855.

DISAPPROVAL, BONDS OF GEAUGA COUNTY—$43,027.16.

COLUMBUS, OHIO, September 11, 1929.

Re: Bonds of Geauga County, Ohio—$43,027.16.

Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The transcript relative to the above issue of bonds discloses that the above bonds are issued in anticipation of a county road improvement, proceedings having been started in February, 1929. These bonds, after having been offered to and rejected by the sinking fund trustees, were advertised pursuant to the provisions of Section 2293-28, General Code. This advertisement, as affixed to the affidavit in proof of publication thereof, states that the bonds bear interest at the rate of 5% per annum, but does not state that anyone desiring to do so may present a bid or bids for such bonds based upon a different rate of interest as is permitted under Section 2293-28, General Code. It appears that notwithstanding this fact a bid was received upon a different rate of interest and the bonds awarded to bear interest at the rate of 5½% per annum. This office has consistently held that unless the advertisement published pursuant to the provisions of Section 2293-28, General Code, prior to amendment by the 88th General Assembly, states that bids may be presented based upon bonds bearing a different rate of interest as therein provided, the acceptance of a bid at a different rate of interest is void. See Opinion No. 341 under date of April 23, 1929, directed to your commission and also Opinion No. 93 under date of February 14, 1929, also directed to your commission.

In view of the foregoing, I advise you not to purchase these bonds.

Respectfully,
GILBERT BETTMAN,
Attorney General.

856.

BOARD OF EDUCATION—WHEN REMOVAL OF MEMBER FROM DISTRICT CREATES VACANCY—ELECTION OF SUPERINTENDENT AT ADJOURNED MEETING DISCUSSED—QUORUM NECESSARY TO TRANSACT BUSINESS—HOW SPECIAL MEETING CALLED.

SYLLABUS:

1. *The permanent removal of a member of a board of education from his school district creates a vacancy in the office. Temporary removal, does not. The intention of the member, to be gathered from all the circumstances attendant upon his removal, is the controlling factor in determining whether a removal is temporary or permanent.*

2. *Three members of an exempted village, village or rural board of education constitute a quorum.*

3. *No business can regularly be entered upon by a board of education until a quorum is present; nor can any business be regularly proceeded with when it appears that the members present are reduced below that number.*

4. *To employ a superintendent, teacher or other employe of a board of education requires the affirmative assent of at least three members of the board, which assent*

must be determined by a yea and nay vote properly recorded, as provided by Section 4752. General Code.

5. *A roll call upon any question before a board of education which requires a yea and nay vote, as provided by Section 4752, General Code, cannot be interrupted by a motion to adjourn to some other location, and an adjournment had and the roll call continued at the new location.*

6. *A meeting of a board of education, after its having been duly convened, may be adjourned and continued at another location, upon the affirmative assent of a majority of the members present, and voting, providing a quorum exists.*

7. *A special meeting of a board of education should be called, in the manner prescribed by Section 4751, General Code.*

COLUMBUS, OHIO, September 12, 1929.

HON. EMERSON C. WAGNER, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR:—I am in receipt of your recent letter, which reads as follows:

"I would like to have your opinion on the following questions:

1. Mr. B., a member of the board of education of the Hemlock Village School District, Perry County, Ohio, moved about May 1, to Eaglesport, in Morgan County, Ohio, an adjoining county. He took most of his furniture with him, but did leave a small amount of furniture at Hemlock. He rented his property at Hemlock, and does not own any real estate in Perry County or Morgan County. This man has three children of school age, and they have already been enumerated and will go to school at Hemlock this year, Mr. B. listed his personal property for taxation in Perry County. He has attended every meeting since May 1st, and he now says he is only away temporarily and is willing to make an affidavit to that effect. He intends to return to Hemlock this fall with his wife and children. Is he a legal member of the board of education of the Hemlock Village School District, Perry County, Ohio?

2. Three members of the board of education met at the regular meeting place. A motion is made to employ "A" as a superintendent. Motion seconded. Two members voted "Yes," one voted "No." A motion is then made to adjourn this meeting to the home of a member of the board of Education who has been sick for some time. Two members vote "Yes," one "No." Motion carried, and the two members voting "Yes," together with the clerk of the board, go to the member's home who is sick, and the one voting "No" refused to go and did not go to this member's home. This man who is sick, and who is a member of the board where the meeting was adjourned to, votes with the other two members who voted "Yes" on the motion to employ "A" as superintendent, making three votes in the affirmative. Can they adjourn meeting in this manner? Is the employment of superintendent legal?

3. The board of education met in adjourned meeting, three members present when roll was called. One member of the board, who was also the president of the board, gets mad and leaves this meeting. Can other two members transact business?

4. How can a special meeting be called of the board of education?"

I will consider the questions submitted in the order asked.

First, as provided by the terms of Section 4748, General Code, "removal from the district" of a member of a board of education creates a vacancy in the board. No

definite rule as to what constitutes "removal from the district" can be laid down that is not difficult to apply in specific cases.

