

the county board of education and provided for an equitable division of funds and indebtedness between the district involved. It will be noted that again no mention is made of a division of funds or indebtedness in cases in which municipalities annex territory.

The act of the legislature in striking from the legislation relating to the annexation of territory to a municipal school district the apportionment of funds and indebtedness between two districts after numerous changes as to the vesting of the title of property situated in the territory annexed, would indicate that the intent of the legislature was not to provide for a division of indebtedness or funds other than as indicated by their last act, unless provision is made in some other section for such apportionment.

Section 7600 of the General Code, provided for the apportionment of school funds by the county auditor, and would seem to indicate that after each semi-annual settlement with the county treasurer the county auditor should apportion the school funds derived from the interest on the common school funds the proceeds of the levy under Section 7575 of the General Code and the local school levy as set out in such section.

A study of the history of Section 7600 of the General Code will show that this section in substantially the same form was in existence prior to the codification as Section 3964 Revised Statutes.

As Section 7600 of the General Code was in existence in substantially the same form at the time of the changes it is not believed that it can be considered as authority for an apportionment of funds under the existing laws relating to the annexation of territory to a municipal corporation.

You are therefore advised that in the instant case the village of Oakwood is not entitled to an apportionment of the September distribution of taxes collected from the Van Buren Village School District.

Respectfully,

C. C. CRABBE,

Attorney-General.

3721.

SALE OF REAL ESTATE BY CITY OF EAST CLEVELAND ILLEGAL—
SPECIFIC CASE PASSED UPON.

SYLLABUS:

The sale of real estate by the city of East Cleveland, which is not in conformity with Sections 3698 and 3699 of the General Code, is in conflict with general laws and therefore illegal.

COLUMBUS, OHIO, October 18, 1926.

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

GENTLEMEN:—I am in receipt of your communication as follows:

“We are enclosing herewith copy of charter of the city of East Cleveland and call your attention to Section 1 and 37 thereof.

Sections 3698 and 3699, General Code, provide for the sale of real estate to the highest bidder after advertisement for five consecutive weeks, etc. In the case of Kerlin Bros. v. Toledo, 20 C.C. 603, it was decided that the formalities required by the statutes for the sale of property by a city must be strictly complied with. In the case of State ex rel. v. Carroll, 103 O. S. 50, these sections were considered in connection with an ordinance passed by the council

of the city of Cincinnati authorizing the sale of real estate at auction and the court reached the conclusion that such ordinance was in conflict with the general law to the extent that the fee for an auctioneer was provided when Section 3699 G. C., provides that the proper officer of the city must attempt to make the sale.

The city of East Cleveland adopted several ordinances through its City Commission during the years 1925 and 1926 authorizing the sale or exchange of real estate, naming the parties to whom the sale was made or with whom property was exchanged. These properties were not advertised for sale and no bids were received as provided in Section 3699 G. C.

Question: Was the sale of real estate belonging to the city of East Cleveland in the manner described legal?"

Section 3698 of the General Code provides as follows:

"Municipal corporations shall have special power to sell or lease real estate or to sell personal property belonging to the corporation, when such real estate or personal property is not needed for any municipal purpose. Such power shall be exercised in the manner provided in this chapter."

Section 3699 of the General Code provides as follows:

"No contract for the sale or lease of real estate shall be made unless authorized by an ordinance, approved by the votes of two-thirds of all members elected to the council, and by the board or officer having supervision or management of such real estate. When such contract is so authorized, it shall be made in writing by the board or officer having such supervision or management and only with the highest bidder, after advertisement once a week for five consecutive weeks in a newspaper of general circulation within the corporation. Such board or officer may reject any or all bids and re-advertise until all such real estate is sold or leased."

These sections authorize a municipal corporation to sell or lease real estate and provides that such sale or lease shall not be made unless authorized by an ordinance approved by two-thirds of the members elected to the council. They further provide that when such contract is authorized, it shall be in writing after advertisement once a week for five consecutive weeks in a newspaper of general circulation in the corporation.

Section 1 of the Charter of the city of East Cleveland provides that the city of East Cleveland

"May sell, lease, hold, manage and control such property, and make any and all rules and regulations by ordinance or resolution which may be required to carry out fully all the provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property;"

Section 87 of the charter provides as follows:

"All general laws of the state applicable to municipal corporations now or hereafter enacted, and which are not in conflict or inconsistent with the provisions of this charter, or with ordinances or resolutions hereafter enacted by the commission, shall be applicable to this city and all officers and departments thereof; provided, however, that nothing contained in this charter shall be construed as limiting the power of the commission to enact any ordin-

ance or resolution not in conflict with the constitution of the state or with the express provisions of this charter."

In the case of *Kerlin Bros. vs. The City of Toledo*, 20 C. C. page 603, the court say in connection with Section 2673a R. S., which section was substantially the same as Section 3699, in the fifth syllabus, as follows:

"Under Section 2673a R. S., which limits the power of council to sell municipal property so far as real estate is concerned, a three-fifths vote of the members of council, and an advertisement for two weeks are required in order to sell real estate of the city or village."

Also in the case of *State ex rel. Sielonka v. Carroll*, 103 Ohio St. page 50, in construing sections 3698 and 3699 of the General Code, the court held that the council was without authority to pay the auctioneer's fees for the reason that an ordinance providing for the payment of an auctioneer was in conflict with the general laws.

The city of East Cleveland does not provide in its charter any method for the sale of real estate. Neither does the charter control the sale of real estate by ordinances in conflict with the general laws.

Section 87 of the charter provides that all general laws of the state applicable to municipal corporations which are not in conflict or inconsistent with the provisions of this charter, or with ordinances or resolutions hereinafter enacted by the commission, shall be applicable to this city. The reference to ordinances or resolutions in this section could certainly refer only to such ordinances or resolutions as the city is by its charter authorized to control.

You are therefore advised that the sale of real estate by the city of East Cleveland, which is not in conformity with sections 3698 and 3699 of the General Code, is in conflict with general laws and therefore illegal.

Respectfully,
C. C. CRABBE,
Attorney-General.

3722.

CONTRACTS WHICH RUN BEYOND THE END OF FISCAL YEAR, PAYABLE MONTHLY, MAY NOT BE REDUCED FOR BALANCE OF THIS FISCAL YEAR AND SUCH REDUCTION ADDED TO AMOUNT PAYABLE DURING NEXT FISCAL YEAR.

SYLLABUS:

Contracts entered into which run beyond the termination of the fiscal year and which are to be paid in monthly installments may not be reduced for the balance of this fiscal year and such reduction added to the amount to be paid during the next fiscal year.

COLUMBUS, OHIO, October 18, 1926.

HON. HAROLD A. PREDMORE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"We are submitting for your opinion the following statement of facts and questions recently presented to this office by the Board of Education, Paint Township Consolidated School District No. 3.