

be made from the lowest responsible bidder after advertisement made in the manner hereinbefore provided. All force account work shall be done under the direction of a member of the board of township trustees or of the township highway superintendent."

In its earlier form as enacted 107 O. L. 93, said statute contained provisions relative to the purchase and lease of machinery and tools in substantially the same form as at present.

Were it not for the evident tendency of the purported contract above quoted to destroy entirely the requirement of competitive bidding as set out in said section 3373, the purported contract might be sustained as coming within the authority to lease as set out in said section. However, that question need not be here considered; for it is perfectly plain that while the purported contract is in form a lease, yet it is in substance and practical operation a contract of purchase if it is a contract at all. Quite true, the township trustees may never get to the point where they exercise the option of purchase, and they may, as provided in the instrument, return the machinery to the vendor at the end of the first, second or third year as the case may be; but the fact remains that the leasing price of the machinery is so adjusted that at the end of the third year the machinery becomes the property of the township for the payment of a very small additional sum. Thus the township is placed in the attitude of practically having to buy the machinery at the end of the third year as a plain business proposition, since it will have to pay only a trivial amount as compared with the three years rental which it has already paid.

Upon the whole then, the purported contract because of its tendency is clearly against public policy and void.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3224.

SCHOOLS—TERM OF ASSISTANT COUNTY SUPERINTENDENTS OF
 SCHOOLS FOR YEAR 1922-1923 BEGINS ON AUGUST 1st, 1922.

The term of assistant county superintendents of schools for the year 1922-1923 begins on August 1, 1922, and not on September 1, 1922.

COLUMBUS, OHIO, June 16, 1922.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following question:

"When does the term of the assistant to the county superintendent of schools begin?"

In reply to your inquiry you are advised that apparently all the law which would have any bearing upon this question must necessarily appear in the Kumler-Gorrell Act (amended Substitute Senate Bill 200), the enactment of the General

Assembly which abolished the position of district superintendent of schools and established the position of assistant county superintendent.

Upon your direct question only a limited portion of Amended Substitute Senate Bill 200 applies and the pertinent parts of that act are as follows:

"Sec. 4739: One or more assistant county superintendents, as may be determined by the county board of education, may be elected for a term of not to exceed three years in each county school district by the county board of education on the nomination of the county superintendent. Provided, however, that no assistant county superintendent shall be elected in 1921 *for a longer term than one year*. A person other than the one nominated by the county superintendent may be elected by a majority vote of the county board of education."

"Sec. 4743: The compensation of the assistant county superintendent shall be fixed at the same time that the appointment is made and by the same authority which appoints him such compensation shall be paid out of the county board of education fund * * * ."

"Sec. 4744-2: On or before the first day of August of each year the county board of education shall certify to the county auditor * * * the number of assistant county superintendents employed and their compensation * * * ; and such board of education shall also certify to the county auditor the amounts to be apportioned to each district for the payment of its share of the salaries of the * * * assistant county superintendents * * * ."

At the very close of the Kumler-Gorrell Act (Amended Senate Bill 200) this language occurs in the schedule of the new law (section 3), to-wit:

"District superintendents of schools *now in office shall continue to hold office* until August 1, 1921, and the entire compensation for the school year 1920-1921 shall be paid to those who serve until that date."

Your question has apparently arisen because under the old system in existence prior to August 16, 1921, when the Kumler-Gorrell Act went into effect, the district superintendents assumed their duties as of September 1st in each year, after having been elected by the presidents of the village or rural boards of education within such supervision district at a joint session held prior to September 1st. The law also provided (4741) that "whenever for any cause, in any district, a superintendent has not been appointed by September 1st, the county board of education shall appoint such superintendent for a term of one year". (104 O. L., 133.) In the language above quoted from the present law it will be noted that while section 4739 G. C. provides for the maximum term to which an assistant county superintendent may be elected, nothing appears in such section as to when the term of such appointee should begin. It is significant to note that had the language of the second, or redrafted, Kumler Bill (S. B. 200) on this point been incorporated in the Kumler-Gorrell Bill, the law would then have been as follows:

"4739: The assistant superintendent shall be elected for a term not longer than that for which the supervision district is established (a period of three years from August 1st following (4738) *the term to begin on August 1st following*).

In the question submitted it is understood that the real question is whether the term of the assistant county superintendent begins on August 1st or on September 1st in 1922.

Section 4739, supra, became effective on August 16, 1921, that is, ninety days after its being filed in the office of the secretary of state on May 17, 1921. As one illustration that it was not the intention of the General Assembly that the term of the assistant county superintendent should begin as of September 1st, it is noted that in section 4739 G. C. it is specifically provided "that no assistant county superintendent shall be elected in 1921 for a longer term than one year". This act, effective on August 16, would govern any county board of education which might hold its meeting on August 17, 18, 19 or any day during August, or prior to September 1st. To illustrate, if an assistant county superintendent was chosen on August 20, 1921, to go on duty at once, prior to the beginning of the school term, then he could not have been elected for a period longer than that expiring on August 20, 1922, with the result that there would have been an interim from August 20th to, September 1st in which there would not be any assistant county superintendent. The apparent contemplation of the law is that after the place is once established and in existence it should be filled by some one continuously. However, since the law as it now reads does not tell us directly when the term of the assistant county superintendent of schools begins, recourse should then be had to what may have been the legislative intent in this matter.

