

After careful consideration, it is the opinion of this department that said abstract shows the title to said premises to be in the name of Josephine Windel, subject to a mortgage given to the Citizens Savings and Loan Company, June 4, 1918, which is of record in Vol. 95, page 271 of the mortgage records of Scioto county, to secure the payment of \$3,800.00 with interest. Before the conveyance is accepted and the warrant delivered, any amount remaining unpaid under said mortgage should be satisfied and it should be properly released of record. The taxes for the year 1922 are a lien.

The deed submitted in my opinion is sufficient to convey the title of the said Josephine Windel and husband to the state, when duly delivered.

You have further submitted encumbrance estimate No. 2073 which contains the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in the sum of \$25,000 to cover the purchase of said premises.

It should further be determined that there are no instruments of record filed since the date of the abstract which would operate as a lien upon said premises.

According to the abstract there was no examination made in any of the United States Courts.

The abstract, deed and encumbrance estimate are being returned herewith.

Respectfully,

JOHN G. PRICE,

Attorney-General.

3424.

SCHOOLS—WHERE SCHOOLS SUSPENDED UNDER SECTION 7730 G. C.
—BOARD OF EDUCATION CANNOT MOVE SCHOOL HOUSE UNTIL
AFTER FOUR YEARS FROM DATE OF SUSPENSION—EXCEPTION.

Where a school has been suspended under the provision of section 7730 G. C., the board of education cannot move a school house in which the suspended school was conducted until after a period of four years from the date of such suspension because of the rights of the petitioners, mentioned in section 7730 G. C., the sole exception being where such building has been condemned for school use by proper state authorities.

COLUMBUS, OHIO, July 29, 1922.

HON. CLINTON W. FAWCETT, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion on the following statement of facts:

“In 1921, the board of education of Putnam county, Ohio, acting under section 4736 of the General Code, created the Cloverdale consolidated village school district from the Cloverdale village school district and certain other districts lying contiguous thereto. The schools in the contiguous districts were suspended and there are three schoolhouses that the board of education is not now using. One of these schoolhouses is situated in a district that was divided by the board of education, however, the schoolhouse is located in that part of the district which was made a part of the new or consolidated district Sections 7730 and 7730-1, G. C., among other things, provide for the suspension of a rural or village school, the transfer of pupils, the re-establishment of the same, and when and how school property where the school is sus-

pended may be sold. Section 7730-1 further provides that where a school has been suspended through either or any of the processes mentioned in 7730, the school building and real estate located in the territory of such suspended school shall not be sold by the board of education of the district until after four years from such date of suspension.

I desire your opinion as to whether the board of education of the Cloverdale consolidated village school district can move the schoolhouse which is located in the district that was divided and be used for school purposes in the village of Cloverdale? It now appears that since the Cloverdale consolidated village school district has been created, the buildings are inadequate.

I also desire to know whether section 7730-1 G. C., which limits the time that the buildings can be sold to four years after the suspension of the school applies to all cases in which the school has been suspended, either from an insufficient number of pupils attending or from the consolidation or creation of a new district."

Section 7730 G. C. provides that the board of education of any rural or village school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause, and the section then proceeds in detail to show the necessary steps to be taken in order to carry out such suspension. The portion of section 7730 G. C. which relates to your question is the third paragraph of section 7730 G. C., which reads as follows:

"Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension."

Here it is provided that the parents or guardians of twelve children may petition that the suspended school be reopened, and upon the presentation of such petition carrying the required number "the local board of education shall reopen such school for the ensuing school year provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension." (H. B. 216—109 O. L). The closing language of section 7730 G. C. indicating that there should be a suitable school building in the territory of such suspended school is significant, rather indicating that the school building should be retained in the territory of the suspended school until it has been legally abandoned or legally disposed of as provided for in the following section (7730-1 G. C.):

"In order to protect the rights of the petitioners mentioned in section 7730, where a school has been suspended through either or any of the processes mentioned in such section, the school building and real estate located in the territory of such suspended school and in which property the board of education has legal title, shall not be sold by the board of education of the district until after four years from such date of suspension of said school unless the said school building has been condemned for school use by the chief deputy of the division of workshops, factories and public buildings. Failure to use the school building for school purposes within the four years following the resolution of suspension of such school shall be considered a legal abandonment of such school and the school building and real estate in which the board of ed-

ucation has legal title may be disposed of by such board of education according to law."

The closing language of 7730 G. C. is a clear attempt on the part of the General Assembly to protect the rights of the petitioners residing in the local territory and yet if the school building in the territory of such suspended school is not in existence in the territory then the petition of the parents or guardians comes to naught and can accomplish nothing.

The rights of the petitioners mentioned in 7730 G. C. have heretofore been passed upon by the Supreme Court of this state, in the case of the State, ex rel. Myers vs. the Board of Education of Rural School District of Spencer Township, Lucas County, Ohio, 95 O. S. page 367, and the syllabus in that case passing upon 7730 reads as follows:

"1. The literal meaning of the words 'may' and 'shall' is not always conclusive in the construction of statutes in which they are employed; and one should be regarded as having the meaning of the other when that is required to give effect to other language found in the statute, or to carry out the purpose of the legislature as it may appear from a general view of the statute under consideration.

