Frederick vs. Board of Education, 18 O. C. C. (N. S.) 435:

"A court of equity is without jurisdiction to interfere by injunction to prevent the trial and dismissal of a teacher by a school board."—Id.

It is fair to say that the foregoing leads to the conclusion that the dissolution of a contract with a teacher in the manner indicated in your inquiry is not favored by the law. No express provisions of law are to be found either to affirm or deny such termination of it and neither is there to be found a case directly citing the point under discussion.

Holding to the view that school funds are trust funds for educational purposes only, as it does, the school law does not permit boards of education to create sinecures no matter how long or how efficient the services of any employe may have been.

Such assistants or principals as are necessary for the well-being and thoroughness of school activities are matters left wholly to the discretion of th board of education for each district by the law. But to employ someone to assume the duties of another when that one has for some reason, such as herein set up, become unable to perform such duties, though receiving the pay therefor and presumably so employed, is not a proper use of school funds under the law. If a board has erred in the judgment it exercises in a lawful manner in its selection of teachers for its schools, and no board is presumed to be incapable of error of judgment in the management of all its affairs, the law has provided adequate remedy for the same, of which such board is at liberty at all times to avail itself.

And without attempting to say what may be the implied powers of a board of education, if any, to dissolve contracts relating to buildings, grounds, etc., by the method known as compromise and settlement should occasion arise, and in view of the particularity of the law in respect to contracts with teachers, and their avoidance, it is the opinion of this department that both of your questions must be answered in the negative.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1435.

SCHOOLS—HOW SCHOOL DISTRICT IN WHICH EXISTING TAX LEVIES DO NOT EXCEED TEN MILLS MAY QUALIFY FOR PARTICIPATION IN RESERVE IN STATE COMMON SCHOOL FUND BY VOTING AN ADDITIONAL LEVY OF THREE MILLS—TOTAL LEVY EIGHTEEN MILLS EXCLUSIVE OF STATE HIGHWAY LEVY AND OTHER SIMILAR LEVIES.

In order to qualify for participation in the reserve in the state common school fund a school district, in which there is no levy for interest and sinking fund purposes and no other special tax outside the ten mill limitation, so that the aggregate levy for local purposes is ten mills or less, must vote additional taxes for school purposes in such amount, expressed in terms of rate, as to bring the total levy in the district up to eighteen mills, exclusive of state highway levy and other similar levies.

COLUMBUS, OHIO, July 17, 1920.

HON. EUGENE WRIGHT, *Prosecuting Attorney, Logan, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date requesting an opinion on the following question:

May a school district in which the existing tax levies do not exceed ten mills qualify for participation in the reserve in the state common school fund, by voting an additional levy of three mills under section 5649-5 et seq. of the General Code?

Your inquiry arises from the following provisions of House Bill 615 (108 O. L., part II, 1303):

Section 7596 G. C. as amended by said act:

"* * * If the additional levy provided for by sections 5649-4, 5649-5 and 5649-5a of the General Code has not been submitted to the electors, such order (of the superintendent of public instruction) shall direct such submission for such number of years as the superintendent may deem best and for such number of mills, within the limitations imposed by said sections, as may be required in order to meet the financial needs of the district, or to exhaust its revenue resources; and if such submission is not made, or if the electors of the district do not approve the additional levy so submitted, the district shall not participate in such reserve.

It is clear under this section, as you seem to assume, that if the additional levy provided for by the sections of the General Code mentioned therein has been submitted to the electors and approved by them, the superintendent of public instruction is without power to condition his action in any respect upon the making of any further levy of that kind.

Section 5649-4 G. C., as amended:

"* * * for local school purposes authorized by a vote of the electors under the provisions of sections 5649-5 and 5649-5a of the General Code, to the extent of three mills for such school purposes, the taxing authorities of any district may levy a tax sufficient to provide therefor irrespective of any of the limitations of this chapter.

In connection with these provisions found in the bill itself section 5649-5 and succeeding sections must be considered, as they are referred to in the sections which have been quoted. The following quotations may be made therefrom:

Section 5649-5:

"* * * any board of education may, at any time, * * * declare * * * that the amount of taxes that may be raised by the levy of taxes at the maximum rate authorized by sections 5649-2 and 5649-3 of the General Code as herein enacted within its taxing district, will be insufficient and that it is expedient to levy taxes at a rate, in excess of such rate * * *. Such resolution shall specify the amount of such proposed increase of rate above the maximum rate of taxation and the number of years * * * during which such increased rate may be continued to be levied.

Section 5649-5a:

"Such proposition shall be submitted to the electors of such taxing district * * *.

The form of the ballots cast at such election shall be:

'For an additional levy of taxes for the purpose of * * * not exceeding * * * mills, for not to exceed * * * years, Yes.'"

Section 5649-5b:

"If a majority of the electors voting thereon * * * vote in favor thereof, it shall be lawful to levy taxes within such taxing district at a rate not to exceed such increased rate * * *, but in no case shall the combined maximum rate for all taxes levied in any year in any * * * school district * * * under the provisions of this and the two preceding sections and sections 5649-1, 5649-2 and 5649-3 of the General Code * * * exceed fifteen mills."

