

820.

APPROVAL, BONDS OF MAD RIVER TOWNSHIP RURAL SCHOOL DISTRICT, CLARK COUNTY, \$1,878.48, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, October 17, 1923.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

821.

APPROVAL, BONDS OF CONCORD TOWNSHIP RURAL SCHOOL DISTRICT, DELAWARE COUNTY, \$3,511.79, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, October 17, 1923.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

822.

BOARD OF EDUCATION—UNCONDITIONAL RESIGNATION SUBMITTED BY MEMBER TO TAKE EFFECT IMMEDIATELY WILL BECOME EFFECTIVE UPON FILING IT WITH BOARD—VACANCY CREATED—RESIGNATION CANNOT THEREAFTER BE WITHDRAWN.

**SYLLABUS:**

*An unconditional resignation submitted by a member of a county board of education to take effect immediately, being fully transmitted and filed with such board, the remaining members of which are authorized to fill any vacancies therein, will become effective immediately upon its filing and a vacancy then exists.*

*When such resignation has been fully transmitted and filed and a vacancy created, such resignation cannot thereafter be withdrawn.*

COLUMBUS, OHIO, October 17, 1923.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—Yours of recent date received, in which you submit the following statement and inquiry:

“A member of a county board of education under date of July 20, 1923, tendered his resignation as a member of said board to take effect on the same date. On August 8 this same individual asked for the return of his resignation, saying that he had reconsidered the matter. There was no

meeting of the county board of education between July 20 and August 8. These questions arise:

*“First, is it necessary for the county board of education to accept the resignation of one of its members before such resignation can become effective; second, is it possible for a county board member to withdraw a resignation which he has tendered if there has been no meeting of the county board of education in the interim?”*

Sections 4731 and 4748 of the General Code of Ohio are the sections covering the matter of vacancies and filling of same in a board of education.

Section 4731 of the General Code reads as follows:

*“Each member of the county board of education shall before entering upon the duties of his office, take an oath that he will faithfully perform the duties of his office. Such oath may be taken before any one authorized by law to administer oaths. If any person so elected shall fail to take such oath before the beginning of his term, the office to which he was elected shall be considered vacant. Any vacancy on the board shall be filled in the same manner as is provided in section 4748 of the General Code.”*

Section 4748 of the General Code reads as follows:

*“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.”*

The rule of law in Ohio relative to the necessity of the acceptance of a resignation from office has been clearly defined in the case of *Reiter v. State, ex rel. Durell*, 51 Ohio State, p. 74, the first paragraph of the syllabus being as follows:

*“By the rules of the common law, a resignation of an office does not take effect, so as to create a vacancy, until such resignation is accepted by the proper authority; but the common law in this regard is not in force in this state, to its full extent, and here a resignation without acceptance creates a vacancy to the extent at least of giving jurisdiction to appoint or elect a successor, unless otherwise provided by statute.”*

It is assumed from the statement you submit that the resignation was an unconditional one to take immediate effect and was fully transmitted and duly filed with the county board of education, the remaining members of which board are authorized to fill any vacancy therein (General Code section 4748). There being in the instant case no other provision by statute, it is believed such resignation became effective immediately upon its filing, without acceptance or other affirmative action.

In reply to your second question, I am of the opinion that the resignation in question being an unconditional one, to become effective immediately, cannot be withdrawn at any time after its effective date. This conclusion is supported by the following authorities:

In *Pac. v. People*, 50 Ill., 432, an absolute resignation of a superintendent of schools, to take effect *in praesenti*, which was complete by filing, was held not subject to withdrawal.

And in *State ex rel. Lockhart v. Hauss*, 43 Ind., 105, 13 Am, Rep. 384, it was held that where an officer had transmitted his written resignation, to take immediate effect, and it had been received by the officer or authority appointed by law to receive it, he could not then withdraw it.

So, in *State ex rel. Nourse v. Clarke*, 3 Nev. 566, where an unconditional resignation was forwarded by mail, this court, in passing, said that, as soon as the letter went beyond the party's reach, a vacancy in the office occurred, so that the resignation could not be withdrawn, even by telegram.

And in *State ex rel. Williams v. Fitts*, 49 Ala., 402, a vacancy was held to exist where a county solicitor sent his unconditional resignation to the secretary of state, to be transferred to the proper authority, to whom it was forwarded, and who, upon his return from an absence, received, among other letters, a virtual withdrawal of the resignation, since, after the transmission of the resignation, nothing remained to be done to complete it."

Respectfully,

C. C. CRABBE.

*Attorney-General.*

823.

APPROVAL CONTRACT BETWEEN STATE OF OHIO AND THE ELCON ENGINEERING COMPANY, INSTALLATION OF PIPING AND FEED WATER HEATER FOR CLEVELAND STATE HOSPITAL, AT COST OF \$4 989.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, October 17, 1923.

HON. J. E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contract between the State of Ohio, acting by the Department of Public Welfare, and The Elcon Engineering Company of Columbus, Ohio. This contract covers the installation of piping and feed water heater for the Cleveland State Hospital and calls for an expenditure of \$4,989.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Globe Indemnity Company appears as surety, sufficient to cover the amount of the contract.