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WRITTEN NOTICE OF SPECIAL MEETING—BOARD OF EDUCATION—MAY BE GIVEN BY MAILING SUCH NOTICE BY ORDINARY MAIL—SECTION 4751 G. C.

MAILING WILL RAISE PRESUMPTION NOTICE DELIVERED IN DUE COURSE—PRESUMPTION IS REBUTTABLE—IF IN FACT BOARD MEMBER DID NOT RECEIVE NOTICE, MAILED NOTICE WOULD BE OF NO EFFECT.

SYLLABUS:

The written notice of a special meeting of the board of education, as required by Section 4751, General Code, may be given by mailing such notice by ordinary mail, and such mailing will raise the presumption that the same was delivered in due course; but such presumption is rebuttable and if in fact a member of the board did not receive the same, such mailed notice would be of no effect.

Columbus, Ohio, June 25, 1943.

Hon. H. Lloyd Jones, Prosecuting Attorney,
Delaware, Ohio.

Dear Sir:

I acknowledge receipt of your communication requesting my opinion, reading as follows:

> "Under the provisions of Section 4751, General Code, is the service of the written notice complied with by mailing by ordinary mail?"

Section 4751, General Code, provides:

> "A special meeting of a board of education may be called by the president or clerk thereof or by any two members, by serving a written notice of the time and place of such meeting upon each member of the board either personally or at his residence or usual place of business. Such notice must be signed by the official or members calling the meeting."

It will be well to read this section in connection with Section 4750, which provides:

> "The board of education shall make such rules and regulations as it deems necessary for its government and the government of its employes and the pupils of the schools. No meeting of a board of education, not provided for by its rules or by law, shall be legal, unless all the members thereof have been notified, as provided in the next section."

It will be observed that the notice required for a special meeting must be in writing, but there is nothing in these statutes as to the manner in which the notice is to be served except that it must be served upon each member personally or at his residence or place of business. Nor is there any stipulation as to any return or other proof of service.

Referring to the use of the mail as an instrument of service of a notice, it is stated in 30 Ohio Jur., 264:

> "The prima facie presumption is that a notice duly mailed was received; and even where the addressee has changed his address, if it appears that the postoffice department had customarily delivered to his new address mail addressed to the old one, the presumption is that a notice addressed to the old address was received."

Citing Judge v. Masonic Mutual Benefit Association, 10 O. C. C. (N. S.) 473, where it was held:

> "Proof of the mailing of a letter, properly stamped and addressed, affords prima facie evidence of its receipt by the person to whom directed; and this applies notwithstanding the address of the addressee may have been lately changed, as in this case, the well known accuracy, knowledge, facilities and practice of the post office department in such matters raising a presumption of delivery; but this being a rebuttable presumption, which may be met by evidence of equal weight or countervailing force, a preponderance of proof that it was not received is not necessary to overcome the presumption of delivery."

Substantially the same rule will be found in the statement in 39 Am. Jur. p. 249:

> "Mailing of notice to a person at his known address within the state may be authorized as a mode of service, but in the absence of a statute authorizing the service of a notice by mail, a notice so served is ineffective unless it is received. However, where a notice was properly mailed, its receipt will be presumed, in the absence of evidence to the contrary, and deposit in a street letter box or delivery to a mail carrier on duty is considered a proper mailing. This presumption may be overcome by evidence that the notice never was in fact received."

These general rules were recognized and applied by the Supreme Court of Ohio in a case involving a meeting of a board of education, State ex rel. Ach v. Evans, 90 O. S. 243. One of the questions before the court was as to the legality of a meeting of a board of education at which the board, proceeding under what was known as the Jung act, resolved to reduce the size of the board. It was claimed that this meeting was not a regular meeting, and if a special meeting the statutory notice to each and every member of the board was not given as required by Section 4751, General Code. Referring to this, the court said:

> "As to the first objection we believe that the meeting might be considered either an adjournment of the regular meeting or a special meeting. But in either event, each and every member had notice of the meeting by reason of the fact that copies of the minutes of each previous meeting had been regularly mailed to the proper address of each and every member of the board. The presumption of course follows that they received the notice, and there is nothing in the record to the contrary."

It follows from these authorities that since the statute makes no provision as to the manner in which or the agency by which notice is given, such notice may be committed to the ordinary mail and *if received* by the person to whom the notice is given, it will entirely satisfy the law. However, receipt of the notice is only presumptive and if the notice is not in fact received, that fact may be shown. And according to the case of Judge v. Masonic Mutual Benefit Association, supra, the burden of proof that such notice was given and received remains upon the party asserting it.

It should be added that whether the notice is delivered by mail or by messenger, it must be served a reasonable length of time before the time fixed for the meeting.

It was held by one of my predecessors that a special meeting of a

board of education is illegal and action taken at such meeting invalid if notice has not been served upon each member. Quoting from the syllabus in Opinions of the Attorney General for 1932, p. 612:

> "Proceedings of a board of education are invalid where the action was taken at a special meeting from which one member was absent, and written notice of said meeting had not been served on each member of the board as provided by Section 4751, General Code."

In the case of Kattman v. Board of Education, 15 C. C. (N. S.) 232, it was held:

> "Proceedings of a school board providing for an issue of bonds are invalid, where the action pertaining thereto was taken at a special meeting from which one member was absent, and no written notice of the meeting had been served on each member of the board either personally or at his residence or usual place of business."

The court called particular attention to the provisions of the last sentence of Section 4750, General Code, which I have already quoted, which expressly declares that no meeting of the board of education which is not provided for by its rules or by-laws shall be legal unless all the members have been notified as required by Section 4751.

Former attorneys general have, however, held that a special meeting of a board of education is a legal meeting and the business transacted at said meeting is valid if the meeting is attended by all the members of the board even though notice had not been given as required by Section 4751 of the General Code. See 1930 Opinions Attorney General, p. 1534; 1933 Opinions Attorney General, p. 349.

It follows, therefore, and it is my opinion in specific answer to your question, that the written notice of a special meeting of the board of education, as required by Section 4751, General Code, may be given by mailing such notice by ordinary mail, and such mailing will raise the presumption that the same was delivered in due course; but such presumption is rebuttable and if in fact a member of the board did not receive the same, such mailed notice would be of no effect.

Respectfully,

THOMAS J. HERBERT,
Attorney General.