

2265.

BOARD OF EDUCATION—WHEN IT SHALL BE CONSIDERED TO HAVE
SUSPENDED RULES OF PARLIAMENTARY PROCEDURE—CON-
DUCT OF ITS PROCEEDINGS.

SYLLABUS:

1. *When a board of education, by acquiescence of a majority of the board, conducts its proceedings in a manner other than in strict accord with Parliamentary Law, it will be considered as having tacitly suspended such rules and its action will be construed as being regular and proper.*

2. *A board of education may lawfully adopt a motion to rescind its former action without the intervention of a motion to reconsider, if done without objection and by a majority vote of the board, regardless of what the general rules of order adopted by the board or its standing rules may provide with respect thereto.*

COLUMBUS, OHIO, August 28, 1930.

HON. W. S. PAXSON, *Prosecuting Attorney, Washington C. H., Ohio.*

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

“I am enclosing herewith a copy of the minutes of a meeting of one of our township boards of education which gives rise to a question upon which I would appreciate receiving a ruling from you. This occurred at a regular meeting of the board. You will note that after a motion was made to hire three transportation men for a period of three years, which motion was carried by a vote of three to two, a motion was made to rescind said motion, and upon the motion to rescind three voted ‘yes’ and two voted ‘no’. Immediately thereafter a motion was made and seconded to hire the same men for a period of one year. This motion was carried by a vote of three to two. The board of education has adopted Robert’s Rules of Order for their guidance in conducting the board meetings. The motion to hire for three years having been regularly adopted, and no motion to reconsider having been made and adopted before voting on the motion to rescind, the question is are the transportation men hired for three years or one year?”

Accompanying your letter is a copy of the minutes of the board of education in question which shows that at a certain meeting of the board a motion was made to employ certain school bus drivers to transport the children of the schools of the district for a term of three years. This motion was carried by a vote of three to two. Later on, apparently at the same meeting, a motion was made to rescind the former motion to employ the transportation men, which motion to rescind was carried by a vote of three to two. A motion was then made to employ these same men for one year at the same salary and upon the same terms as had been fixed in the former motion. This latter motion was carried by a vote of three to two.

These proceedings of the board are questioned by you for the reason that a motion to rescind was made although a motion to reconsider had not been made and the time had not elapsed for reconsideration. In Robert’s Rules of Order, which had been adopted by the board, it is provided with reference to a motion to rescind:

“When an assembly wishes to annul some action it has previously taken and it is too late to reconsider the vote, the proper course to pursue is to rescind the objectionable resolution, order, or other proceeding. (Sec. 25).”

From the foregoing it would appear that the intention of the author is to provide that the making of a motion to rescind before it is too late to reconsider is irregular. This conclusion, however, may be somewhat questionable inasmuch as in the next section (Section 26) it is provided :

“When any principal question or amendment has been once acted upon by the assembly, it cannot be taken up again at the same session except by a motion to reconsider, and when the motion to reconsider has been once acted upon, it, the motion to reconsider, cannot be repeated on the same question unless the question was amended when previously considered. A correction of the minutes, however, can be made without a motion to reconsider, at the same or any subsequent session, and so can a motion to rescind.”

Regardless of whether or not the strict rule as laid down in Robert's Rules of Order requires that a motion to reconsider must intervene before a motion to rescind is allowed, the rule, as any rule, may be suspended by general consent of the assembly and where such a motion is made and acted upon favorably by a majority of the assembly without objection it amounts, in my opinion, to a tacit suspension of the rule.

Thus in Robert's Rules of Order, Section 61 at p. 188, it is said :

“By ‘general consent,’ that is, if no one objects, the rules relating to the transaction of business can at any time be ignored without the formality of a motion.”

It has been held that the rule providing that a motion to reconsider be made by one who voted with the majority on the motion proposed to be reconsidered may be dispensed with by a majority vote of the assembly and when the majority treats the motion as regularly made, even if made by someone other than one who voted with the majority on the main question, it will be considered as a tacit suspension of the rule. *Poe vs. Rochester* 5 Lans. (N. Y.) p. 11. Quoting with reference to this matter from *Corpus Juris* Vol. 46, p. 1383, it is said :

“Parliamentary law requires that the motion to reconsider be made by one who voted with the majority on the motion proposed to be reconsidered. A majority, however, can dispense with the rule requiring a reconsideration to be moved by one who voted with the majority, and if the majority treats the motion as regularly made it is to be considered as a tacit suspension of the rule.”

Anyway, the proceedings of boards of education should not be scrutinized too closely where they clearly show the intentions of the board acquiesced in by a majority of the board. It is said by the Supreme Court of Ohio in the case of *State ex rel Ach, et al. vs. Evans, et al.* 90 O. S. 243 at p. 251 :

“Obviously, the proceedings of boards of education, of county commissioners, township trustees and the like, must not be judged by the same exactness and precision as would be the journal of a court.”

It is apparent from your communication that the majority of the board desired finally to employ the school bus drivers for a period of one year instead of three years and even though it should be determined that their proceeding in so doing did not precisely conform with the rules of Parliamentary Law, it is my opinion that in acting as they did they tacitly suspended the rules and finally adopted the motion

employing these school bus drivers for a period of one year by a majority vote of the board.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2266.

MUNICIPALITY—MAY NOT AUTHORIZE NOTES IN ANTICIPATION OF THE LEVY OF SPECIAL ASSESSMENTS UNTIL RESOLUTION OR ORDINANCE DETERMINING TO PROCEED WITH THE IMPROVEMENT HAS BEEN PASSED.

SYLLABUS:

A municipality may not authorize notes in anticipation of the levy of special assessments for an improvement until the resolution determining to proceed with such improvement has been passed as provided in Section 3824, General Code. Section 5625-35, General Code, does not, therefore, dispense with the requirement contained in Section 5625-33, General Code, as to the fiscal officer's certificate until the resolution determining to proceed has been passed as required by Section 3824, General Code, and an ordinance authorizing notes has been adopted in accordance with Section 2293-24, General Code.

COLUMBUS, OHIO, August 29, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

“Section 5625-35 of the General Code reads:

‘In the case of an improvement, the cost of which is to be paid in whole or part by special assessments, a contract may be executed without an appropriation or certificate for that portion of the cost derived from special assessment; provided, a resolution or ordinance authorizing such assessment and the bonds or notes to be issued in anticipation thereof has been duly passed in the manner provided by law.’

When a municipal corporation decides to improve a street and levy special assessments for a part of the cost thereof, and such municipality has funds available with which to pay the city's portion, may a contract be let for such improvement immediately following the passage of the resolution of necessity, under the provisions of Sections 3814 and 3815 of the General Code, which determine the general nature of the improvement, the method of the assessment, and whether or not bonds shall be issued in anticipation of the collection of assessments?”

Section 5625-35, which you quote, contains an exception to the provisions of Section 5625-33, General Code, which provides in so far as pertinent as follows:

“No subdivision or taxing unit shall:

* * * * *

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal