joint high school statutes, as amended in Senate Bill 100, 109 O. L., 373, the provisions of the joint high school statutes will govern.*

2. *When a 4740 district and a rural district unite under 7669 G. C. for joint high school purposes, such 4740 district loses its status as a 4740 district and the superintendent or principal employed in such joint high school would be employed in accordance with 7670 by the high school committee conducting such joint high school.*

3. *Where a rural district and an exempted village district unite under 7669 G. C. for high school purposes, the exempted village district is not required to have the sanction of the county superintendent of schools in the employment of the superintendent of the exempted village district.*

COLUMBUS, OHIO, July 1, 1922.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department on the following questions:

"1. In case a village school district and a rural school district unite to maintain a joint high school to be conducted by a committee in accordance with section 7670 G. C., may the village district upon nomination by the county superintendent, and the rural district also upon nomination by the county superintendent, employ the same person as superintendent, such superintendent to give one-half of his time to the joint high school, one-fourth of his time to the supervision of the village elementary schools, and one-fourth of his time to the supervision of the elementary school of the rural district, in each instance the assumption being that the employment is authorized by section 4740 of the General Code?

"2. When a 4740 district and a rural district unite under section 7669 G. C., must the superintendent be employed in accordance with section 4740 of the General Code?

"3. If a rural district and an exempted village district unite under

section 7669 G. C., for high school purposes, must the village district employ a superintendent with or without action by the county superintendent?"

In answering your first question attention is invited to the fact that section 4740 G. C. prior to August 16, 1921, and as amended in 107 Ohio Laws, page 622, reads as follows :

"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."

As long as 4740 G. C. read as above there was little conflict with 7670 G. C. (99 Ohio Laws) which read, and still reads, as follows :

"Any high school so established shall be under the management of a high school committee, consisting of two members of each of the boards creating such joint district, elected by a majority vote of such boards. Their membership of such committee shall be for the same term as their terms on the boards which they respectively represent. Such high school shall be free to all youth of school age within each district, subject to the rules and regulations adopted by the high school committee, in regard to the qualifications in scholarship requisite for admission, such rules and regulations to be of uniform operation throughout each district." (99 O. L., p. 462.)

Old section 4740 G. C. (107 Ohio Laws) referred to "supervision district" and hence when the Kumler-Gorrell act became a law it was necessary to change section 4740 G. C. in some manner because supervision districts within the county school district were abolished by that act (substitute Senate Bill 200). Section 4740 G. C. which appears in the General Code today seems to have been taken from one of the number of bills before the 84th General Assembly, the purpose of which was to abolish district supervision and also elect by popular vote members of the county board of education.

In comparing section 4740 G. C. as amended in 109 Ohio Laws, page 243, with section 7670 G. C., there is a great difficulty in harmonizing the two sections, and it would appear that section 4740 G. C. as it now exists was apparently passed without any regard whatever for the plain provisions of section 7670 G. C., the section bearing upon the manner of conducting a joint high school, for section 4740 as amended in 109 Ohio Laws, page 243, reads as follows :

"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 7670 G. C. (99 Ohio Laws, p. 462) supra, provides that the joint high school as soon as established shall be under the management of a high school committee consisting of two members of each of the boards creating such joint district, elected by a majority vote of such boards. Prior to the amendment of section 4740 in 109 Ohio Laws, it was generally conceded and had been frequently held by this department that this high school committee employed the principal and teachers for the joint high school as well as doing all other things necessary in the successful conduct of such high school, in the same manner as if a local board of education would conduct its own high school. Thus it has been held in prior opinions of this department as follows:

"With the exception of the power reserved by provision of section 7672, G. C., to the board of education of each of the school districts comprising the union for high school purposes, to levy a tax and set aside the proceeds of such levy as a separate fund for the maintenance of said high school, the joint high school committee when properly elected under authority and in compliance with the requirement of section 7670 G. C., exercises the same powers and performs the same duties in connection with said high school as are exercised and performed by the board of education of a school district which maintains its own high school." (1916 Opinions of Attorney-General, Vol. I, p. 772.)

