

after by a board of trustees. These two boards are entirely separate, and there is no statutory or common law inhibition upon the members of one board being employed by the other or upon the members of one board being interested in the contracts of the other except as the same may be covered by Section 12911, General Code, referred to above.

The only statutory regulation as to who shall be employed by a board of education as driver of its school wagon or motor van is that contained in Section 7731-3, General Code, and if a person is employed who meets the qualifications fixed by the said statute, I see no reason why the employment is not legal even though such person may be a member of a board of township trustees for a township which includes the same territory as the school district.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1472.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTORS—J. H. SWEETMAN AND JOHN F. GALLIER.

COLUMBUS, OHIO, January 30, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval two bonds, each in the penal sum of \$5,000.00. On one of said bonds the name of J. H. Sweetman appears as principal and the Fidelity and Deposit Company of Maryland appears as surety. On the other, the name of John F. Gallier appears as principal and the Commercial Casualty Company appears as surety. Both of said bonds are conditioned for the faithful performance of the duties of the principals as resident district deputy directors.

Finding the said bonds to have been executed in proper legal form, I have endorsed my approval thereon as to form, and return the same herewith.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1473.

BOARD OF EDUCATION—RAZING SCHOOLHOUSE AND ATTEMPTING TO ISSUE BONDS FOR NEW BUILDING BY AUTHORITY OF REPEALED STATUTE—QUESTION OF ISSUING BONDS TO, SUBMITTED ONLY AT NOVEMBER ELECTIONS.

SYLLABUS:

When through a mistake of law as to the amount of bonds which may be issued by a board of education without a vote of the electors such board has caused a school building to be razed for the purpose of using the site for a new building proposed to be constructed, such destruction of the old building is not

a casualty within the meaning of Sections 2293-15 and 2293-22, General Code, and the question of issuing bonds for the purpose of constructing a new school building may not, under the provisions of Section 2293-22, General Code, be submitted to popular vote at other than the November election.

COLUMBUS, OHIO, January 31, 1930.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“We submit the following for your opinion:

Last summer the Dudley Rural Board of Education planned to erect a school building at Hepburn in their district. They have a surplus of five or six thousand dollars in their treasury.

They proposed to issue bonds under Section 7629 without a vote of the people, since a \$36,000 bond issue had been defeated in the November 1928 election, and a school house was badly needed at Hepburn, the old one being unfit for use.

The board of education went so far as to have all arrangements of letting a contract for the new building, and to sell the bonds.

In anticipation of all this the board had the old building razed to use the site for a new building and to use what material might be suitable in the new building.

The board of education had been proceeding under the provisions of Section 7629, which had been repealed and had been inoperative since January 1st last preceding. The old building having been torn down, the district is without a building. Two old abandoned rooms hardly fit for use are now being used for the purpose.

The board of education wishes to know whether there is any possible means under some phase of an emergency condition to hold a special election to issue bonds and centralize their schools, or to issue the emergency bonds. We had this matter before you at the time the difficulty arose last summer, and we counseled at the conclusion that nothing could be done, but they are now asking that an opinion be obtained from you.”

I am advised that the amount of bonds which the board of education desires to issue is in excess of the one-tenth of one per cent limitation of unvoted net indebtedness provided in Section 2293-15, General Code, and that, accordingly, a vote of the electors is necessary unless upon the facts as submitted, such bonds need not be considered in ascertaining the limitations of net indebtedness set forth in this section. Paragraph (c) of Section 2293-15 provides certain bonds which shall not be considered in ascertaining the limits of the section. It is as follows:

“Bonds heretofore issued under the provisions of Section 7630-1 or hereafter issued for the purpose of rebuilding or repairing a schoolhouse wholly or partly destroyed by fire or other casualty, or for the purpose of building a new schoolhouse in lieu of repairing or rebuilding such schoolhouse destroyed by fire or other casualty; provided that any insurance moneys received as a result of any such destruction are first applied to reduce the amounts of bonds issued for such repair, rebuilding or new construction, but bonds excepted from the limitation of this section under the provision of this paragraph (c) shall never exceed three per cent of the

total value of all property in any such school district as listed and assessed for taxation."

The first fact for determination is whether or not when a building has been destroyed by a board of education under mistake of law, such destruction amounts to a casualty within the meaning of this section. The section refers to the destruction of a building "by fire or other casualty". It is further provided that "any insurance moneys received as a result of any such destruction" must first be applied to reduce the amount of bonds issued for such rebuilding or new construction. I am clearly of the view that the reference to "other casualty" is to some occurrence commonly referred to as an act of God, such as lightning, earthquake, windstorm, etc. Loss from such casualties is customarily covered in part at least by insurance. I do not believe insurance companies customarily issue policies to insure against loss occurring through mistakes of law, and, therefore, the reference in the section to the application of insurance moneys is indicative of the fact that the Legislature, in the enactment of this section, did not contemplate such casualties as are not customarily insured against.

Coming now to the matter of submitting the question to a vote of the electors at a special election, Section 2293-22, General Code, is as follows:

"The question of issuing bonds shall always be submitted to popular vote at a November election, except that, whenever it is necessary to rebuild or repair public property, wholly or partially destroyed by fire or other casualty or to build a new similar property in lieu of repairing or rebuilding such property, with the consent of the tax commission of Ohio the question of issuing such bonds may be submitted to popular vote at a primary election or a special election called for that purpose. The tax commission shall consent to such submission only if they find that the submission of such question at a primary or special election is absolutely necessary to meet the requirements of the people of said subdivision."

The language used in this section with reference to the entire or partial destruction of a building by fire or other casualty is identical with that used in Paragraph (c) of Section 2293-15, and in my opinion the two sections are in *pari materia* and must be read together.

It, accordingly, follows that in my opinion, when through a mistake of law as to the amount of bonds which may be issued by a board of education without a vote of the electors such board has caused a school building to be razed for the purpose of using the site for a new building proposed to be constructed, such destruction of the old building is not a casualty within the meaning of Sections 2293-15 and 2293-22, General Code, and the question of issuing bonds for the purpose of constructing a new school building may not, under the provisions of Section 2293-22, General Code, be submitted to popular vote at other than the November election.

Respectfully,

GILBERT BETTMAN,
Attorney General.