"3. When the board of education of a rural school district employs a supervisor, whom they style 'superintendent of schools,' for a term of three years, his contract of employment need not bear the certificate of the fiscal officer provided in Section 5625-33.

4. The term 'current salary' as used in the exception in paragraph D, Section 5625-33, applies to the entire salary of a regular employe, even though his contract of employment runs for more than one year."

In view of the foregoing, it is apparent that Section 5625-33, General Code, has nothing whatsoever to do with the subject matter of your inquiry.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1706.

BOARD OF EDUCATION—WHERE REAL PROPERTY CONVEYED—CONDITION SUBSEQUENT—PREMISES TO BE USED SOLELY FOR PUBLIC SCHOOL—IF ABANDONED THREE YEARS OR MORE—REVERTER CLAUSE—TITLE REVERTS—POSSESSION BY ENTRY OR THROUGH COURT DECREE OF FORFEITURE AND RECONVEYANCE.

SYLLABUS:

Where real property is conveyed to a board of education by warranty deed and the habendum clause in the deed contains a condition to the effect that the premises are to be used solely for the purpose of conducting a public school or schools thereon, and in the event that said premises should be abandoned for school purposes, for three years or more, then said premises shall immediately revert and pass to the grantor, his heirs or assigns and thereafter, the board of education abandons the premises for school purposes for three years or more, thereupon, the title reverts to the grantor if the grantor in his lifetime, or those in privity of blood with him after his decease, enters the premises and takes possession

of the same, or applies to a court of competent jurisdiction to grant him relief to have the forfeiture declared and a reconveyance ordered.

COLUMBUS, OHIO, January 5, 1938.

HON. LESTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication relating to a request for an opinion concerning real estate of the Board of Education of Southeastern Rural School District, Ross County, Ohio. For the purpose of this opinion it is only necessary to refer to your supplemental letter which reads as follows:

> "Supplementing my recent letter and in answer to your inquiry of November 23rd, I desire to advise you that Arthur F. Jones conveyed the property in question to the Board of Education of the Southeastern Rural School District, Ross County, Ohio, by Warranty Deed, dated September 11th, 1936.
>
> In addition to the usual provisions of a Warranty Deed, this deed contained the following condition in the habendum clause:
>
> > 'Provided, however, and this deed is upon the express condition, which is a part of the consideration, that the said premises above described are to be used solely for the purpose of conducting a public school or schools thereon, and in the event that said premises should be abandoned for school purposes, as aforesaid, for three years or more, then said premises shall immediately revert and pass to the Grantor, his heirs or assigns, and said Grantor, his heirs or assigns, may immediately enter, have and repossess the same.' The Grantee does hereby covenant and agree for itselves, its successors or assigns, that it will, at all times, keep and maintain a good and sufficient fence between said premises and lands of the Grantor, his heirs or assigns."

The question presented in your letter is whether or not the real estate conveyed to the Board of Education of Southeastern Rural School District, will revert back to the grantor if said real estate is not used for school purposes within a period of three years.

It is to be observed that the habendum clause contains not only a statement of the uses and purposes for which the deed was made, but also, *an express condition* that, if the premises should be abandoned for school

purposes, for three years or more, the premises shall revert to the grantor or his heirs. The language employed conveys an estate upon condition. This can be denominated as a condition subsequent. Conditions subsequent are defined in 13 O. J., page 955, as "events the happening of which, will, as the term implies, defeat an estate already vested."

In the case of *George C. Reiter, Sr.,* vs. *The Pennsylvania Company et al.,* 21 O. N. P. (N. S.) 58, the following were set forth as "exhibiting instances of conditions" that the courts have held to be conditions subsequent:

> "A conveyance for the purpose of a site for a county school house and for no other purpose; and if not so used, the title to revert to the grantors. *Wagner* vs. *Wallowa Co.,* 1916 F., 303; 148 Pacif., 1140."
>
> "A conveyance upon conditions that a county should build a jail upon the property within two years and so occupy it forever. *Skiparth* vs. *Martin,* 50 Arl., 141, 150; 6 S. N. 514."
>
> "A grant to a railway company of a right of way upon the express condition that it should construct its road within a time limited. *Nicoll* vs. *Railroad,* 12 N. Y., 121."
>
> "A conveyance to a railway company upon condition that it should construct a certain length of road within a given time and upon default that the granted estate should revert. *Schlesinger* vs. *Kansas City and Southern Railway Company,* 152 U. S. 444."

In this last mentioned case, *Schlesinger* vs. *Kansas City and Southern Railway Company,* 152 U. S., 444, the court held:

> "A condition in a grant of land to a railway company that the company shall construct a certain length of road within a given time, and on its failure to do so, that the granted estate shall revert to the grantor, is a condition subsequent for breach of which the grantor may enter upon the land and repossess himself of it; and, in case of his doing so, the land is not subject to attachment thereafter for debts of the company, contracted while the land was in its possession."

It is to be noted that the courts of Ohio have consistently held that when an estate granted is intended to be terminated or forfeited for failure to perform some condition, certain terms must be used in the granting clause, or somewhere in the deed, declaring that the estate conveyed is to be forfeited "in the event that" certain conditions are not complied with.