Returning now to the section which immediately requires construction, viz., section 7596 of the General Code, it will be observed that in order to qualify for participation in the reserve in the state common school fund a district must "exhaust its revenue resources" by levying as much taxes as it can "within the limitations imposed by" sections 5649-4, 5649-5 and 5649-5a of the General Code.

It is obvious therefore that an answer to the question which is submitted can be found by ascertaining just how much taxes a school district in the situation of your district can levy under the provisions of the section and within the limitations therein found. To simplify the discussion, no account will be taken of state highway improvement levy and other special levies of the sort. Your statement of facts makes it appear that the school district in question has no bonded indebtedness and that no district levying within the same territory has a bonded indebtedness, so that all the levies now being made are in the aggregate ten mills or less. As corollary to this proposition it appears that the board of education of the district is now levying as much taxes as it can without authority of a vote of the people.

Under sections 5649-5 to 5649-5b inclusive standing by themselves any number of mills may be levied but the aggregate levy on any taxable property can not be more than fifteen mills. Hence if these sections stood by themselves the utmost that could be levied in any school district in addition to the levies authorized to be made without a vote of the electors would be five mills. But section 5649-4 has been amended so as to provide that to the extent of three mills levies for school purposes may be made outside of all limitations if a vote is taken under sections 5649-5 and 5649-5a of the General Code. Does this mean that the utmost that is authorized to be voted under sections 5649-5 and 5649-5a for local school purposes is three mills? There is no such expression in the section. The section does include a limitation to be sure namely a limitation that to the extent of three mills levies voted by the people for school purposes may be made outside of all other limitations. The only other limitation which is applicable would be the fifteen mill limitation imposed by section 5649-5b of the General Code; the vote taken under sections 5649-5 and 5649-5a of the General Code would of itself take the local school levy outside of the interior and ten mill limitations provided for by sections 5649-2 and 5649-3a of the General Code respectively; so that by virtue of such vote there would be but one limitation of law to which a voted levy would be subject and that limitation as stated would be the fifteen mill limitation of section 5649-5b. The effect of section 5649-4 then is virtually to raise the fifteen mill limitation which would otherwise apply to a voted evy in a school district to eighteen mills and section 5649 4 as amended and sections 5649-5 to 5649-5b inclusive read together amount to this: That by a vote of the people taken under section 5649-5 local school taxes may be levied at such rate as will not cause all the taxes levied in the school district for school and other purposes to exceed eighteen mills.

This is what school districts have the power to do under the sections discussed. The question now recurs as to whether school districts are to exhaust this power in order to qualify for the new type of state aid provided for in House Bill 615. In the opinion of this department such power must be exhausted. Section 7596 is full of information to this effect if indeed it is not perfectly clear on its face. The number of mills required is not named in section 7596; the additional levy is to be made "within

the limitations imposed by sections 5649-4 5649-5 and 5649-5a of the General Code." But this does not mean that it can only be three mills; on the contrary it means as said before that it can only be three mills in addition to what it could otherwise be which is fifteen mills—or in total fifteen mills plus three mills, or eighteen mills:

Only in this way could so-called weak school districts be placed upon an equality as it were, with the other school districts in the state. The policy of the whole act may be summed up as follows:

A very considerable (in most instances) part of the financial burden of the schools is to be borne directly by the state, all districts sharing in the state's distribution; the balance of the expense of the schools is to be borne locally, and the people of each district are to tax themselves as heavily as they can within the limitations of the Smith Law as changed by the act to this purpose, but if those limitations prevent the necessary revenues from being raised, then there is the reserve in the state common school fund (so designated by section 7582 of the General Code) which is to equalize educational advantages throughout the state by supplementing the other state and local revenues to the end that each district shall have enough money for its purposes.

It would be obviously unjust to allow the taxpayers of one district to get state moneys supplementary to a local levy of thirteen mills in the aggregate, when some other district, whose interest and sinking fund levies might be large, would have to levy eighteen mills in order to obtain the same benefits. By adhering to the principle which, in the opinion of this department, pervades the entire statute every weak school district in the state which gets state moneys will have the same tax rate—or will be on an equality.

It follows from the foregoing that the answer to the question as stated is in the negative; and that in order to qualify for participation in the reserve in the state common school fund a school district, in which there is no levy for interest and sinking fund purposes and no other special tax outside the ten mill limitation so that the aggregate levy for local purposes is ten mills or less, must vote additional taxes for school purposes in such amount, expressed in terms of rate, as to bring the total levy in the district up to eighteen mills exclusive of state highway levy and other similar levies.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1436.

HOTELS AND RESTAURANTS—LICENSE ISSUED UNDER SECTION 843 G. C. NEED NOT NECESSARILY REFER TO THE BUILDING BY ITS TRADE NAME—DESCRIPTION SUFFICIENT THAT WILL ENABLE STATE FIRE MARSHAL TO LOCATE AND IDENTIFY IT.

A hotel or restaurant license issued under sections 843 et seq., G. C., need not necessarily refer to the building or structure by its trade name. A description of the building or structure with such degree of certainty as will enable the state fire marshal and the general public to locate and identify it, is sufficient.

COLUMBUS, OHIO, July 17, 1920.

HON. WM. J. LEONARD, *State Fire Marshal, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date inquiring whether or not your department should issue a hotel license to a person to conduct a hotel under a certain trade name, when a license to conduct a hotel under the same name has been issued to another person in the same city, was duly received.