

In view of the provisions of Section 2323, supra, to the effect that no contract shall be entered into in excess of the entire estimate thereof, I am of the opinion that the contract under consideration may not be approved.

I am returning the contract herewith without my approval noted thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1813.

ELECTIONS—SECTION 5175-2, GENERAL CODE, CONSTRUED—FILING
OF EXPENSE ACCOUNTS—DIRECTORY AND NOT MANDATORY.

SYLLABUS:

Under the provisions of Section 5175-2, General Code, every candidate who is voted for at any election or primary election within this state, is required to file within ten days after such election an itemized statement of all expenditures pertaining to his candidacy. The ten day period, however, is directory and not mandatory as to time. Where persons are elected as members of a board of education and have not filed their expense accounts within said ten day period, they may do so thereafter if the vacancies have not been filled previously and may enter upon the discharge of the duties of the office.

COLUMBUS, OHIO, March 5, 1928.

HON. CARL Z. GARLAND, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“The following question has come to my attention and I would appreciate your opinion on the same.

At the election in the fall of 1927 three members of a local board of education were to be chosen, three of the members of the board of education as it then existed placing their names on the ticket as candidates, together with three other persons, residents of the district. The result of the election was as follows, the three persons who were not theretofore members of the board received the highest number of votes. These persons receiving the highest number of votes failed to file an expense account with the county board of elections, as required by the statute, and it is therefore the contention of the old board of education that the three persons receiving the highest number of votes are not now members of the board because they have failed to qualify in the filing of their expense account.

Under the above circumstances are these three persons legally elected and qualified as members of this board of education?

In the event the newly elected persons are not legally members of the board of education do the old members of the board still continue in office, with authority to transact and carry on all the business of the board?

This matter is somewhat pressing at this time in view of the fact there are outstanding bills which should be paid, and we are at a loss to know just who is responsible for the transaction of the business of the board. Will you please give me your opinion on the above matter as soon as possible?”

Section 5175-2, General Code, is as follows :

"Every candidate who is voted for at any election or primary election held within this state, and every person, committee or association or persons incorporated or unincorporated, who may have contributed, promised, received or expended directly or indirectly, any money or thing of value in connection with any election held in this state, shall within ten days after such election file, as hereinafter provided, an itemized statement showing in detail all the moneys or things of value, so contributed, promised, received or expended, and all liabilities directly or indirectly incurred in connection with such elections; but individuals other than candidates making only contributions, the receipt of which must be accounted for by others, need not file such statement under this section."

Section 5175-8, General Code, provides as follows :

"No board, office or officer authorized by law to issue commissions or certificates of election shall issue a commission or certificate of election to any person required by this act to file a statement or statements until such statement or statements have been so made, verified and filed by such persons as provided by this act. *No person, required by this act to file a statement or statements shall enter upon the duties of any office to which he may be elected until he has filed all statements provided by this act, nor shall he receive any salary or emolument prior to the filing of the same.*" (Italics the writer's.)

Under the provisions of Section 4746, General Code, it is required that before entering upon the duties of an office each person elected or appointed a member of a board of education shall take proper oath of office. Section 4748, General Code, relative to vacancies in the office of boards of education, provides 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."

In the case of *State ex rel. Riggs, vs. Elijah Lee Jaquis*, 11 O. C. D. 91, it was held that the right of the person to hold office is not affected by a failure to file statements of expenses within ten days after nomination and election respectively. In that case the statement of expense was filed after the expiration of the ten day period. It was held that the provision with reference to the filing of statement of expenses as to time was directory and not mandatory.

In the case of *The State ex rel. Witham vs. Nash, Governor, et al.*, 65 O. S. 549, the syllabus is as follows :

"An infirm director is not required to give bond before the first Monday of January, when his term of office begins, but must give bond before entering on the discharge of his duties as such infirm director."

On page 553 of said case the court said :

“An infirmary director must give bond ‘before entering on the discharge of his duties.’ Revised Statutes, Section 960. In this respect the law differs from that governing the bond of a sheriff, which prescribes that a sheriff shall give bond ‘within ten days after receiving his commission and before the first Monday of January.’ *State ex rel. Poorman vs. Commissioners*, 61 Ohio St., 506. The term of office of an infirmary director begins on the first Monday in January; but the actual discharge of the duties of such officer does not necessarily begin with his term.”

It will be noted from Section 4748, supra, that “a vacancy in any board of education may be caused by * * * failure of a person elected or appointed to qualify within ten days.” It will also be noted from the above section that “any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, * * *.” A vacancy may therefore exist which has not been filled. Since it has been held that the provision with reference to filing of expense statements under the Corrupt Practice Act is directory and not mandatory as to time, it is my opinion that the persons elected, if they are otherwise qualified, may yet file their expense statements and be entitled to the office.

It is therefore my opinion that if the vacancies have not been filled by the board of education as provided in Section 4748, supra, that the persons receiving the highest number of votes who failed to file an expense account within the ten days after the election, if they are otherwise qualified, may yet prepare and submit their itemized statement of expenses in accordance with law, whereupon they will be entitled to the office.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1814.

DELINQUENT TAXES—ABATEMENT OF SAME—SECTIONS 5718 AND 5719, GENERAL CODE, CONSTRUED.

SYLLABUS:

In foreclosure proceedings under the provisions of Sections 5718 and 5719, General Code, only the taxes which were included in the delinquent land tax certificate are abated, and the taxes and assessments accruing subsequently to the delivery of said certificate are not abated in said foreclosure proceedings, but remain a lien upon the land, unless the same are paid from the proceeds of the sale.

COLUMBUS, OHIO, March 5, 1928.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads :

“We respectfully request from your office an opinion regarding the following situation :

On the 13th day of May, 1926, the county auditor of this county filed with the auditor of state, a delinquent land tax certificate and thereafter on the 24th day of July, 1926, the auditor of state directed the treasurer of this