reimbursement of such sum. (Opinion O. A. G. 1932, No. 4112 approved and followed.)

4. Under Section 5851, the itemized account of the expenses incurred and the amount paid for medical and surgical attendance must be filed with the County Commissioners by the person bitten or injured by a dog afflicted with rabies, his parent or guardian if a minor, or the administrator or executor of a deceased person, and the County Commissioners are without authority to act upon a claim filed by anyone other than such persons.

5. To vest jurisdiction in the County Commissioners to make allowances to persons who have been injured by animals afflicted with rabies as provided by Sections 5851 and 5852, General Code, there must first be filed with said commissioners within four months after the injury, an itemized account of the expenses incurred by the person receiving such injury, verified both by his own affidavit and that of his attending physician, or verified both by his parent or guardian, if a minor, or the administrator or executor of a deceased person, and the attending physician.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1173.

TEXTBOOKS—CHARGE OF IMMORALITY OR MISCONDUCT AGAINST PRINCIPAL OF SCHOOLS UNDER CONTRACT TO HANDLE TEXTBOOKS WILL LIE WHEN—MUST PURPOSELY AND FRAUDULENTLY FAIL TO PROPERLY ACCOUNT FOR AMOUNT OF PROCEEDS.

SYLLABUS:

1. *Where a shortage occurs in the accounts of a principal of schools with whom a contract had been made for the care, custody and sale of textbooks in pursuance of Section 7715, General Code, a charge of immorality or misconduct will not lie against such principal, and his dismissal under Section 7701, General Code, will not be justified unless it appears that the shortage was intentional and fraudulent and amounted to the doing by the said principal of acts involving moral turpitude.*

2. *Where a contract had been made with a school principal for the care, custody and sale of textbooks in pursuance of Section 7715, General Code, and the principal purposely and fraudulently failed to properly account for the proceeds of the sales, a charge of immorality and improper conduct will lie against such principal of schools and he may lawfully be dismissed in accordance with the provisions of Section 7701, General Code, even though the defalcation was not brought to the attention of the board of education until after the principal had been re-hired as principal, and he had reimbursed the district for the amount of the shortage upon its disclosure by examiners from the Bureau of Inspection and Supervision of Public Offices.*

COLUMBUS, OHIO, July 27, 1933.

HON. GEO. L. LAFFERTY, *Prosecuting Attorney, Lisbon, Ohio.*

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

> "The Board of Education of ..... School District, in our county, anticipates formally charging the principal of one of their schools with neglect of duty and improper conduct, under General Code, 7701.
>
> This principal is now employed under a two year contract for the school years of 1932-33 and 1933-34.
>
> The neglect of duty, or improper conduct, consists in the wrongful conversion of school book money handled by the said principal of schools during a prior contract, to-wit, for the school year 1931-32, knowledge of which was not brought to the attention of the present board until after the principal had been employed by them or the 1932-33 and 1933-34 school years. The Board of Education claims that they first learned of this after the state examiners made an examination during the latter part of the year 1932, which was filed in, I believe, March of 1933.
>
> The principal of schools, through his counsel, claims that the school board, had they kept proper inventories of their school books, could have known of the difference between the principal and the school board, and that the principal would have been glad to settle the matter at any time he was called upon to do so.
>
> The school board claims that the principal wrongfully converted this school book money to his own use from the time he received it under the old contract until the examiners made their findings, at which time he then started to repay the money, and during the period from about January 1st of 1933 to date has paid back all of the claimed difference.
>
> The examiners criticize the school board for not having kept proper records, and especially an inventory of the school books.
>
> We have advised the Board that it was our opinion that any neglect of duty or improper conduct, as mentioned in Section 7701, would have to occur during the period of his present contract in order that it be such as to warrant the principal's dismissal under said section, and that his activities during a prior contract could not be made the basis of dismissing him from the present contract where no claim is made that he has in any way during the term of this present contract for the 1932-33 school year and 1933-34 school year, breached any part of it whatsoever.
>
> Under Section 7708, which provides that the teacher may bring suit against the school district if he is dismissed for any insufficient or frivolous reason, we have advised this board of education that there is a possibility of the court not permitting a jury to hear any evidence concerning the prior contract for the school year 1931-32, and if the court would so do the Board would have no case at all as we see it.
>
> We would like your opinion as to whether or not the Board would be justified in dismissing this principal under the provisions of Section 7701 of the General Code for neglect of duty or improper conduct, where there is absolutely no claim of such neglect of duty or improper conduct during the term of his present contract, but that he has, as claimed by the Board and denied by the principal, wrongfully converted