(The above was affirmed in practically the same language in an opinion of this department, appearing at page 466, Vol. I, Opinions of the Attorney-General, 1920.)

"When a joint school district is formed for high school purposes by a rural school district, and an adjoining village school district, such combined territory becomes one district for high school purposes, and taxes levied for the purchase of a school site and the erection of the school building, and the support of such joint high school thereafter must be borne by the respective joined districts in proportion to the total valuation of the property in each, notwithstanding the fact that the village district has the smallest valuation and sends the most pupils." (1919 Opinions of the Attorney-General, Vol. I, p. 483.)

"The high school committee in charge of a joint high school, operated by two or more school districts, must be governed in its disbursement of moneys from the tuition fund by the limitations set forth in section 7595-1 G. C." (1919 Opinions of the Attorney-General, Vol. I, p. 750).

The following significant language occurs on page 903 of Volume II, Opinions of the Attorney-General, 1920 relative to the manner of conducting a joint high school and the authority of the high school committee:

"It must not be forgotten that the member districts of the joint high

school district do not themselves conduct the high school. As section 7670 expressly provides, the authority in charge of the joint high school is a high school committee elected by the members of the respective boards of education. This committee employs the principal and teachers and otherwise manages and conducts the joint high school. The expense incurred by such committee is then to be contributed, subject to the qualifications already pointed out, by the member districts. These things being true, it cannot be said that either district is the employer of the principal and teachers, so that an unsatisfied claim for the salary of any such principal or teacher could not be said to be an indebtedness of either district. In order to reach this conclusion it is necessary, of course, to reject the theory of agency or partnership. Such a theory would be worked out by holding that the joint high school committee is an agent of both boards of education, so that the obligations which it incurs are claims against both in the same sense in which the agent of a partnership might create claims against both partners for which either would be liable. Such a theory, however, cannot be applied to boards of education in the absence of express statutory provision. The statutes which exist, interpreted as they have been by the courts, are not open to such construction. The joint high school committee is without power to incur obligations against either board. The result is, as previously stated, that the indebtedness of the joint high school committee is not the indebtedness of either school district for which money may be borrowed under section 5656 of the General Code."

While the principal or superintendent of the joint high school formerly was employed by the high school committee selected from the respective several boards of education forming the joint high school district, section 4740 was amended in 109 Ohio Laws supra so as to provide that such superintendents (that is in a union of school districts for high school purposes which has become a 4740 district) "shall be employed by the local board of education upon the nomination of the county superintendent," and thereafter when so chosen "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."

In your inquiry you indicate that a village school district and a rural school district united to maintain a joint high school (under section 7669 G. C.) would be conducted by a committee under section 7670, but that thereafter the employment of a superintendent for such joint high school was carried out in the manner "authorized by section 4740 of the General Code." There are frequent instances where a village school district and a rural school district will join under section 7669 G. C. in the establishing and maintaining of a joint high school, but this of itself does not make such joint high school district a 4740 district at all. In order to become what is known as a 4740 district, it is necessary that the steps mentioned in section 4740 be taken, and the requirements appearing in such section be fully complied with. A village school district and a rural school district which had united in maintaining a joint high school, can attain a 4740 status only by virtue of this union. Therefore if the village school district and the rural school district which you describe as having united under section 7669 G. C. to conduct a joint high school under section 7670 G. C. thereafter took the steps necessary to make such "union of school district for high school purposes" into a 4740 district, then the rights and privileges which run under section 4740 G. C. as recently amended might apply, since section 4740 as amended in 109 Ohio Laws is a later enactment than section 7670 G. C. (99 Ohio Laws, p. 462). Section 4740 closes with the language that "such super-

intendent 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."

