

upon the property by the Tax Commission. And inasmuch as this property was thus localized for taxation in the taxing districts in which the same was situated, it would, apart from any question with respect to the certification of any taxes against the property under section 5694, General Code, be subject to the lien of such taxes as were assessed upon this particular property; and the same would not be subject to the lien of other taxes assessed against the company as a public utility and apportioned to the county and the taxing districts thereof.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3051.

BOARD OF EDUCATION—MOTION MAY BE PUT TO VOTE BY ANY MEMBER WHEN PRESIDENT REFUSES—ROLL CALL AND READING OF MINUTES BY SECRETARY WHEN PRESIDENT REFUSES TO CALL FOR SAME.

SYLLABUS:

1. *When the president of a county board of education refuses to put a proper motion to a vote, such motion may be put by the vice-president or any other member of such board.*
2. *When the president of a county board of education refuses to permit a roll call or a reading of the minutes of the preceding meeting, such roll call and reading of the minutes may be obtained by any member of said board making a motion ordering the secretary to call the roll and read the minutes.*
3. *The minutes of a meeting of a county board of education, after being approved by the board and signed by the secretary alone, are an authentic record of the action of said board.*

COLUMBUS, OHIO, August 16, 1934.

HON. LYMAN R. CRITCHFIELD, JR., *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date, requesting my opinion, which reads as follows:

"I have been requested by the Wayne County Board of Education to ask your opinion with reference to several matters of procedure in the conduct of meetings which are as follows:

First: When the President refuses to put a duly seconded motion to a vote, what procedure should be adopted to allow the Board to vote on the motion?

Second: When the President refuses to allow the Secretary to call the roll or read the minutes of the last meeting, how may the Board obtain a roll call and a reading of the minutes?

Third: When the President refuses to sign the minutes after approval by the Board as read, can the signing of the minutes by the President be dispensed with, or if not, what if any steps can be taken by the Board to make sure that their minutes are properly authenticated?

As I see it, these are questions of parliamentary procedure which are not specifically provided for by statute. Section 4750 provides that the Board may make such rules and regulations as it deems necessary for its own government. This particular Board has made no rules or regulations for the conduct of its meetings.

I shall appreciate an opinion at your earliest convenience."

Section 4732 of the General Code reads as follows:

"Each county board of education shall meet on the third Saturday of January of each year, and shall organize by electing one of its members president and another vice-president, both of whom shall serve for one year. The county superintendent shall act as secretary of the board. The secretary shall keep a full record of the proceedings of the board, properly indexed, in a book provided for that purpose. Each motion, with the name of the person making it and the vote thereon, shall be entered on the record."

The above section, which provides for the election of the president of the county board of education, also provides for the election of a vice-president. It must be presumed, I think, that the legislature when it provided for a vice-president without prescribing the duties of the office meant that that official should perform his usual and ordinary duties, and it is therefore necessary to determine what duties generally devolve upon a vice-president. Following the definition in the Standard Dictionary, we find that a vice-president is one who is to act upon occasion in place of a president. That a vice-president by the very nature of his office must perform the duties of the president on the occasions that the same are not performed by the president on account of absence, inability or other reasons seems to be the generally accepted rule.

It appears from the language of your first question propounded that the president of the Wayne County Board of Education refuses to perform one of the duties of his office. The purpose of all parliamentary rule is to subserve the will of the assembly, rather than to restrain it, and certainly the president by a refusal to perform one of the principal duties of his office cannot obstruct the expression of the assembly. Pertinent to the question before us, it is declared in Cushing's Rules of Proceeding in Deliberative Assemblies, Section 198a, as follows:

"The president of an association cannot prevent the transaction of business at a meeting by refusing to put motions, or by leaving the meeting. And if he does refuse or leave, the vice-president may put a motion which is properly made."

The fifth paragraph of the syllabus in the case of *State, ex rel., Moore vs. Archibald*, 5 N. D. 359, reads as follows:

"A motion to remove the defendant having been made and seconded at a meeting of the board at which all the members were present, the chairman of the meeting refused to put the motion, on the ground that it was illegal. Thereupon it was put by the trustee who made the motion, and received the vote of three of the five members, the other two trustees refusing to vote. *Held*, that these proceedings were effectual to remove the defendant."

Commenting in regard thereto, the court remarked:

"It is, perhaps, true that this presents a case of a failure to pursue the practice which ordinarily obtains when persons gathered together as a body are acting as a body. But it cannot be said that every violation of parliamentary usage will annul the action of the body guilty of such irregularity. The course of procedure rests largely with the discretion of the majority, provided the course adopted affords a reasonable guaranty that the sense of the body on the particular measure before it has been fairly taken."

