

nance is required, not part of it. The publication of the ordinance, as in this case, where the enacting clause was omitted, was not the publication of the whole ordinance, and was not the publication which the law required."

I have been unable to find any reported cases or opinions in Ohio on this question, but I am of the opinion that the case of *People vs. Russell, supra*, lays down a rule which would be followed in every jurisdiction where ordinances are required by statute to be published.

An exception, however, must be made in the case of municipalities which have adopted a charter as provided in section 7 of article XVIII of the Ohio Constitution. Such municipalities may by charter provide for the publishing of city ordinances in any terms that they may desire and where they have so provided are not required to observe the laws applicable to other municipalities. Section 4676-1, General Code, specifically provides for cities organized under section 7, article XVIII, as follows:

Municipal corporations now or hereafter operating under a special charter adopted in accordance with the constitution of the state of Ohio, which charter provides for or authorizes in whole or in part a method of procedure in the passage and publication of legislation, the making of improvements and the levying of assessments differing from the method prescribed by general law, may pass and publish such legislation, make such improvements and levy such assessments either under the provisions of the general law or in accordance with the procedure so provided for or authorized by such local charter. * * * *"

In specific answer to your question, I am of the opinion that ordinances of a general nature, except in municipalities organized under section 7, article XVIII of the Ohio Constitution which have specifically provided otherwise by charter, must be published in their entirety and where published by caption only do not meet with the requirements of section 4228 of the General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

314.

MEETING — BOARD OF EDUCATION — VALID WHERE NO NOTICE GIVEN BUT ALL MEMBERS ARE PRESENT—RESIGNATION OF MEMBER, WHEN EFFECTIVE—MEMBER MAY NOT BE ELECTED CLERK WHERE HIS VOTE NECESSARY FOR MAJORITY.

SYLLABUS:

1. *A meeting of a board of education at which all the members are present and in which they all participate, is a valid and legal meeting even though it is not held as a regular meeting and no notice was given of the meeting, as is provided by Section 4751, General Code.*

2. *Upon the resignation of the president of a board of education, the duly elected vice-president becomes president.*

3. *The verbal resignation of a member of a board of education followed by its formal acceptance by the board renders the resignation complete, and a vacancy on the board is thereby created.*

4. *Where a member of a board of education is elected clerk of such board by his own vote which was necessary to give him a majority, there is no election.*

COLUMBUS, OHIO, March 22, 1933.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

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

“The Dover-Trimble School Board held a meeting on the first Monday of January, 1933; said meeting did not follow any election of any members of the School Board the previous fall, therefore would not be as provided for in Section 4747 of the General Code.

No written notice was given for said meeting to members of the Board of Education as provided in Section 4751, although all members were present. The business of the board was taken up as follows:

First: Passed on old bills;

Second: Started organization of the Board; they elected a President, Mr. A.; elected a Vice President, Mr. B.; nomination for Clerk was made and Mr. A. who had been elected President was nominated for Clerk; said nomination was objected to as not being proper and then Mr. A. resigns as President. Mrs. C. was then nominated for Clerk and Mr. A., who formerly at the same meeting was elected President, resigned, and was elected Clerk by the use of his own vote. Vice President, Mr. B. then took the President's chair, declaring that he automatically became President, and Mr. D., another member of the School Board verbally resigned. His resignation was voted upon and a majority accepted it. The bond was then fixed for the new Clerk in the sum of \$500.00.

The questions upon which I wish your opinion are:

Whether this whole meeting was a valid and legal meeting;

If so, was the clerk legally elected?

Was Mr. A. legally elected?

Was Mr. B. legally the President and was the resignation of Mr. D. binding upon him, and is there a vacancy in the Board?”

Section 4747, General Code, reads as follows:

“The board of education of each city, exempted village, village and rural school district shall organize on the first Monday of January after the election of members of such board. One member of the board shall be elected president, one as vice-president and a person who may or may not be a member of the board shall be elected clerk. The president and vice-president shall serve for a term of one year and the clerk for a term not to exceed two years. The board shall fix the time of holding its regular meeting.”