It is understood that your question is upon the beginning of the term of the assistant county superintendents for the coming school year of 1922-1923. Since the term of the assistant county superintendents chosen in the fall of 1921 could not begin prior to the going into effect of the law itself, that is, on August 16, 1921, in arriving at what may have been the legislative intent in this matter it is necessary to briefly consider what the law-making body had before it on this question prior to the time of the passage of the Kumler-Gorrell Act (Amended Senate Bill 200).

In the 84th General Assembly more than two score of bills were introduced bearing upon changes in the school laws of the state, and quite a few of these were upon the question of changing the manner of electing the county board of education and providing for a different system of school supervision in the county school district. Only the leading ones of these various bills will be considered here and then only for the reason that running through all these bills there is a continual reference to August 1st. and but little reference to September 1st. Thus H. B. 50 (Faris-Burns Bill) provided for an elective county board of education; H. B. 80 (Faris Bill) provided for supervision districts with assistant county superintendents, but did not mention the time when the term began *or for how long they could be elected*, but the districts had to be created *prior to August 1st*. In the creation of the supervision districts (prior to August 1st), as provided in proposed section 4743 of H. B. 80, that section said:

"On recommendation of the county superintendent an assistant county superintendent for each supervision district, not supervised by the county superintendent, shall be elected by a majority vote of all the presidents of boards of education in such supervision district."

The section of the General Code which provided for the length of the term of any district superintendent was 4741 G. C., and this section was repealed outright, as well as 4738, 4739 and 4742 of the General Code. H. B. 80 (Faris Bill) was introduced very early in the legislative session on January 24th, but was amended and reprinted twice by order of the House of Representatives, first as

"Amended House Bill 80, and second as "Re-Amended House Bill 80" (Faris-Pence Bill). The original Pence Bill (S. B. 42) used the language "before August 1st" in referring to assistant county superintendents, but did not mention any term of years or the time when the term was to begin. Like the Faris Bill (H. B. 50) it also repealed 4739 and 4741 of the General Code, which had covered the details as to term of appointment and the time when the same should begin. In the Faris-Pence Bill (Re-Amended H. B. 80) section 4741, providing for a term of years for assistant superintendents, appeared in amended form, still saying:

"not longer than one year thereafter he may be re-elected in the same district for a period not to exceed three years."

Singularly the title of Re-Amended H. B. 80 does not amend 4741, or enact it into law, but repeals 4741 outright. This outright repeal is also carried in section 2, the repealing clause of H. B. 80 (Faris-Pence Bill). This bill does not say when the term begins but closes with this language in proposed section 4743:

"District superintendents *now in office shall continue to hold office* until August 1, 1921, and the entire compensation for the school year 1920-1921 shall be paid to those who serve until that date."

Here is a direct statement by the law-making body that the former position of district superintendent was an "office" and those in service were to "continue to hold office until August 1, 1921", but not thereafter, for the General Assembly abolished the "office" of district superintendent as of August 1, 1921, for this very language was incorporated at the close of the schedule in the Kumler-Gorrell Law (Amended Senate Bill 200), as quoted heretofore. The law finally passed did not go into effect until August 16, 1921, because of the 90-day referendum of the Ohio Constitution, but those in service when August 1st arrived were given full pay for the month of August of the "school year 1920-1921" by a specific grant of the law-making body.

It is significant to note that in all of these bills on this subject but little reference is made to September 1st, but "before August 1st", "until August 1st", "before the 1st day of August", etc., occurs frequently, that date being the time of the beginning of the county superintendent's term, as well as the date when the certification from the county board of education should be in the hands of the county auditor. Aside from the Faris Bill (H. B. 50) another bill upon this subject was the Gorrell Bill (H. B. 394) and this bill provided in its proposed section 4741 that the provisions then existing in the law on the district superintendents should govern the length of the term of assistant county superintendents, but this measure did not say when such term of the assistant county superintendent should begin. In section 4739 it provided:

"One or more assistant superintendents * * * may be elected * * * *by the county board of education* upon nomination of the county superintendent."

Then in the next section of the bill (4741), speaking on the election of the assistant county superintendents, it provided that:

"Whenever for any cause * * * a superintendent has not been appointed by September 1, *the county board of education shall appoint* such superintendent for a term of one year."

Comparing the above two sections it would appear that they do not harmonize and the last sentence of 4741 is meaningless. The next section of the bill (4742) provided that when the county board elected an assistant superintendent "not less than 60 days before the expiration of the term of any assistant superintendent" the county board of education should meet on call of the county superintendent and "the meeting shall organize by electing a chairman and clerk". This does not harmonize with the law which provides that the board already had its president and secretary chosen for definite terms. The original Kumler Bill was Senate Bill 144 and specifically provided in 4738-1 G. C. that the term of the assistant county superintendent was "to begin on August 1st following". In the same section it is provided also that:

"If by September 1st of any year a 'supervision board' has failed to choose an assistant superintendent for the district, the county board shall choose an assistant to serve *until the following August 1st* and shall fix his salary * * * ."