2. Where power is granted by statute to public officers by permissive language, coupled with a provision for invoking the exercise of such power by a petition of voters, or of any part of the public, such language will be regarded as peremptory unless a contrary construction is manifestly required.

3. Under the proviso contained in section 7730, General Code, as amended May 27, 1915 (106 O. L. 398), the board of education of any rural or village school district, which has theretofore suspended any or all schools in such village or school district, is required to re-establish such suspended school on a petition therefore, signed by a majority of the voters of the suspended district, at any time the school enrollment of the said suspended district shows twelve or more pupils of lawful school age."

Section 7730-1 is a supplementary section to 7730 G. C., and should be read in conjunction with the latter because 7730 closes with the language relative to the "suitable school building in the territory of such suspended school" and then 7730-1 G. C. sets forth how such building may be disposed of in order to protect the rights of the petitioners named in 7730 G. C. It may be said that prior to the enactment of 7730-1 G. C. (H. B. 616-108 O. L. part 2) there was nothing in the statutes of the state which established just when or after how long a lapse of time a school building could be considered to be abandoned. In order to clear up this feature, as to what would constitute legal abandonment of a school building section 7730-1 G. C. was enacted, providing that four years should elapse following the resolution of suspension of such school before the building could be disposed of by the board of education. It is noted that the language in 7730-1 G. C. is, that the building "shall not be sold" by the board of education until after four years have elapsed, and further that failure to use the school building for school purposes within the four years gives the board of education owning the building the right to "dispose of" the same according to law. When 7730 and 7730-1 G. C., are read together, there seems to be clear intent on the part of the law-making body that the building existing in the local school territory prior to suspension should remain intact, or in its present location in the local school territory for a period of at least four years. It is clear from the language of 7730-1 G. C., that the building "shall not be sold" until after four years unless condemned for school use by state authorities. If the building was sold, it might be removed and its use by the board of education for local school purposes would cease in any event, the title having passed to private ownership. Thus, as indicated heretofore,

the rights of the petitioners mentioned in 7730 G. C., would not obtain at all. The question which you submit is not upon the selling of the building, as you concede that that cannot be done prior to four years, but upon the actual "removal of the building" from the local school territory to another point in the district and within the village of Cloverdale, where buildings are at present inadequate for school purposes. It would appear that if the General Assembly desired that a school building located in a territory where a school had been suspended under 7730 G. C., desired to say that the building could be removed from its location within the local school territory, even though not sold, the law-making body would likely have said so. On the contrary, *there seems to be within both sections 7730 and 7730-1 G. C., the view that the building should remain in the local school territory for a period of at least four years following the resolution of suspension of such school.*

In your closing paragraph you desire to know "whether section 7730-1 G. C., which limits the time before the buildings can be sold to four years after the suspension of the school, applies to all cases in which the school has been suspended, either from; (1) an insufficient number of pupils attending, or (2) from the consolidation, or (3) the creation of a new district." The answer to this is, that section 7730 G. C., applies in either case, because schools cannot be suspended under the law unless by virtue of 7730 G. C. An exception to this might be under old 7784 G. C., where a board of education under its authority of assigning pupils where it sees fit in its own district might deplete the enrollment in a local school to such an extent that the school would be virtually abandoned, and even in this event the board of education desiring to suspend a school so depleted should spread upon its minutes the resolution of suspension mentioned in 7730 G. C., so that the period of four years would have a definite date from which to run. The consolidation of schools is also accomplished under 7730 G. C., while new districts are created under 4736 G. C., but the creating of a new district in itself does not abandon any schools. It merely changes school district lines and has no reference to the points in such new district where the schools are to be conducted. Thus a new school district is created by the county board of education, but the county board of education cannot say what school houses shall be operated, that being left to the local board of education in the new school district. If a new school district is created, the operation of the schools in the old school houses formerly in use still obtains until the board of education in the new district by virtue of 7730 G. C., suspends such school as it may see fit. Thus 7730 G. C., becomes involved in either one of the three cases mentioned by you, and then 7730-1 says that it shall apply "where a school has been suspended from either or any of the processes mentioned in such section (7730)." The result is, that 7730-1 G. C., applies where there has been a suspension of schools because of an insufficient number of pupils attending, or, where the schools have been suspended because of consolidation, or where upon the creation of a new district in 4736 G. C., some of the schools in the new district have been suspended by virtue of 7730 G. C.

In reply to your inquiry, you are advised that it is the opinion of this department that "where a school has been suspended under the provision of 7730 G. C., the board of education cannot move a school house in which the suspended school was conducted until after a period of four years from the date of such suspension because of the rights of the petitioners mentioned in 7730 G. C., the sole exception being where such building has been condemned for school use by proper state authorities.

Respectfully,
JOHN G. PRICE,
Attorney-General.