It will be observed from the terms of the foregoing statute that a meeting of a board of education to “organize” is to be held on the first Monday in January after an election for members of the board. Such a meeting would necessarily be held in January of each even numbered year. The organization

effected at this meeting, however, is to continue for one year only, at least so far as the president and vice-president are concerned as the statute expressly provides that the president and vice-president shall serve for a term of one year. That makes it necessary to elect a president and vice-president each year. A clerk may be elected for a term of two years. Apparently this particular board of education elected its clerk in 1932 for one year only, inasmuch as it attempted to elect the clerk at the beginning of 1933.

The statute also provides that the board shall fix the time of holding its regular meetings. I assume the meeting on the first Monday of January, 1933, was not a regular meeting else you would not inquire as to its validity. If it was a "regular" meeting under the rules of the board, there can be no question but that it was a "valid meeting." If it was not a regular meeting the question arises as to its being a valid special meeting inasmuch as no written notice was given of the meeting. Section 4751, General Code, provides that to constitute a valid special meeting of a board of education a written notice of the time and place of the meeting signed by the officers or members calling the meeting must be served on each member of the board at his home or his usual place of business. All the members of this board were present at the meeting to which you refer and participated in the meeting, and I am of the opinion that under those circumstances the meeting was a valid meeting even though it may have been a special meeting, and that all business transacted at this meeting was as effectual as though done at a regular meeting.

This office, in an opinion reported in Opinions of the Attorney General for 1930, page 1534, held:

"A special meeting of a board of education is a legal meeting and the business transacted at said meeting is valid if the meeting is attended and participated in by all the members of the board, even though such members had not previously thereto been notified of the time and place of holding such meeting strictly in accordance with Section 4751 of the General Code."

See also Corpus Juris, Vol. 56, page 337, Title "Schools", Section 210.

At the beginning of this meeting Mr. A. was elected president and Mr. B. was elected vice-president. The law does not require these officers to take an oath or give a bond as such officers or to do anything else after being elected to qualify for the position. Apparently, they became actual incumbents of the positions to which they had been elected as soon as they were elected and assumed their duties. Mr. A. assumed the position of president after his election. He resigned later in the meeting and Mr. B., the duly elected vice-president claimed the position.

The statutes are entirely silent as to what the duties of a vice-president of a board of education of a rural or village school district are. The title itself implies, in my opinion, that he is to take the place of the president upon his death, disqualification or resignation. If that is not the purpose of electing a vice-president, I am at a loss to know for what purpose the law provided for electing such an officer.

As to the validity of the election of Mr. A. as clerk inasmuch as his election was accomplished by the aid of his own vote I am of the opinion that this election was not valid. It was held by this office in an opinion No. 4104 rendered under date of February 27, 1932 and addressed to the Prosecuting Attorney of Union County, that:

"Where a member of a city, exempted village, village or rural board of education is elected clerk of such board by his own vote which was necessary to give him a majority, there is no election."

With reference to the resignation of Mr. D., it appears that he verbally resigned and that his resignation was formally accepted by a majority vote of the board. If that does not constitute a valid resignation I can not conceive how a resignation might be made so as to be effectual. The law does not provide that a resignation of this kind must be made in writing and I am of the opinion that a verbal resignation is as good as a written one, and where that resignation is formally accepted, as was this one, it, in my opinion, is complete. A vacancy therefore existed on this board immediately upon the acceptance of the resignation of Mr. D.

I am therefore of the opinion, in specific answer to your questions:

1. The meeting in question was a valid and legal meeting.
2. Mr. A. was not legally elected clerk.
3. Mr. B. legally became president of the board upon the resignation of Mr. A.
4. The resignation of Mr. D. was complete and effectual and immediately thereupon, a vacancy existed in the board.

Respectfully,

JOHN W. BRICKER,

Attorney General.

315.

APPROVAL, NOTES OF PAINT CONSOLIDATED NO. 3 RURAL SCHOOL DISTRICT, HIGHLAND COUNTY, OHIO—\$179.00.

COLUMBUS, OHIO, March 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

316.

APPROVAL, NOTES OF WHITEOAK RURAL SCHOOL DISTRICT, HIGHLAND COUNTY, OHIO—\$4,906.00.

COLUMBUS, OHIO, March 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

317.

APPROVAL, NOTES OF BRUSHCREEK CONSOLIDATED NO. 4, RURAL SCHOOL DISTRICT, HIGHLAND COUNTY, OHIO—\$6,153.00.

COLUMBUS, OHIO, March 22, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.