A careful survey of all of the school laws upon supervision indicates that as far as the county school district is concerned, it was not intended that rural school districts should have more supervision of their elementary schools than that which obtains under the county superintendent of schools and his assistants. Thus it was held in an opinion of this department, appearing at page 684, Opinions of the Attorney-General, Vol. I, 1921, that a local board of education was without authority to elect a superintendent of schools under the general language of section 7690 G. C. since the General Assembly had already provided for county supervision of schools by a county superintendent and such assistants as might be elected by a county board of education. Again it was held by this department on May 24, 1918 in Opinion No. 1236, appearing at page 735, Volume I, 1918 Opinions of the Attorney-General that "When districts are united for high school purposes, that act alone does not unite such district for supervision purposes." However section 4740 G. C. has been amended, as indicated above, in 109 Ohio Laws, p. 243, since the issuing of this opinion in 1918.

In practical life section 4740, as it now reads, does not fit at all into the scheme detailed in section 7670 G. C. as to the conduct of a joint high school. If the superintendent employed in a joint high school district which has become a 4740 district is employed by the several boards of education, then he cannot be employed by a high school committee as has long been the plan under section 7670 G. C.; if his employment calls for one-half of his time to be given to the joint high school, one-fourth of his time to the supervision of the village elementary schools, and one-fourth of his time to the supervision of the elementary schools of the local district, it would appear that the joint high school committee under section 7670 G. C. which has the "management of the high school" has very little authority at all in the conduct of this joint high school. In other words, this language of section 4740 G. C. is practically unworkable when compared with the joint high school sections and the supervision details in other sections of the law since the question would be sure to arise as to just who had control of this superintendent since he was employed by the respective boards of education with a schedule of hours arranged by the boards of education rather than the joint high school committee. It can hardly be conceived that it was intended by the law making body that this superintendent or principal of a joint high school established under section 7669 G. C. should thereafter under another section of the law give but one-half of his time to such high school and the rest of it in supervision of elementary schools which schools had already been given supervision under the county superintendent of schools and his assistants. In other words, the union of school districts under section 7669 G. C. is for high school purposes only and the supervision which is referred to in the law by referring to the duties of the assistant county superintendents means only that supervision of the joint high school and not the supervision of any local schools in the district.

In your second question you desire to know whether in a case where a 4740 district and a rural district united under section 7669 G. C., must the superintendent be employed in accordance with section 4740 G. C. The answer to this is that even though the village district had been a 4740 before with the rural district for joint high school purposes, it lost its 4740 status immediately upon consummation of this union. Thus it was held in the opinion of the Attorney-General (No. 1236) issued on May 24, 1918, as follows:

"A district which exists under section 4740 G. C. and which unites with an adjoining district for high school purposes, cannot longer exist under said section 4740."

The reason for this appears in section 4740 G. C., one of the requirements of which is that to be a 4740 district, the district must conduct a first grade high school and the 4740 district which became part of the joint high school district would not be conducting a first grade high school by itself as a district since such first grade high school would thereafter be maintained by the joint high school district and not by the old 4740 district. So that if a 4740 district and a rural district united under section 7669 G. C., the superintendent or principal employed in such joint high school would be employed in accordance with section 7670 G. C., that is, by the high school committee conducting the joint high school.

In the third question you desire to know if a rural district and an exempted village district unite under section 7669 G. C. for high school purposes, must the exempted district employ a superintendent with or without action by the county superintendent?