to his own use certain moneys coming into his possession and control under a previous contract with the Board, and did not get all of the money paid back to the Board until after the new contract had commenced.

As we see this question, it appears that the Board desires to dismiss the principal of schools for misconduct or neglect of duty which they didn't learn of until after they had hired him this last time, but which they could have learned had they themselves kept their records properly. We have told the Board this—that assuming there was a wrongful conversion of money during a prior contract but if that contract was with another school altogether, it would seem very improbable that the court in the final analysis and under a suit brought in favor of Section 7708 of the General Code, would consider prior misconduct if during the contract involved there was no misconduct. In other words, the board has the duty of ascertaining those things before they employ the teacher and enter into a contract with him, and that under Section 7708 the teacher would be obligated only to show that he had performed his services in accordance with the terms of the contract and not been guilty of any misconduct or neglect of duty during that contract, or so much of it as has already expired, and that he stood ready and willing at any time to complete his contract according to its terms, and that by way of defense to such action the Board would not be permitted to show misconduct which had occurred prior to the contract concerning which the Board now desires to consider breached and dismiss the principal therefrom.

For your information, the Board has agreed with our idea, that a criminal charge concerning this wrongful conversion of money during the school year 1931-32, all of which was first wrongfully converted before the present contract involved in this dismissal question, would probably result in an acquittal inasmuch as the principal has made restitution in full, and the Board by their own failure to keep the necessary inventories and records of their school book contract, is also guilty of some neglect in carelessly handling its business.

This Board desires to know concerning this question within the next few days because it is imperative that they give the present principal sufficient notice before the first of August, before which time it is customary that all teachers be employed, and if you can give us your opinion in the next day or so we will appreciate it very much."

The right, as well as the method of dismissing appointees of a board of education, or teachers in the employ of a board of education, is fixed by Section 7701, General Code:

"Each board may dismiss any appointee or teacher for inefficiency, neglect of duty, immorality, or improper conduct. No teacher shall be dismissed by any board unless the charges are first reduced to writing and an opportunity be given for defense before the board, or a committee thereof, and a majority of the full membership of the board vote upon roll call in favor of such dismissal."

A board of education in dismissing an appointee, is limited by the terms of the statute to dismissals for one or more of the grounds enumerated in the

statute, to wit: inefficiency, neglect of duty, immorality, and improper conduct. Just what constitutes inefficiency, neglect of duty, immorality, or improper conduct is left to a great extent to the determination and discretion of the board of education, although that discretion must be exercised in good faith and in such a manner that when a teacher is dismissed, the grounds for dismissal may not be said to be frivolous or insufficient. Section 7708, General Code, gives to a teacher who has been dismissed for a "frivolous or insufficient reason", a right of action against the district for damages. A principal of schools, being a teacher, by force of Section 7705, General Code, would therefore in my opinion, have the same rights under Section 7708, General Code, as any other teacher.

