

1171.

ARMISTICE DAY—HOLIDAY—BOARDS OF EDUCATION AUTHORIZED
AND TEACHERS UNAUTHORIZED TO CLOSE SCHOOLS.

SYLLABUS:

Armistice Day is a legal holiday and boards of education may legally provide that there shall be no school session on that day.

Section 7687 of the General Code does not authorize teachers in the public schools, without authority of the board of education, to dismiss their schools on Armistice Day.

COLUMBUS, OHIO, November 8, 1929.

HON. DANIEL P. BINNING, *Prosecuting Attorney, Coshocton, Ohio.*

DEAR SIR:—This acknowledges your letter of November 6, 1929, as follows:

“The State Legislature at their 1929 session by H. B. 25 amended Sections 5977 and 8301, making November 11th a legal holiday known as Armistice Day. Section 7687, which was last amended 97-360, provides that school teachers may dismiss school on the various holidays enumerated in said section without forfeiture of pay.

May school teachers now dismiss school on Armistice Day without forfeiture of pay?”

Section 7687 of the General Code, to which your inquiry is particularly directed, reads as follows:

“Teachers in the public schools may dismiss their schools, without forfeiture of pay, on the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September, the twenty-fifth day of September, and on any day set apart by proclamation of the president of the United States, or the governor of this state as a day of fast, thanksgiving or mourning.”

It is to be observed that Armistice Day is not therein mentioned. Sections 5977 and 8301 were amended by the last Legislature (113 O. L. p. 23), and as so amended read:

Sec. 5977: “The first Monday in September of each year shall be known as ‘Labor Day’ and for all purposes shall be considered as the first day of the week.

The eleventh day of November shall be known as Armistice day and is hereby declared to be a legal holiday, and if said day falls on Sunday, the following Monday shall be the legal Armistice holiday.”

Sec. 8301. “The following days, viz.:

1. The first day of January, known as New Year’s day;
2. The twenty-second day of February, known as Washington’s birthday;
3. The thirtieth day of May, known as Decoration or Memorial day;
4. The fourth day of July, known as Independence day;
5. The first Monday of September, known as Labor day;

6. The twelfth day of October, known as Columbus Discovery day;
7. The eleventh day of November, known as Armistice day;
8. The twenty-fifth day of December, known as Christmas day;
9. Any day appointed and recommended by the governor of this state or the president of the United States as a day of fast, or thanksgiving;
10. The twelfth day of February, known as Lincoln's birthday; and
11. Any day which may hereafter be made a legal holiday, shall for the purpose of this division, be holidays. But if the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the eleventh day of November or the twenty-fifth day of December be the first day of the week, known as Sunday, the next succeeding secular or business day shall be a holiday."

Quite evidently it was the intention of the Legislature to make Armistice day, and the succeeding Monday in cases where Armistice day falls on Sunday, a legal holiday. Just what significance attaches to this, however, is not at all clear.

It will be noted that Section 8301 of the Code is found in the group of laws relating to negotiable instruments, and it has been held by this office on several occasions that its force only extends so far as is necessary in the application of the law of negotiable instruments. Attention should further be directed to the fact that subdivision 11 provides "any day which may hereafter be made a legal holiday, shall for the purpose of this division, be holidays." Apparently, therefore, the section only purports to make the various days therein enumerated holidays for the limited purpose of negotiable instruments.

The provisions of Section 5977, *supra*, make it clear, however, that Armistice day is to be treated as a legal holiday generally. There is, however, no statute defining just what significance must be attached to the declaration of the Legislature in this respect. Nowhere is the statement to be found that public work shall cease, although by custom the authority of proper officials to provide for cessation of work on those days is well established.

In view of the usage of long duration in this respect, I think it quite clear that boards of education which by law have general authority with relation to the management and operation of the schools within their respective districts, may lawfully provide that the schools shall not be kept open upon legal holidays. Your question, however, does not relate to the authority of the board but to that of the individual teacher.