This principle was expressed in the case of *The Village of Ashland* vs. *Greiner et al.,* 58 O. S., 67, wherein it was stated, in effect, that to "have the legal effect to forfeit the estate and reinvest the title in the grantor, his heirs or assigns," "there must be words of forfeiture or re-entry in the deed." (Also *John A. Matterson, Trustee, etc.* vs. *Theresa Ury and others,* 5 O. C. C., 347, affirmed 52 O. S., 637 and *Larwill et al.,* vs. *Farrelly,* 8 O. A. 356).

In the case of *Crouse et al.,* vs. *Board of Education of Green Township,* 12 O. A., 481, the deed in question contained the following habendum clause:

> "To have and to hold said premises with the appurtenances unto said Basil Umstead, John Crouse, Jr. and Michael Musselman, directors of school district number 5, in Green Township and their successors in office forever, for the use and purpose whatsoever and in case said premises shall at any time hereafter cease to be occupied as a school house lot that the same shall revert to and be vested in said John Crouse, Jr., the said grantor and his heirs."

The court held:

> "The centralization of the schools of a rural district by vote of the people thereof, resulting in the abandonment for school purposes of a lot conveyed to the directors of the school district for the use and purpose of a school house lot only, with condition of reverter in case the lot should cease to be used as a school house lot, works a forfeiture of such lot by the people acting voluntarily under the permission of the law."

To the same effect is the case of *May* vs. *Board of Education,* 12 O. A. 456, wherein it was held:

> "1. Lands deeded to a board of education to be used for school purposes, with an express condition of reverter, upon abandonment of such use, revert to the grantor or his heirs."

In the case of *Schwing* vs. *McClure et al., Trustees,* 120 O. S., 335, William Schwing and Mabel Schwing conveyed certain property to a board of education, and the deed contained the following clause:

> "It is hereby agreed and understood between the grantors and grantee that if at any time the premises herein described

shall cease to be used for school purposes, the same shall at once vest in said grantors, their heirs and assigns forever."

In the case of *Schwing* vs. *McClure, supra,* the question was whether or not, upon abandonment of the school property for school purposes, "the school house, its fixtures and equipment" passed with the realty upon reversion to the heirs of the grantor. The supreme court reiterated the doctrine that lands deeded to a board of education to be used for school purposes, with an express condition of reverter, upon abandonment of such use, revert to the grantor or his heirs, when in the body of the opinion at page 340, it made reference to the fact the deed contained an express reverter clause and therefore there was no question as to the reversion of the land and "the school board makes no claim here to the land," and also, in the syllabus when it stated:

"2. The members of the board of education of a school district are not authorized to convey or transfer to private parties, without consideration, any of the property of the school district, real or personal. Hence, the acceptance by such members of the board of education of a school district of a deed providing that if at any time the premises in question shall cease to be used for school purposes, the same shall at once vest in the said grantors, their heirs and assigns forever, is not effectual to constitute a public school building erected upon such premises with public funds a part of the realty, so that such building passes with the realty upon reversion to the heirs of the grantor."

From the language employed in the habendum clause in the deed to the Board of Education of Southeastern Rural School District, it is clear that the use and purpose for which said premises are to be used, "are solely for the purpose of conducting a public school or schools thereon," and further that it is made a condition that "in event that said premises should be abandoned for school purposes for three years or more," the estate conveyed is to be forfeited and the grantor or his heirs are to have the right of re-entry.

In view of the well established doctrine in Ohio, to the effect that, if there is a breach of conditions subsequent in a deed, and the deed contains words of forfeiture and re-entry, title to the premises reverts to the grantor or his heirs, it is my opinion that, if the Board of Education of Southeastern Rural School District abandons the use of the premies for school purposes for three years or more, title to the premises reverts to the grantor, if the grantor takes the necessary action to oust the grantee.

As stated in 13 Ohio Jurisprudence, 970:

> "The breach of conditions subsequent in a deed, though the deed contains words of forfeiture and re-entry, does not ipso facto produce reverter of title, but the estate continues in full force until proper steps are taken to consummate the forfeiture, inasmuch as performance may be named by the grantor, and the condition dispensed with. The title remains in the grantee until some action is taken by the grantor or by the court whereby the grantee is ousted."

Therefore, in specific answer to your question it is my opinion that, where real property is conveyed to a board of education by warranty deed, and the habendum clause in the deed contains a condition to the effect that the premises "are to be used solely for the purpose of conducting a public school or schools thereon, and in the event that said premises should be abandoned for school purposes * * * for three years or more, then said premises shall immediately revert and pass to the grantor, his heirs or assigns," and thereafter the board of education abandons the premises for school purposes for three years or more, thereupon the title reverts to the grantor if the grantor enters the premises and takes possession of the same, or applies to a court of competent jurisdiction to grant him relief to have the forfeiture declared and reconveyance ordered.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1707.

APPROVAL — BONDS CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, $15,000.00, PART OF ISSUE DATED APRIL 1, 1926.

COLUMBUS, OHIO, January 5, 1938.

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

RE: Bonds of City of Cleveland, Cuyahoga County, Ohio, $15,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above city dated April 1, 1926. The transcript relative to this