The statutes do not furnish a definition of what constitutes a "frivolous or insufficient reason." In the case of *Shuck, Admrx.,* vs. *Board of Education,* 92 O. S. 55, which was an action for damages brought on account of a teacher having been dismissed for reasons which were claimed to be frivolous and insufficient, the court said:

> "In the trial of the case in the court of common pleas the facts and circumstances surrounding the affair were submitted to the jury and the court properly charged that it was for the jury to find from the evidence in the case whether Shuck had been dismissed for a frivolous and insufficient reason. And a frivolous and insufficient reason was defined to be one of little weight or import, not amounting to inefficiency, neglect of duty, immorality or improper conduct."

The jury in this case found for the plaintiff and judgment was rendered accordingly. This judgment was reversed by the Court of Appeals and the reversal sustained by the Supreme Court. The reversal, however, was on the weight of the evidence and the charge of the court was not questioned. The second branch of the syllabus in this case in the Supreme Court is as follows:

> "Under Section 7708, in an action by a teacher who has been dismissed upon the charge of immorality and improper conduct, it is for the jury to determine from all the facts and circumstances in the case whether or not the conduct of the teacher was such as to constitute a good and sufficient reason for his dismissal by the board of education."

In the case of *Christman* vs. *Coleman,* 117 O. S., 1, Judge Robinson made the following observation:

> "The general rule is that, where power has been conferred upon an administrative officer or board to remove another officer, a teacher, or appointee, for cause, and the procedure is provided for such removal, and the procedure has been followed, the finding of such administrative officer or board dismissing another officer, a teacher, or appointee, is final and conclusive, and not reviewable by the courts, either in a direct proceeding to reverse or by collateral attack, except where such administrative officer or board has acted in bad faith, corruptly, fraudulently, or has grossly abused its discretion."

It seems clear from the authorities that a board of education in dismissing a teacher must not act in bad faith or corruptly or fraudulently and must not be

guilty of a gross abuse of discretion. The facts upon which a board of education determines that a teacher is inefficient, immoral or has been guilty of neglect of duty or improper conduct must be such that a jury will not regard the reasons for dismissal as being frivolous or insufficient, else the dismissal of the teacher is not justified.

Grounds justifying the removal of a teacher under this statute must be of some substantial weight or import and should, in my opinion, be such as to militate against the efficiency of the teacher's services and the welfare of the school. No more definite rule can be stated.

From your statement it appears that formal charges are to be preferred against a principal of one of the schools in your county with a view to his dismissal under the statute. The facts as set out in your letter show that the principal had been entrusted by the board of education with the handling of the school books, and that sometime prior to the time he was re-hired as principal, he carelessly or otherwise, failed to account to the board for all money accruing from the sale of the books. This fact was not known to the board until after he had been re-hired, and it is now contended that the re-hiring condoned the offense, if the failure to account may be regarded as an offense for which he might be dismissed, in other words, that he can not now be lawfully dismissed on account of acts occurring prior to the time of his present contract of employment, regardless of the fact that the board, upon re-hiring him, did not know of the occurrence until after he was re-hired. It is also claimed by the teacher, it appears, that the board itself was careless in not finding out about the matter before they re-hired him.

Under a proper construction of the statute, it is my opinion that acts constituting "inefficiency" or "neglect of duty" such as to justify the dismissal of a teacher must occur during a present contract of employment. If a teacher is at present efficient, it should not be grounds for dismissal that he had been inefficient at some time in the past. Similarly, neglect of duty at some time in the past would not be a sufficient reason to dismiss a teacher if he were fully performing his duty under his present contract. The purpose and clear intent of the law is to protect the schools and not to punish an individual, and should be construed and applied, in my opinion, so as to warrant a dismissal for reasons only that affect the teacher's present efficiency and usefulness. It would serve no good purpose to dismiss a capable and dutiful teacher for something he had done in the past that does not now detract from his present efficiency, and I do not think the legislature so intended. This question arose in a case decided by the Supreme Court of Arkansas—*Ottinger* vs. *School District,* 157 Ark., 82, 247 S. W. 789. It was there held:

> "Conduct under a previous contract is not ground for discharge of a teacher."