Section 7687, *supra*, is in reality a restriction upon the authority of boards of education which, otherwise than as limited by specific provisions of this character, have broad statutory powers with respect to the employment of teachers and the requirements of work incidental to such employment. In substance, the section prohibits the board from making any forfeiture of pay of teachers who choose to dismiss their classes upon the days designated therein. It is to be observed that in the enumeration in this section there are omitted Lincoln's birthday, Columbus Discovery day and Armistice day, all of which are set forth in Section 8301, *supra*. While it may be that the omission of these days is an oversight on the part of the Legislature, it scarcely lies within the province of an administrative official to supply the omission by way of interpretation. This is especially true in view of the fact that the statute places the power in the individual teacher to disregard the orders of those in authority with impunity. As I have before stated, I believe it clear that boards of education could properly dismiss schools upon any day which has been designated as a legal holiday, but it does not follow that if the board does not choose so to do, the teachers may disregard the wishes of the board.

Of course forfeiture of pay in the event of failure to hold classes on a holiday

would depend upon the contract between the board and the teacher and the rules and regulations which the board adopts. I am not intending in this opinion to pass upon the rights of individuals growing out of such contracts or rules and regulations.

It may be suggested that Section 7687, *supra*, is broad enough to cover Armistice day for the reason that both the President of the United States and the Governor of Ohio have issued proclamations calling upon the people for its observance. You will note that the section applies to "any day set apart by proclamation of the President of the United States or the Governor of this State as a day of fast, thanksgiving or mourning." The most obvious application of this language is to what is known as "Thanksgiving day", which occurs annually on the fourth Thursday in November, the day being set each year by proclamation. The language of the section, however, gives the impression that any day so set apart by proclamation would justify the dismissal of classes. I believe that this would be true in the event that the proclamation of the president or the governor were such as to specifically designate the day as one of fast, thanksgiving or mourning.

In order to determine the intent and purpose of the proclamations issued with respect to Armistice day, I have carefully examined them and feel that neither contemplates an entire cessation of activities. Thus the President of the United States in his proclamation states:

"Whereas, by concurrent resolution of the Senate and the House of Representatives, in 1926, the President was requested to issue a proclamation for the observance of Armistice day:

Now, therefore, I, Herbert Hoover, President of the United States of America, in pursuance of the said concurrent resolution, do hereby order that the flag of the United States be displayed on all Government buildings on November 11, 1929, and do invite the people of the United States to observe the day in schools and churches, and other suitable places, with appropriate ceremonies, giving expression to our gratitude for peace and the hope and desire that our friendly relations with other peoples may continue."

You will note that this proclamation rather contemplates that schools shall be in session, for it calls upon the people to observe the day in schools with appropriate ceremonies.

The proclamation of the Governor of Ohio states in part:

"Therefore, in accordance with the act of the last General Assembly, let us observe Armistice day this year and especially heed the suggestion of the League of Remembrance by two minutes of solemn silence on the eleventh hour of this eleventh day of the eleventh month of the eleventh year since the war ended.

Let all industrial activity be suspended and street traffic cease during this brief space of time as we join in a world-wide wave of silence, the universal language.

Let us ever remember with grateful homage the valorous services of the World War heroes of both state and nation, and by our individual attitude show that we do remember."

This proclamation carries no necessary inference that schools shall not be in session. In view of this discussion, I do not feel that the proclamations are such as to warrant action by a teacher dismissing classes under authority of Section 7687, *supra*.

Accordingly, and in specific answer to your inquiry, I am of the opinion that Armistice Day is a legal holiday and boards of education may legally provide that

there shall be no school session on that day. I am further of the opinion that Section 7687 of the General Code does not authorize teachers in the public schools, without authority of the board of education, to dismiss their schools on Armistice day.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1172.

APPROVAL, BONDS OF VILLAGE OF AMANDA, FAIRFIELD COUNTY
—\$3,500.00.

COLUMBUS, OHIO, November 9, 1929.

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

1173.

APPROVAL, BONDS OF HARRISON TOWNSHIP RURAL SCHOOL DIS-
TRICT, MONTGOMERY COUNTY—\$35,000.00.

COLUMBUS, OHIO, November 9, 1929.

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

1174.

APPROVAL, BONDS OF HARRISON TOWNSHIP RURAL SCHOOL DIS-
TRICT, MONTGOMERY COUNTY—\$48,000.00.

COLUMBUS, OHIO, November 9, 1929.

Industrial Commission of Ohio, Columbus, Ohio.