

2400.

BOARD OF EDUCATION—SPECIAL MEETING CALLED—ATTENDED
AND PARTICIPATED IN BY ENTIRE MEMBERSHIP—ADVANCE
NOTIFICATION DEEMED UNNECESSARY TO VALID TRANSACTION
OF BUSINESS.

SYLLABUS:

A special meeting of a board of education is a legal meeting and the business transacted at said meeting is valid if the meeting is attended and participated in by all the members of the board, even though such members had not previously thereto been notified of the time and place of holding such meeting strictly in accordance with Section 4751, of the General Code.

COLUMBUS, OHIO, October 1, 1930.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“A special meeting of the Adams Township Rural School District Board of Education was had by said board on last Saturday night, September 13th. It is admitted that no written notice was sent out to the members of the board of education, as required by Section 4751 of the General Code of Ohio. The members of the board seem to have been notified by the clerk telling their children at school to tell the parent board members to attend a special meeting of said board at the usual place of meeting at 7:30 p. m., on Saturday night. Apparently the children were advised to advise their parent board members on Thursday or Friday. However, that may be, no written notice was sent to the various board members in compliance with the above said section of the law.

However, all members of the board appeared at the special meeting and the meeting was called to order and those present accounted for by the clerk of the board of education. One of the members present participated in the voting but voted “NO” on the matters submitted. Near the close of the evening’s session the member voting “NO” became highly indignant and threw the meeting into a furore by suddenly announcing that the meeting wasn’t legally called and that the whole evening’s business transacted was transacted illegally. He made abusive remarks to the other four members of the board present and created quite a scene and the meeting was adjourned.

It appears that all members of the board of education knew from the oral notices given them the special purpose for which the meeting was called and no one but the one member raised any question about the legality of the meeting and he did not do so until he became indignant near the end of the session of said school board.

The meeting was an urgent one and one having to do with making a request for participation in the State Equalization Fund for transportation of school children. Apparently this questionnaire had been filled out at a regular meeting of the board of education, but some error was found in same by the county superintendent of schools and he suggested that they call another meeting and fill out a new questionnaire and application for participation in said fund. Apparently, the application was overdue in Columbus and that was the reason why the meeting was so hastily called.

The question that I desire your opinion upon is whether or not, under

all the circumstances set out above, the transaction of business at said meeting as above described has any validity in the law. The especial query that I have in mind is whether or not, inasmuch as all members were present at the meeting and participated therein except as above indicated, the matter of notice was vital as giving legal effect to the meeting?"

It is a rule of universal application that the proceedings of all deliberative bodies and legislative assemblies, in order to be valid and legally effective, must have been had in a duly organized meeting. In order that a meeting may be regarded as a "duly organized meeting" it must be held at a time and place fixed by law, or be called in the manner prescribed by law.

The law provides that boards of education shall hold regular meetings at such times and places as may be fixed by the board at its organization meeting to be held on the first Monday of January after the election of the members of such board.

Provision is also made for the holding of special meetings of boards of education. The statute with reference thereto is 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."

It has been held that the provision of the above statute with reference to the service of a written notice of the time and place of holding a special meeting of the board of education must be strictly complied with, and that the service of the notice in writing is imperative in order to validate such a special meeting, at least, in cases where one or more members of the board are absent from the special meeting. In the case of *Kattman vs. Board of Education*, 15 C. C., N. S., 232, it was held that the proceedings of a school board providing for an issue of bonds are invalid where the section pertaining thereto was taken at a special meeting from which one member was absent and no written notice of the meeting had been served on each member of the board either personally or at his residence or usual place of business, even though actual notice of the meeting was had by each member although it was not in writing. In that case, it appeared that all the members of the board had met, and after an informal discussion had agreed that on the next evening a formal special meeting would be held at which time the bond issue would be authorized. All the members were present at this informal meeting and thus were well aware of the intention to hold a formal meeting on the next evening. In spite of this, however, inasmuch as one member was absent from the meeting held on the next evening, the court held that such meeting was invalid because the notice that each member had was not in writing.

The question of whether or not the service of a notice for a special meeting of the board of education, as provided by the statute, may be waived, or whether or not presence at a meeting of all the members of the board and their participation in the proceedings constitutes a waiver of the formal notice of the meeting, if in fact such notice may be waived, has never been decided by the courts of Ohio, so far as I know, nor has it ever been the subject of a formal opinion of this office.

It is stated in *Cyc.*, Vol. 35, page 905:

" * * * in general, the fact that the directors of a school-district had no notice of a meeting is immaterial if they were all present at the meet-

ing and participated therein, for in such case the presumption is that proper notice has been given."

Citing *Clay County School District vs. Allen*, 83 Ark. 491; 104 S. W. 172; *Decker vs. Douglas County School District*, 101 Mo. Ap. 115; 74 S. W. 390.

In McQuillan on Municipal Corporations, 2nd Ed., Section 631, it is said:

"It is necessary to the validity of a special meeting that all of the members have been duly notified as required by law, unless those who were not properly notified were present at the meeting. But a special meeting duly called on notice to all members, whether all attended or not, is legal. And when all members are present voluntarily and participate, the meeting is legal for all purposes unless the law provides otherwise. Hence notice of a special meeting may be dispensed with or its necessity waived by the presence and consent of every one of those entitled to notice and who participates in the meeting."

In the instant case all of the members of the board were present at the meeting in question. In fact they had all had actual notice of the meeting before the meeting was held. The notice, however, had not been served upon them strictly in accordance with the statute. They each, however, attended the meeting in pursuance of the verbal notice which they had had, and each participated in the deliberations and the proceedings of the meeting. One member did not agree with the results of the meeting and voted "no" as you state, on matters submitted to a vote in the meeting. The fact, however, that he voted "no" and did not agree with the other members of the board cannot be said to constitute his non-participation in the meeting, nor can he now be heard to say that he was not present and did not participate in the meeting.

I am of the opinion, that, inasmuch as each and all of the members of the board were present at this meeting, and participated in the proceedings of the meeting, the fact that written notice had not been served on those members prior to the meeting, strictly in accordance with the statute, does not have the effect of rendering the meeting an illegal meeting or of rendering invalid the action taken at the said meeting.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2401.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND SKINNER ENGINE COMPANY, CINCINNATI, OHIO AND ERIE, PENNSYLVANIA, FOR TWO ENGINES AND GENERATORS FOR MASSILLON STATE HOSPITAL, MASSILLON, OHIO, AT AN EXPENDITURE OF \$15,590.00—SURETY BOND EXECUTED BY THE NATIONAL SURETY COMPANY.

COLUMBUS, OHIO, October 1, 1930.

HON. HAL H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a contract between the State of Ohio, acting by and through the Department of Public Welfare (Massillon State Hospital, Massillon, Ohio) and Skinner Engine Company, of Cincinnati, Ohio, and Erie, Pennsylvania. This contract covers the construction and completion of two engines and generators complete, for Massillon State Hospital,