

paying the fees into the municipal treasury are practically the same, with the exception that the Toledo act, after requiring payment into the treasury, adds the following qualification: "Except as otherwise provided by law." The second branch of the syllabus of said opinion is as follows:

"In police courts, or municipal courts succeeding such police courts, in the absence of specific provision to the contrary, under section 4599 G. C. the fees and costs imposed and collected by the court in state cases go into the county treasury."

The exception above referred to was emphasized in said opinion, and it was also noted that the Toledo act further provided that the clerk should succeed to all the powers and duties of a police court clerk. However, in the Massillon act it is provided that all fees, fines, etc., shall be paid into the municipal treasury without any qualifying provisions whatever, and it is believed that consideration of said opinion will disclose that the opposite conclusion would have been reached had it not been for the qualifying provisions as above referred to.

In this connection it, perhaps, is proper to mention that the court of common pleas, in the case of State, ex rel. vs. Thompson as clerk of the municipal court of Dayton, which was decided May 28, 1914, held that the fees in state cases under the Dayton municipal court act should be covered into the county treasury. However, it is believed that a careful analysis of the Dayton act and said opinion discloses conditions that do not obtain in the case before us. The Dayton act, after requiring the clerk of the municipal court to pay all costs, fines and penalties into the municipal treasury, further provided that said municipal clerk should have all the powers and perform all the duties of a police court clerk. The court in this case reached the conclusion that the act was inconsistent in this respect, and therefore section 4599 should control.

As above stated, no such inconsistency appearing in this case and the municipal court act of Massillon specifically requiring, without qualification, that all fees, costs, fines, etc., shall be paid into the municipal treasury, it is believed, as suggested in the solicitor's letter, that fines arising from prosecutions instituted under section 13195 should be paid into the municipal treasury of the city of Massillon.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1846.

BOARD OF EDUCATION—WHERE TWO SPECIAL MEETINGS CALLED FOR SAME PURPOSE—ONE BY PRESIDENT OF BOARD—OTHER BY TWO MEMBERS OF BOARD—BOTH LEGAL CALLS—HOW PURPOSE OF CALLS LEGALLY DISPOSED OF.

When two special meetings of a board of education are called for the same purpose, one by the president of the board, the other by two members of the board, each in accordance with law, both are legal calls and the one to prevail will be that at which the board legally disposes of the matter for which the call was made.

COLUMBUS, OHIO, February 7, 1921.

HON. MARY K. DAVEY, *Prosecuting Attorney, Logan, Ohio.*

MY DEAR MISS DAVEY:—Acknowledgment is made of the receipt of your letter of recent date, which reads:

"Under authority of section 4751 G. C., a special meeting of the board of education was called by the president thereof, on January 19, for February 1, in the legal manner; afterwards two members of the board, under authority of section 4751 G. C., called a meeting for the same purpose to be held on January 27.

Which meeting of the board of education, both called legally under section 4751 and called for the election of a president of said board, shall prevail?

My opinion is after searching the statutes and the opinions and finding nothing pertaining to this subject, that the legality of the special meeting called must rest upon custom or precedence, as the president is the officer of the board of education who by custom generally calls the special meetings of the board.

This question has been submitted to me by one of the district superintendents of Hocking county."

You say that there have been two special meetings of the board of education legally called, each for the same purpose, i. e., to elect a president of the board of education. From this it is assumed that a complete organization of the board was not effected on the first Monday of January, no president having been elected.

This might raise the question of the legality of completing the organization of the board after the date fixed in section 4747 G. C. In answer to the query thus raised you are advised that a former Attorney-General has ruled that the organization of a board of education may be had at a date later than the first Monday of January. See Opinions of Attorney-General, 1918, p. 40. The reasoning and the finding in that opinion are regarded as the law in the case.

A board of education may have meetings fixed by its rules or by law, and special meetings. Section 4750 G. C. Special meetings of a board of education are those other than the regular meetings provided for in section 4747 G. C., and the meetings required by statute, such as the one for organization on the first Monday of January, that required in section 4747-1 G. C. and in section 4710 G. C., and perhaps others.

Section 4750 G. C. in part provides:

"* * * No meeting of a board of education, not provided for by its rules or by law, shall be legal, unless all the members thereof have been notified, as provided in the next section."

Section 4751 G. C. provides:

"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."

The president or the clerk or two members of the board of education may call a special meeting, any one of which will be a legal meeting of the board if called in accordance with the requirements of the statutes. Of course, as a matter of official duty, a member is expected to give attention to calls for special meetings, though he may not be required or compelled to attend all meetings of the board. The law intends when it provides that a quorum may transact business, that some of the members may be absent at any meeting of the board.

In this instance it is suggested that a clerk could have called a special meeting for a date other than that fixed in either call spoken of in your letter and for the same purpose. The statute expressly provides for the calling of special meetings and when the president, clerk, or two members of the board follow the requirements of the law in making a call for a meeting, if the meeting be held and the proceedings had at said meeting are in all respects as required by law, any action the board takes at that time will be legal and effective.

It is, perhaps, a courtesy due the dignity of the office of president of the board to expect him to issue a call for special meetings and when the call is made to have the board members comply with or respect the same, and while it might be, in some cases, a lack of such respect or courtesy to have two members or the clerk call a meeting for an earlier date than that fixed by the president, yet such a call is within the authority of the statute, and legal if correctly and properly made.

A careful search of the school laws discloses no provision to qualify or avoid the conclusion that such calls are legal ones, and if a president for the board is chosen at the earlier meeting it would seem that a later meeting for the same purpose would become unnecessary, unless, of course, the member so elected should fail or refuse to accept the office. If preference were to be given at all to either one of the calls made, it could be well argued that since the purpose is to complete the organization of the board the earlier date is to be preferred, for the law seeks to have the organization effected on the first Monday of January, although it is not intended to say that such a conclusion follows.

Since the president is to be chosen at a special meeting called, the president who issues the call is of course president of the former board, who serves until his successor is elected and qualified, in conformity to section 4745 G. C.

Section 4838 G. C. provides for the election of members of the board of education in November in the odd numbered years.

Now if your question were asked concerning an organization of the board occurring on the first Monday of January following an election of certain new members of the board who qualified at that meeting, when the organization is not complete, thus displacing the member who was the president of the former board, a different question might have been presented, because then the president spoken of in your question as calling a special meeting of the board to elect a president would be a member of a former board displaced by a new member who had qualified, and his call as president might not be a legal call. Such contingency is suggested to us, but is left unanswered for it is believed that it is not in your question.

If both calls are legal, the meeting which will prevail is the one which a quorum or all of the board members attend and effect the business for which the call is made, that is, the members will, by their action, settle which call shall prevail and it is believed that this statement specifically answers your question.

Since you admit that both calls for the meeting have been regularly made in conformity to law, it follows, in view of express provision of the statute, that any action taken by the board in conformity to the requirements of the law governing the actions of the board in conducting its business will be legal, and if a meeting is held on the 27th of January and a president is elected such action will be the action of the board.

Respectfully,
JOHN G. PRICE,
Attorney-General.