On the other hand, the charges of immorality and improper conduct have a somewhat different basis. Immorality on the part of a teacher, meriting his removal, need not be in connection with his school work. *Tingley et al.* vs. *Vaughn,* 117 Ill. App., 347. Acts of dereliction constituting "inefficiency" or "neglect" of duty such as to merit the dismissal of a teacher should, in my opinion, have a proper relation to the work of the school and a present contract of employment. A teacher who had been guilty of immorality or improper conduct, regardless of when the acts constituting the immorality or improper conduct occurred, if the facts are generally known among the school patrons and school pupils, is

not in a position to properly perform his obligations as a teacher. He is not entitled to, and will not receive that confidence of the patrons and pupils that a teacher should receive. Even if suspicion of vice or immorality be once entertained against a teacher, his influence for good is gone. The parents become distrustful, the pupils contemptuous and the school discipline essential to success, is gone. As was said by Chief Justice Tindall, in the case of *Ewin* vs. *Independent School District,* 10 Idaho, 102, 77 Pac. 222:

> "The general want of reputation in the neighborhood, the very suspicion that he has been guilty of the offenses stated against him in the return, the common belief of the truth of such charges amongst the neighbors, might ruin the well-being of the school if the master were continued in it, although the charge itself might be untrue and at all events the proof of the facts themselves insufficient before a jury."

In sustaining the removal of a Massachusetts Superintendent of Schools, because he was indicted in Maine for adultery, the court said:

> "There can, however, be no doubt that the existence of the indictment alone would, at least, put him under just suspicion of having committed the offense therein charged. The joint committee did not act upon mere rumors more or less current in the community. Schools will suffer if those who conduct them are open to general and well-grounded suspicion of this kind. It needs no extended argument to show that not merely good character, but good reputation, is essential to the greatest usefulness in such a position as that of superintendent of schools. In *Chaddock* vs. *Briggs,* 13 Mass. 248-254, it is said in respect to a clergyman: 'Even a reputation for immorality, although not supported by full proof, might, in some cases, be a sufficient ground for removal.' Where a superintendent of schools is under indictment for adultery, it is competent for the joint committee to declare that he has become unsuitable and unfit to continue in that position, without assuming for themselves to determine the question of his guilt or innocence. They are not bound to form a judgment upon that matter."
>
> *Freeman* vs. *Bourne,* 170 Mass. 289, L. R. A. 510.

To be sure, a teacher may not have the confidence of the parents and pupils, and for that reason may not be a successful teacher merely because they do not like him or are dissatisfied with his work or possibly because of idle or false rumors as to his unseemly conduct and yet his dismissal would not be justified. There must be some concrete act or acts upon which the charge of immorality or improper conduct may be predicated before a board of education has jurisdiction to hear charges and dismiss a teacher.

Even under a statute much broader than ours, a statute which authorizes removal for almost any unsatisfactory services, it has been held that a teacher may not be removed merely because the scholars and parents are dissatisfied with him. *Paul* vs. *School District,* 28 Vt. 575.

Any dereliction or defalcation that may have occurred on account of the handling of the school books by the person in question can not be made the basis of a charge of neglect of duty looking to the dismissal of him as a teacher

under his present contract, for the reason that any such dereliction or defalcation has no relation to the performance of his duties under the present existing contract or any previous contract to teach. When the board contracted with him for the handling of the books, a separate contract from his contemporary contract to teach was made. There is no necessary relation between the contracts. The contract for the handling of the books might have been made with anyone. The contract with this man to handle the books was made with him as an individual and not as a part of his contract to teach.

Section 7714, General Code, authorizes boards of education to order and pay for from district funds necessary textbooks for the use of the pupils and the schools in the district. Section 7715, General Code, directs that such boards shall make all necessary provisions and arrangements to place the books so purchased within easy reach of and accessible to all the pupils of their districts. It provides further:

> "For that purpose it may make such contracts, and take such security as it deems necessary, for the custody, care and sale of such books and accounting for the proceeds; but not to exceed ten per cent. of the cost price shall be paid therefor. Such books must be sold to the pupils of school age in the district at the price paid the publisher, and not to exceed ten per cent. therefor added. The proceeds of sales shall be paid into the contingent fund of such district."

