

1578.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND W. E. CALDWELL COMPANY, LOUISVILLE, KENTUCKY, FOR CONSTRUCTION OF 25,000 GALLON STEEL WATER TOWER FOR OHIO STATE BRICK PLANT, JUNCTION CITY, OHIO, AT AN EXPENDITURE OF \$4,245.00—SURETY BOND EXECUTED BY THE NATIONAL SURETY COMPANY.

COLUMBUS, OHIO, March 3, 1930.

HON. HAL H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare (Ohio State Brick Plant, Junction City, Ohio), and the W. E. Caldwell Company of Louisville, Kentucky. This contract covers the construction and completion of one 25,000 gallon steel water tower complete for Ohio State Brick Plant, Junction City, Ohio, and calls for an expenditure of four thousand two hundred and forty-five dollars (\$4,245.00).

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. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure has been obtained as required by Section 11 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the National Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1579.

SCHOOL—VILLAGE AND RURAL DISTRICTS INCLUDING FORMER 4740 DISTRICTS—SUPERVISED BY COUNTY SUPERINTENDENTS AND ASSISTANTS—SCHOOL PRINCIPALS PERFORM ADMINISTRATIVE DUTIES UNDER SUCH SUPERINTENDENTS.

SYLLABUS:

1. *All schools in villages and rural school districts, including those in districts which formerly employed superintendents, by authority of former Section 4740, General Code, are now under the direct supervision of the county superintendent and assistant county superintendents of schools elected by county boards of education under the provisions of Section 4739, General Code.*

2. *The local principal of a high school or consolidated school is required to perform certain administrative duties in connection with the administration of the schools, such administration, however, being under the supervision of the county superintendent and assistant county superintendents of schools.*

COLUMBUS, OHIO, March 3, 1930.

HON. RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The office of the county school superintendent to which office we are legal adviser, has asked us to request your opinion in the following connection. Section 4740 of the General Code was repealed at the last session of the legislature, July 26, 1929. This section provided in substance that local village boards of education might employ assistant superintendents who should perform the duties prescribed by law for assistant county superintendents, but who should teach for such time as the board of education might direct. It appears that since the repeal of this statute there is no authority for local boards of education to employ such superintendents.

The question is this: Has the local principal of a village school the right to perform the administrative duties with which the superintendents appointed under G. C. 4740 were charged or must such duties be entirely performed by assistant county superintendents elected by the county boards of education under the provisions of Section 4739?”

In my Opinion Nos. 690 and 788, copies of which are enclosed herewith, there is set forth in considerable detail the history of former Section 4740, General Code, its scope and effect and its relation to other sections of the School Code about which there seems to have existed more or less misunderstanding.

It appears that the Legislature, in 1914, (104 O. L. 133 et seq.,) adopted a comprehensive plan for the supervision of the schools outside of city school districts (in village and rural school districts). Such supervision as was provided should be accomplished by the election of a county board of education and the employment by such county board of education of a county superintendent of schools, and such district superintendents as might be necessary for the supervision of the schools of the village and rural school districts in the county school district. The provision therein for the employment of district superintendents was later changed so as to provide for the employment of assistant county superintendents instead of district superintendents. An exception was made to the provision for county supervision of village and rural school districts by the enactment of Section 4740, General Code, thereby permitting village and rural school districts, which had, prior to 1914, employed their own superintendents to continue to employ superintendents of schools, and thus provide for the supervision of their schools independent of county supervision. This is stated by the court in the case of *Board of Education vs. Thompson*, 25 N. P. N. S. 431, 436, as follows:

“The effect of this section was to carry forward into the plan of county supervision, as district supervision units, this district and union of districts which had previously taken such interest in their schools as to provide supervision when the same had not been required, and had continued to do so up to the date of this enactment.”

It will be noted that for some time prior to 1914, there had existed authority for any board of education to employ a superintendent both by Section 7690, General Code, formerly Section 4017, Revised Statutes, and by Section 7705, General Code, formerly Section 4017a Revised Statutes, but many districts, especially township districts had not, prior to 1914, taken advantage of these sections and employed a superintendent of schools.