This subject received the attention of my predecessor, in quite an exhaustive opinion, found in Opinions of the Attorney General for 1927, at page 1057, wherein a number of authorities, including several previous Attorneys General's opinions, observations of text writers and decisions of courts in Ohio and other states are reviewed and commented upon. The syllabus of the opinion reads as follows:

> "Permanent removal from the district of a member of a board of education creates a vacancy in such board. Such removal, for temporary purposes only does not create a vacancy. Whether the removal from the district of a member of the board of education is permanent or temporary is in all cases a question of fact to be determined from the intention of the member so moving, considered in the light of all the circumstances connected with such removal."

In the course of the opinion, it is said:

> "An examination of the authorities discloses a fixed rule of universal application that the intention of a person of legal age who is not under restraint is determinative of the question of the situs of his residence and to effect a change of residence, after one has been established, he must not only move in a physical sense but he must do so with a fixed intention of remaining away or must form that intention after the consummation of the physical act of moving. If removal be made with the intention to return, the situs of his domicile remains in the place from which he moved and does not change upon the performance of the mere act of removal not coupled with an intention to remain. In other words the question turns upon whether or not the removal is temporary or permanent."

The question of whether or not the removal is permanent or temporary, depends, to a great extent on the intention of the person himself, if he really has any fixed intention in the matter, and that intention must be gathered from all the circumstances attendant upon his action. His own declarations on the subject, if made honestly, are somewhat determinative of the matter, although such declarations must be considered in the light of the circumstances surrounding his acts. Any declaration made by him is only one of the criteria by which to judge his real intention.

Chief Justice Shaw, in the case of *Lyman* vs. *Fiske,* 17 Pick. 231, said, with reference to the determination of whether or not a change of residence had been effected:

> "It is often a question of great difficulty, depending on minute and complicated circumstances leaving the question in so much doubt that a slight circumstance may turn the balance. In such a case the mere declaration of the party made in good faith of his election to make the one place rather than the other his home would be sufficient to turn the scale but it is a question of fact for the jury to be determined from all the circumstances of the case."

In an opinion of this office, reported in Opinions of the Attorney General for 1924, at page 525, where the question was considered as to whether or not a township trustee, upon changing his residence from the township in which he had been elected to another township thereby created a vacancy in the office, it was held:

> "Whether or not there has been such a change of residence is a question of fact to be determined by ascertaining the intent of such person. If he removes with the purpose of establishing a fixed habitation elsewhere and does not intend to return to his former home, a change of residence is effected; or, in the event that after a temporary removal he should decide to permanently remain away from his original habitation, this would likewise constitute a change of residence. Circumstances surrounding the acts of such a party may be considered for the purpose of determining what his real intentions are."

It will be seen, from the foregoing, that the question of whether or not "removal from the district" has been effected in any case, is a mixed question of law and fact, and depends to a great extent on the intention of the person himself. To determine this intention is a matter of extreme difficulty in any specific case, and necessitates the taking into consideration of all the circumstances surrounding the situation.

In a comparatively recent case, being that of *State ex rel.* vs. *Paulson,* 29 O. A. R., p. 121, decided by the Court of Appeals of the First District, it was held:

> "Where member of board of education moved into another school district with wife and children, who attended school in that district, such member had removed from district within meaning of Section 4748, General Code, relating to vacancy in board of education, though he still owned residence property in first district and intended to return at some future time; word 'removal' meaning change of place, especially of habitation."

The opinion in the above case is very short, and contains no reference to other decisions or to controlling legal principles, nor does it recite the facts in the case, to any great extent. It was a suit in quo warranto, and the court, of course, passed upon the facts, as well as the law. The court no doubt had before it all the attending circumstances, and observed the witnesses in giving their testimony. The case is not controlling in any respect, and leaves the question just as I have stated it herein; that is that the intention of the party controls, and that intention is to be gathered from all the circumstances, his intention being the controlling circumstance, and his declaration of that intention being one of the criteria by which to determine the intention.

Under the circumstances related by you, it appears that Mr. B. listed his personal property for taxation in Perry County, his children, who are of school age, will go to school at Hemlock, and he himself emphatically states that his absence from Hemlock is only temporary, and he expects to return with his family this fall. There are perhaps many other circumstances which should be taken into consideration, in determining whether or not his removal is really permanent or temporary, but I do not have those circumstances before me. In the face of his own declaration on the subject, and the facts before me, I could not say that his removal from the district is other than he himself states it to be, that is, a temporary removal. That being true, he is still a legal member of the board of education of Hemlock Village School District, Perry County, Ohio.

Second. Exempted village, village and rural boards of education consist of five members. Section 4708 and 4712, General Code. It requires a majority, that is, three members of each such board to constitute a quorum authorized to transact business. To appoint a superintendent, teacher, janitor or other employe, or to elect or appoint an officer, or to pay any debt or claim, or to adopt any text book, or to pass a motion or adopt a resolution authorizing the sale or purchase of real or personal property, it requires the affirmative vote of at least three members of the board.