A former Attorney General, in an opinion found in Opinions of the Attorney General for 1922, page 987, after quoting the provisions of Section 7715, General Code, said:

> "Here is direct authority given to the board to make contracts relative to text books which will bring such text books within easy reach and accessible to all the pupils of the district. The section does not limit such contracts to any certain persons, but apparently the board may make such contracts for the sale and distribution of text books with any person it sees fit, taking such security as it deems necessary. * * This contract can be made with members of the students' council or any responsible person; it can be made with the principal or teacher of the school.* *"

Whether or not a failure on the part of this man to properly account for the proceeds of the sale of the books constitutes "immorality" or "improper conduct" within the meaning of these terms as used in Section 7701, General Code, is a different question. This failure, if it be shown to have occurred, may or may not be immoral or improper, depending upon whether it occurred as the result of an honest mistake or because of carelessness or whether it was a deliberate attempt to cheat.

People with the best intentions make mistakes and are sometimes negligent or careless. Such conduct could not be characterized as immoral or even improper in the sense that these terms are used in the statute. If, however, the shortage in accounts occurred by reason of an act involving moral turpitude, it would be my opinion that a charge of immorality or improper conduct looking to the dismissal of the teacher under Section 7701, General Code, might properly be predicated thereon and if proven, his dismissal would be justified. Neither the time when

such acts occurred or when they were found out (either before or after the time of entering into the present contract) nor the fact that the board itself was somewhat careless in not keeping a check on the accounts, or that the defalcation was made good, enter into the question.

Surely, a person charged with a defalcation under such circumstances cannot be heard to complain of the board's entrusting the whole matter to him instead of keeping a double check on the business, in exoneration of his defalcations if in fact such defalcations did occur, nor does returning the money condone the offense if circumstances are such that an offense was committed.

Whether or not the shortage occurred by reason of acts of this man involving moral turpitude, is purely and entirely a question to be determined by the board of education. It would not be proper for me to express an opinion on the matter even if I had all the facts before me. The law entrusts the decision of that question to the board of education and imposes on the district the burden of the board's mistake if that decision is wrong.

It is also possible, so far as the facts recited in your inquiry are concerned, that nothing sufficiently improper to justify the dismissal of the teacher has occurred.

A board of education has the means of securing at first hand all the information necessary to properly decide the matter, and should decide it wtih a view to the welfare of the school and the rights of the teacher.

It is my opinion that under the facts as stated by you, the teacher may not be lawfully dismissed unless the board should find, after taking into consideration all the surrounding facts and circumstances as well as the effect of the whole matter on the teacher's efficiency and usefulness as a teacher, that the teacher has been guilty of acts involving moral turpitude, and that in making this determination, the fact that the information upon which the charge is predicated did not come to the attention of the board until after the teacher had been re-hired, although the acts themselves constituting the charge occurred prior to that time, does not enter into the question; nor does the fact that the board itself may have been negligent in not keeping a closer check on the accounts out of which the shortage occurred, or that the alleged shortage in the accounts was later straightened up have anything to do with the board's official determination.

Very truly yours,
JOHN W. BRICKER,
Attorney General.

1174.

COUNTY COMMISSIONERS—COUNTY HOME—MEDICAL RELIEF AND MEDICINE MUST BE INCLUDED IN CONTRACT WITH PHYSICIAN.

SYLLABUS:

Section 2546, *General Code, requires the county commissioners in their contracts with physicians as therein provided, to include both medical relief and medicine.* (*O. A. G.*, 1913, *Volume* 1, *page* 186, *discussed, approved and followed.*)