An exempted village district is a village school district which has taken advantage of the provisions of section 4686 G. C., that is, upon establishing a population of three thousand or more, the village school district can be made exempt from the supervision of the county superintendent of schools and thus not under authority of the county board of education. It would appear to be rather a rare case where an exempted village school district would be compelled to join with a rural school district in the support of a joint high school since a village with three thousand population or more is usually wealthy enough to conduct a first grade high school of its own, which it does and then charges tuition to the pupils from surrounding districts who attend the first grade high school of the exempted village district. The fact that the cases are rare may be the reason that the law does not make any explicit mention as to what should obtain in a case of this kind. Clearly the exempted village school district does not have to employ its superintendent upon any action of the county superintendent and it cannot be conceived that by merely joining with a rural school district for high school purposes that the exempted village school district would then be compelled to employ its superintendent upon the nomination of the county superintendent. It is true that section 7705 provides that the board of education in each rural school district shall employ no teacher for any school unless such teacher is nominated by the county or assistant county superintendent (except by majority vote) but this section does not run to the new school district known as the exempted village school district and the word "teacher" is used instead of "superintendent." If an exempted village school district and a rural school district unite under section 7669 G. C. for high school purposes, the employment of the personnel in such joint high school would be by the joint high school committee mentioned in section 7670 G. C.

A union of a local district and an exempted village district under section 7669 G. C. for high school purposes, would not constitute a 4740 district by virtue of that union. Therefore such a district could not employ such a superintendent for the reason that only a 4740 district may employ a superintendent. An exempted village district would doubtless have a superintendent, but his employment is outside the jurisdiction of the county superintendent of schools.

In considering these questions it is worthy of notice that while the General Assembly amended 4740 G. C. in the manner above indicated, the same General Assembly also amended and supplemented the sections of law under which joint high school districts are operated. The sections under which joint high schools are oper-

ated are 7669, 7670, 7671, 7671-1, 7671-2 and 7672 of the General Code. In Senate Bill 100, passed by the 84th General Assembly, section 7669 and 7672 were amended, while section 7671-1 and 7671-2 were added as supplemental sections in order to clarify and strengthen the joint high school statutes, one of the corrections being a provision for the dissolution of the joint high school district for which no law had existed prior thereto. It is true that 7670 G. C., one of the joint high school sections, was not disturbed, Senate Bill 100 starting with 7669 G. C. and ending with 7672 G. C. of the joint high school statutes. Here is a practical indication in the strengthening of the joint high school statutes and leaving 7670 without any change, that the General Assembly was satisfied with old 7670, in the manner in which it operated in having a joint high school conducted under the management of a high school committee.

Section 4740 G. C., to which you refer, is a part of the Kumler-Gorrell law and was filed in the office of the secretary of state on May 17, 1921, while Senate Bill 100, clarifying and strengthening the joint high school statutes, was filed in the office of the secretary of state on May 19, 1921, that is, two days thereafter. Senate Bill 100 did not contain any amendment to 7670 G. C. of the joint high school statutes (and the section to which you refer) but 7670 is practically the keystone of the joint high school statutes, starting with 7669 and ending with 7672 G. C.; that is to say, the joint high school statutes would be unworkable in consummating what was intended if the provisions of 7670 G. C. did not obtain, for section 7670 is the section which provides for the management of the high school, the requirements as to entry to such school and the provisions for rules and regulations for the government of the joint high school without these things there would be no functioning in a joint high school district.

In reply to the questions submitted, then, you are advised that it is the opinion of this department:

(1) Where a village school district and a rural school district unite to maintain a joint high school to be conducted by a committee in accordance with 7670 G. C., such union of districts is for high school purposes only and the superintendent or principal employed cannot be employed for supervision purposes other than the supervision of the joint high school so created. Where the provisions of section 4740 G. C. (109 O. L., 243) cannot be harmonized with section 7670 G. C., and the joint high school statutes, as amended in Senate Bill 100, 109 O. L., 373, the provisions of the joint high school statutes will govern.

(2) When a 4740 district and a rural district unite under 7669 G. C. for joint high school purposes, such 4740 district loses its status as a 4740 district and the superintendent or principal employed in such joint high school would be employed in accordance with 7670 by the high school committee conducting such joint high school.

(3) Where a rural district and an exempted village district unite under 7669 G. C. for high school purposes, the exempted village district is not required to have the sanction of the county superintendent of schools in the employment of the superintendent of the exempted village district.

Respectfully,
JOHN G. PRICE,
Attorney-General.