Upon the adoption of the School Code, in 1914, Section 7705, General Code, was repealed, but the authority contained therein for a rural or village board of education to employ a superintendent was repealed by implication by the adoption of the plan of county supervision. This fact was noted by a former attorney general, in his opinion published in the Opinions of the Attorney General for 1921 at page 684. It is there held :

“A rural board of education is without authority to elect a superintendent of schools under the general language of Section 7690, General Code, since the General Assembly has provided for county supervision of schools by a county superintendent and such assistant county superintendents as may be elected by the county board of education.”

In my former Opinion No. 690, it is stated, after noting the history of former Section 4740, General Code :

“In any event, no matter what the effect of Section 4740, General Code, is, as last amended, it has been since 1914 the only authority for a village or rural school district to employ a superintendent, and thus provide for local supervision of its schools, independent of the county board of education and county superintendent and assistant county superintendents of schools. Upon its repeal, no authority will exist for such local supervision or for the employment by a village or rural school district of a superintendent of schools.”

It will be noted, from the terms of Section 7705, General Code, that :

* * * * *

In all high schools and consolidated schools one of the teachers shall be designated by the board as principal and shall be the administrative head of such school.”

By “administrative head of such school,” as used in the foregoing section, is not meant a superintendent, as the only provision for the supervision of schools outside of city and exempted village school districts, is that the supervision shall be done by the county superintendent and his assistant superintendents. In village and rural districts, therefore, the principal of a high school or consolidated school, while exercising administrative duties in the administration of the school, must do so under the supervision of the county or assistant county superintendents.

In specific answer to your question, therefore, it is my opinion that all schools in village and rural school districts, including those in districts which formerly employed superintendents, by authority of former Section 4740, General Code, are now under the direct supervision of the county superintendent and assistant county superintendents of schools elected by county boards of education under the provisions of Section 4739, General Code. The local principal of a high school or consolidated school is required to perform certain administrative duties in connection with the administration of the schools, such administration however

being under the supervision of the county superintendent and assistant county superintendents of schools.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1580.

COUNTY COMMISSIONERS—FUNDS FROM LEVY UNDER SECTION 5625-6(e), GENERAL CODE, NOT APPLICABLE FOR COUNTY'S SHARE OF GRADE ELIMINATION COST—LEVY UNDER SECTION 6926, GENERAL CODE, NOT OBLIGATED TO PAY BOND ISSUE, APPLICABLE FOR SUCH COST.

SYLLABUS:

1. *Funds arising by reason of the levy provided for in paragraph (e) of Section 5625-6, General Code, may not be used to pay the county's portion of the cost of a grade separation made in pursuance of Section 6956-22, et seq., of the General Code.*
2. *The proceeds of the levy provided for under Section 6926, General Code, which are not obligated to pay bonds issued in anticipation of the collection thereof, may be used to pay the county's share of the cost of a grade elimination project instituted under the provisions of Section 6956-22 of the General Code.*

COLUMBUS, OHIO, March 3, 1930.

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

GENTLEMEN:—Your recent communication reads as follows:

“Under the provisions of Sections 6956-22 to 6956-39 of the General Code, providing for the elimination of grade crossings, may the county commissioners pay the county's proportion of the expense of such elimination out of the county road and bridge fund provided for by Section 5625-6, Paragraph (e), of the General Code?”

Section 5625-6, General Code, to which you refer, as amended by the 87th General Assembly (112 O. L. 394) provides in part:

“The following special levies are hereby authorized without vote of the people:

* * * * *

e. In the case of a county, for the construction, reconstruction, re-surfacing, and repair of roads and bridges, other than state roads and bridges thereon.

f. In the case of a county, for paying the county's proportion of the cost and expense of the construction, improvement and maintenance of state highways.

* * * * *

Excepting the special levies authorized in this section any authority granted by provision of the General Code to levy a special tax within the fifteen mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses.”