It appears from the above that whether the president or another should put a motion before the board to be voted on is a mere matter of form, and therefore I must conclude that if a proper motion is made and the president of the board refuses to put said motion to a vote, the vice-president or any member of said board may do so in order to allow the members to vote thereon.

Your next question is how a board may obtain a roll call and reading of the minutes when the president refuses to allow the secretary to call the roll or read the minutes.

Section 4733, General Code, provides in part as follows:

"A majority of the board shall constitute a quorum at any regular or special meeting."

Of course, no business can regularly be entered upon until a quorum is present; consequently, it must first be ascertained that a quorum is present before any business can regularly proceed, and the record must disclose the fact that a quorum was present. It is the duty of the secretary to call the roll of the board and to take note of those who are present and record the same. In section 128 of Hughes' American Parliamentary Guide, it is stated that the chairman should always call meetings to order and if a quorum be present the chairman should direct the reading of the minutes of the last meeting. In the matter before us the president refused to allow the secretary to ascertain whether or not a quorum was present and refused to allow the secretary to read the minutes of the previous meeting. Certainly the chairman of a meeting cannot paralyze the action of a majority, by a refusal to discharge the functions of his office. Section 127 of Hughes' American Parliamentary Guide reads as follows:

"If for any reason the chair should refuse or neglect to present to the meeting or House business that had been filed, or on his table, a motion would be in order to take such business from the chair's table and would require only a majority vote."

When the president of the board in this instance refused to permit a call of the roll or a reading of the minutes of the last meeting, how could it be determined that a quorum was present for the transaction of business? All that would be left for a majority to do if it were its desire to dispose of matters before the board would be to have some of their number make a motion that the roll be called and the minutes of the last meeting read and call for a vote on such motion. Such action could work no injury to the minority, nor would it deprive them of any of their rights as members of the board. It therefore seems

to me that if a motion to take from the chair such business that the chairman refuses or neglects to present to the meeting is proper, the reasoning on that point should apply with equal force in the instant case and a motion ordering the secretary to call the roll and read the minutes of the last meeting would be in order.

The third question for my determination is what, if any, steps can be taken by the board to have the minutes properly authenticated if, after approval by the board, the president refuses to sign the same. The mere failure to conform to parliamentary usage will not invalidate the action when the requisite number of members have agreed to a particular measure. *Madden vs. Smeltz*, 2 O. C. C. 168; *Mann vs. Lemars*, 109 Ia. 244. It was declared in the case of *Corinth vs. Sharp*, 107 Miss. 696, that where facts of the action can be obtained from the record of the council, non-compliance with strict technical rules will not overthrow the action. It is remarked in the case of *Madden vs. Smeltz, supra*, that it is not to be expected that the technical rules of parliamentary law should be vigorously applied to the proceedings of the village council and when the requirements of a statute have been followed in the passage of an ordinance, it is not invalid for the reason that general parliamentary rules governing the action of legislative bodies have not been strictly adhered to. The principle involved in the above cases is the same as that involved in your question, and in view of what has been said above, it appears that when action has been taken by an assembly and that fact recorded in the minutes, a refusal by the president to sign such minutes will not invalidate such action taken and the signing of such minutes by the secretary alone would be sufficient.

Summarizing, it is therefore my opinion that:

1. When the president of a county board of education refuses to put a proper motion to a vote, such motion may be put by the vice-president or any other member of such board.
2. When the president of a county board of education refuses to permit a roll call or a reading of the minutes of the preceding meeting, such roll call and reading of the minutes may be obtained by any member of said board making a motion ordering the secretary to call the roll and read the minutes.
3. The minutes of a meeting of a county board of education, after being approved by the board and signed by the secretary alone, are an authentic record of the action of said board.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3052.

SOLDIERS' RELIEF COMMISSION—PERSON IN EMPLOY THEREOF
 PRIOR TO ENACTMENT OF SEC. 2933-1 ILLEGALLY EMPLOYED—
 WHO MAY BE EMPLOYED BY SAID COMMISSION.

SYLLABUS:

1. *Any person who was prior to the enactment of Section 2933-1, General Code, in the employ of a soldiers' relief commission, was illegally employed and may be summarily dismissed from such employment.*
2. *A soldiers' relief commission may employ only honorably discharged veterans of the war with Spain or the World War as investigators and clerks.*