Section 4752, General Code. For the transaction of other business than that above mentioned, the assent of a majority of the members present and voting, is sufficient, providing a quorum exists.

It is not necessary that a board of education hold its meetings at any particular place, if the meeting has been properly called at the place where held, or properly adjourned to that place. A meeting once properly convened, may be adjourned, upon motion duly made and carried, to any other location, and the meeting continued at the new location. Under the circumstances related by you, it was perfectly proper to adjourn the meeting to the home of the sick member, and there continue the meeting. It only requires a majority of those voting to pass such a motion. It appears, however, that the motion to employ a superintendent had been made and voted on, and the motion lost, for the reason that it required the affirmative vote of three members of the board for the motion to carry. After the vote was taken, the matter was foreclosed. Whether the result of the vote was announced or not, the minutes must necessarily have shown the vote to have been "two—yes" and "one—no," showing that the motion lost. An adjournment could not then be taken and another "yes" vote recorded without a reconsideration of the motion, or a new motion having been made. In my opinion a motion to adjourn a meeting to another location cannot be made during a roll call. If, under the circumstances, after the meeting was adjourned, to the residence of the sick member, and there reconvened, and the question of employing a superintendent was submitted to the meeting and the roll call had thereon, as required by Section 4752, General Code, and three members voted in the affirmative, it amounted to a lawful employment of a superintendent. I do not know what the minutes show in that respect, but if that was what actually happened, the minutes may be corrected at the next meeting to show that fact. I do not mean that it was necessary to have had a formal motion made to employ a superintendent at the adjourned meeting. If it was the general understanding that that question was before the board, and a roll call had on the question, it is sufficient.

The Supreme Court, in the case of *State ex rel.* vs. *Evans, et al.*, 90 O. S. 243, at page 251, used the following language:

> "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 the journal of a court."

A board of education, in the conduct of its affairs, should not be held to a strict compliance with all the technical rules of parliamentary practice. On the other hand, the proceedings should be orderly and such as to conform to the statute. The statute, Section 4752, General Code, provides that to employ a superintendent or teacher an "aye" and "no" vote must be taken, and recorded, and I do not think a roll call on such a question can be interrupted by motion to adjourn to another location and adjournment had and the roll call continued at the new location.

Third. In Cushing's Manual of Parliamentary Practice, Section 19, it is said:

> "No business can regularly be entered upon until a quorum is present; nor can any business be regularly proceeded with when it appears that the members present are reduced below that number; consequently the presiding officer ought not to take the chair until the proper number is ascertained to be present; and if at any time in the course of the proceedings notice is taken that a quorum is not present, and, upon the members being counted by the presiding officer, such appears to be the fact, the assembly must be immediately adjourned."

The same author, in Section 249, says:

"When, from counting the assembly on a division, it appears there is not a quorum present, there is no decision, but the matter in question continues in the same state in which it was before the division."

Many other authorities might also be cited holding that a deliberative assembly or any board or committee must at all times have physically present enough members to constitute a quorum in order to lawfully transact business. When, in a regularly convened meeting of a board of education, a bare quorum is present, and one member leaves the meeting, the number then present is reduced below the number necessary to constitute a quorum and the meeting must adjourn.

Fourth. A special meeting of a board of education should be called, in the manner provided by Section 4751, General Code, which reads as follows:

"A special meeting of a board of education may be called by the president or clerk thereof or by any two members, by serving a written notice of the time and place of such meeting upon each member of the board either personally or at his residence or usual place of business. Such notice must be signed by the official or members calling the meeting."

Respectfully,
GILBERT BETTMAN,
Attorney General.

857.

DISAPPROVAL, BONDS OF CITY OF RAVENNA, PORTAGE COUNTY—$32,973.74.

COLUMBUS, OHIO, September 12, 1929.

Re: Bonds of city of Ravenna, Portage County, Ohio, $32,973.74.
Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—An examination of the transcript relative to the above bonds purchased by your commission discloses that the ordinance authorizing these bonds was passed by the council July 1, 1929. These bonds mature serially on September 1 of each year beginning September 1, 1931. Section 2293-12, General Code, provides in part as follows:

" * * * If issued with semi-annual maturities the first installment shall mature not earlier than the first day of March next following the 15th day of July next following the passage of the ordinance or resolution authorizing the issue of such bonds as provided in Section 2293-26 of the General Code; and if issued with annual maturities, the first installment shall mature not earlier than the first day of the second September next following said 15th day of July. In either case the first installment shall mature not later than eleven months after said earliest possible date of maturity."

It is obvious that under the provisions of this section the resolution authorizing these bonds having been passed July 1, 1929, the date of earliest maturity may not be earlier than September 1, 1930, nor later than August 1, 1931. These bonds were advertised pursuant to the provisions of Section 2293-28, General Code, which adver-