Abandoning Senate Bill 144 the same author introduced Senate Bill 200 on the same subject and in this bill, in section 4738, it was provided that the supervision districts (to be under the direction of the assistant superintendents) should be "effective for a period of three years from the first day of August following". Again in this bill (S. B. 200—Senator Kumler) a definite provision as to the beginning of the term of the assistant superintendent is made, for section 4739 said:

"Each supervision district, *when established*, shall be under the direction of an assistant county superintendent of schools. He shall be employed not later than July 1st in any year by the county board upon the nomination of the county superintendent. * * * * * * * * * *
The assistant superintendent shall not be elected for a term longer than that for which the supervision district was created, *the term to begin on the first day of August following.*"

An examination of the journal of the House of Representatives and the journal of the Ohio Senate shows that a number of bills on this subject were either in consideration in the proper committees or on the floor of the House or Senate itself. The House of Representatives, near the end of its session, had passed the Faris-Pence Bill (H. B. 80) and it was pending in the Senate, which body had passed Senate Bill 200 (Kumler Bill). The Gorrell Bill (H. B. 394), introduced rather late in the session, was also pending in the House of Representatives and it was apparently the sincere desire of the membership of the General Assembly that a law of some kind upon this subject should be passed. This resulted in conferences and compromises being made in which certain parts of one bill would be adopted and other parts of another bill be included and the result was Substitute Senate Bill 200, which is the law today.

The question which you have submitted would be answered by the law itself had the language which appeared in H. B. 200 (Kumler Bill) remained in the final enactment, for as heretofore pointed out the original Kumler Bill provided that the assistant county superintendent was to assume office as of August 1st.

Section 4739 G. C., as it now appears, omits to say when the term of the assistant county superintendent was to definitely begin. The clear provision for the time of the beginning of the term of the assistant superintendent, as it appeared in the original Kumler Bill, was lost in the amalgamation of the Faris Bill, the Faris-Pence Bill, the Gorrell Bill and the Kumler Bill, all on the same

subject, but the intent of the General Assembly is clear when one reads all of these bills upon point of time when the assistant superintendent was to start his term, for all had in mind that his term should begin on August 1st and not on September 1st.

For a full discussion upon the question of "legislative intent", see Opinion No. 2324, appearing at page 684, Vol. 1, Opinions of the Attorney-General for 1921.

It is entirely possible that the General Assembly, in considering all of these bills in order to arrive at a proper enactment before it adjourned, looked at the matter from a practical standpoint, having in mind that the arrangements for the opening of the school in September should really be made some weeks ahead of the opening day. Supervisory officers in schools have a considerable amount of work to do before the schools open to arrange their work for the year and all of this should, in a general way, be taken care of prior to September 1st. From a practical standpoint, if a retiring assistant county superintendent is to no longer remain in the school system, but is to go to a new school system, it would appear to be unusual to retain him in the old district during August when he had little interest there, and keep him away from the new district where he ought to be laying out his plans in August for the opening of school in September. It is understood that the reports to be made up by these supervisory officials to the state superintendent of public instruction and the reports to be made to other officers should be completed by June 30th, and that being true it would seem that the time after June 30th should be taken in preparation for the schools of the next year. If the assistant superintendent would not expect to be in the county for the next year, he ought not to be preparing the work for another man to carry out. If his leaving was not voluntary, there is a probability that no service whatever would be secured from him, for he would not feel like assisting those who might have been instrumental in removing him. From a practical standpoint too, if a new superintendent is to be employed he would not be in accord with the assistant superintendents possibly and he would start on his employment on the first of August and for thirty days would have as his assistant personnel persons who might not be in harmony with him, and at a time when the very best help and cooperation should be given to him. That is to say, he would have the old assistant superintendent for one month and then on the very day school was to be opened, practically after all plans had been made, he would have to begin with new help. It must be remembered that the General Assembly abolished the position of district superintendent in charge of a supervision district. They did not keep in the law any provision that there should be supervision districts; on the contrary, it was provided that the persons under discussion who were to be employed were to be assistant superintendents, that is, assisting the county superintendent in such manner as he might direct and at any place in the county school district where he might care to send his assistants, since the law had already provided that he was and is the executive officer of the county board of education. As indicated heretofore, it is entirely possible that the General Assembly, in considering these questions, may have had some of these things in mind. It is believed it was an oversight on the part of the lawmaking body that in the bill, as finally drawn in substitute form, the reference as to the time of the beginning of the term of the assistant county superintendent was inadvertently left out in section 4739.

You are therefore advised, in answer to your question, that it is the opinion of this department that the term of assistant county superintendents of schools, for the year 1922-1923, begins on August 1, 1922, and not on September 1, 1922.

Respectfully,

JOHN G. PRICE,
Attorney-General.