

with the statute. Of course, in addition to the map or as a part thereof, the director could use other descriptive terms as a part of the record.

Based upon the foregoing and in specific answer to your inquiries, it is my opinion that:

1. Under the provisions of Section 1189, General Code, as amended by the 88th General Assembly, 113 O. L. 600, the director of highways may designate two one-way routes as a continuation of a highway running through a municipality, if, in his judgment and discretion, the public needs require such action, and each of said routes shall be considered as a part of the state highway.

2. If, in the judgment of the director of highways, it is necessary in order to properly take care of the traffic, he may establish two two-way routes as a continuation of a highway to take care of the traffic in congested areas, and such designation will be considered as a part of the state highway system.

3. In keeping a record of such designations, the director of highways may use such instrumentalities as preserve a proper record of his action. An accurate map with sufficient explanatory notes as to indicate definitely the route so designated will be a sufficient compliance with the statute.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1363.

ELECTION—RURAL SCHOOL BOARD—PERSONS DEPRIVED OF OPPORTUNITY TO VOTE—DUTY OF CANVASSING AUTHORITY—INVOKING QUO WARRANTO.

SYLLABUS:

1. *Where the voters of two of three townships constituting a rural school district were deprived of the right to vote for members of a board of education, the canvassing authority, possessing only ministerial power, must issue certificates of election to the persons who appear elected on the face of the returns, unless enjoined from so doing by a court of competent jurisdiction.*

2. *The general rule is that an election is invalid if enough persons were unlawfully deprived of an opportunity to vote to change the result.*

3. *There being no statutory provision for a recount or an election contest with respect to members of a board of education, quo warranto may be invoked.*

COLUMBUS, OHIO, January 4, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—You have requested an opinion on the validity of the November, 1929, school board election in the Lawshe Rural School District, Adams County, Ohio, based on the following letter to you:

“Lawshe Rural School District had an election November 5, 1929, to vote upon three members of the board of education. The district is divided into three voting places, Meigs, Oliver and Scott Townships. The county election board failed to send ballots to Scott and Oliver Townships and about thirty-five voters were denied the right to vote. I see in the Election Law Book, where any portion of the voters are denied their right to vote the election is invalid. (Opinion of Attorney General.)

Please advise if this is correct, and how to proceed to overthrow the election. This same thing happened two years ago, when three members of the board of education were elected. Are they legal members now?"

I am further advised that the abstract of the vote cast at the November, 1929, election was as follows:

"Frank Charles.....	37
M. D. Tumbleson.....	36
John Campbell.....	33
S. M. Wingo.....	29
John Cluxton.....	26
Charles Arey.....	24"

I am further advised that all of these votes were cast in Meigs township, no ballots being furnished in Scott and Oliver townships, about thirty-five electors thereby being deprived of the right to vote.

It is apparent, from the facts you present, that the result of the election might have been changed had the electors of Scott and Oliver townships had an opportunity to vote. The general rule is that an election is void if enough persons were unlawfully deprived of an opportunity to vote to change the result. 2 Corpus Juris, Section 225.

Section 5120, General Code, provides that returns in school elections shall be made to the clerk of the board of education, which board shall canvass the returns at a meeting held the second Monday after election; Section 5121, General Code, provides that the persons having the highest number of votes shall be declared elected. Undoubtedly, therefore, the board has issued certificates of election to Messrs. Charles, Tumbleson and Campbell.

The power of the board of education in canvassing this vote is ministerial, and it cannot inquire into the irregularity through which no ballots were provided in two of the three townships comprising the school district. This principle was laid down in my opinion No. 1291, rendered under date of December 13, 1929, to the Secretary of State, the syllabus of which reads:

"After an election has been held and the returns are certified to the proper canvassing official or board, it is the duty of such official or board to proceed to canvass the vote and determine the persons duly elected to the offices to be filled at such election, if it is possible upon the face of the returns to determine such result. It is not within the province of such canvassing official or board to pass upon questions of irregularities in connection with such election resulting from the use of improper forms of ballot, or otherwise, since the duty of such official or board is ministerial in character and confined to a consideration of the returns alone."

This view is supported by decisions of the Ohio Supreme Court, in *State ex rel vs. Tansy*, 49 O. S. 656; *State vs. Patterson*, 73 O. S. 305; *State ex rel vs. Graves*, 91 O. S. 113.

No provision for a recount or an election contest is found in the General Code with respect to members of boards of education, yet the rule is as stated by Judge Jones in the case of *Prentiss vs. Dittmer*, 93 O. S. p. 314 at p. 322:

"It has been held, however, that if no adequate remedy is provided by law, quo warranto might be invoked in order to ascertain the legality or illegality of the election. *The State ex rel Conrad vs. Patterson*, 84 Ohio St. 89."

The irregularities complained of at the 1927 election could be presented to the court in such quo warranto proceeding.

Volume 20 of Corpus Juris, Section 347, citing *South vs. Rauh*, 32 O. C. C. 515, says it may always be shown that the person to whom a certificate was issued was not entitled to the office.

It should be understood that in reaching these conclusions, I am not attempting in any way to express a final opinion upon the validity of this election. It is not my province to anticipate the considered judgment of a court or other tribunal having before it all the pertinent facts.

By way of specific answer to your inquiry, I am of the opinion that :

1. Where the voters of two of three townships constituting a rural school district were deprived of the right to vote for members of a board of education, the canvassing authority, possessing only ministerial power, must issue certificates of election to the persons who appear elected on the face of the returns, unless enjoined from so doing by a court of competent jurisdiction.

2. The general rule is that an election is invalid if enough persons were unlawfully deprived of an opportunity to vote to change the result.

3. There being no statutory provision for a recount or an election contest with respect to members of a board of education, quo warranto may be invoked.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1364.

WORKMEN'S COMPENSATION LAW—TEST FOR DETERMINING
WHETHER INSURANCE AGENTS ARE EMPLOYES WITHIN MEANING
OF SUCH LAW.

SYLLABUS:

Insurance agents who enter into a contract with an insurance company to do certain things required by said contract are not employes of the company within the meaning of the Workmen's Compensation Law, unless all the terms and conditions are such as to constitute a relationship of master and servant.

If, by the terms of such agreement, the agent is authorized to carry out the requirements of the contract without being controlled therein by the company, such agent would be an independent contractor.

Opinion of the Attorney General, 1919, Volume I, page 699, followed and approved.

COLUMBUS, OHIO, January 4, 1930.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Permit me to acknowledge receipt of your receipt for my opinion as follows:

“The Industrial Commission of Ohio desires to submit to you for an opinion the question of the coverage of the managers, superintendents and agents of the National Life and Accident Insurance Co. We are submitting herewith a blank form of the contract entered into between the National Life and Accident Insurance Company and the agents.

The Commission further desires your opinion on the question of the