Parole is not a principal appointive board within the meaning of that phrase as contained in Section 486-8-a-8 and that such board is not entitled to any of the personal exemptions from the classified service of the State of Ohio allowed to elective state officers and principal appointive executive officers, boards and commissions by Section 486-8-a-8.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4597.

APPROVAL, BONDS OF MAHONING COUNTY, OHIO—$400,000.00.

COLUMBUS, OHIO, September 7, 1932.

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

4598.

APPROVAL, BONDS OF YOUNGSTOWN CITY SCHOOL DISTRICT, MAHONING COUNTY, OHIO—$144,000.00.

COLUMBUS, OHIO, September 7, 1932.

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

4599.

CLOSED SCHOOL—DISTRICT BOARD OF EDUCATION MUST REOPEN SCHOOL UPON FILING OF PROPER PETITION.

SYLLABUS:

The duty of a district board of education to reopen a school which has been suspended by authority of Section 7730, General Code, upon the filing of a proper petition therefor as provided by the statute, is mandatory and that duty is not in any wise affected or limited by the terms of Section 7600, General Code.

COLUMBUS, OHIO, September 8, 1932.

HON. J. S. HARE, *Prosecuting Attorney, New Philadelphia, Ohio.*

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

> "The pupils attending what is known as the Goosefoot school within Clay Township were transferred to the Gnaden-Clay Village School District thus being required to attend school in Gnadenhutten, Ohio. The

Goosefoot school was suspended and closed as an economic measure by the local board of education because of small attendance. Immediately thereafter there was an injunction case filed in the Court of Common Pleas of this County contending that the local board of education had abused its discretion in suspending this school and compelling the school pupils to pass over a certain road which led from said school locality to the Village of Gnadenhutten on account of the dangers of said highway. The Court held that the road was a safe road and that the board did not abuse its discretionary powers and sustained said board in transferring said pupils to the Village of Gnadenhutten, Ohio, within said school district and thus closing said Goosefoot school. Sometime after the Court's order the residents neighboring the Goosefoot school hired a private teacher and opened up said school building and had their pupils so instructed by said private teacher paid by the parents.

In accordance with section 7600 of the General Code of Ohio, the County Board of Education before April 1st, 1932, in appropriating the money for a certain number of teachers, transportation, etc., did not take into account, of course, this abandoned school known as the Goosefoot school.

Now there is a petition which has been recently presented to the Gnaden-Clay Village School Board of education signed by the parents of more than twelve pupils who would attend said school and which parents are electors within the district. However, there are no pupils at the present time, of course, marked enrolled on account of having a private teacher but, of course they will be enrolled when school opens again if this school is opened.

The question involved is whether or not section 7730 of the General Code of Ohio, is mandatory in compelling the local school board to reopen said school upon filing of such a petition, or does section 7600 of the General Code of Ohio give the County Board of Education the discretion as to whether or not said school should be reopened, when said County Board of Education has not taken said abandoned school into consideration in making the appropriation, or would that section 7600 of the General Code affect section 7730 of the General Code when no distribution would be made until August, 1932?"

Provision is made by statute for the re-establishment of a school which has been suspended by a board of education. This provision is contained in Section 7730, General Code, which reads in part, as follows:

"The board of education of any rural or village school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause, * * Wherever such suspension is had on the direction of the county board of education then upon the direction of such county board, or upon the finding by the board of education ordering such suspension that such school ought to be re-established, such school shall be re-established.

Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking

that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension."

Upon the adoption of the School Code of 1914, Section 7730, General Code, as then adopted, provided for the suspension of schools, as it now does, but did not contain the provision for the reopening of the school so suspended, upon petition of the residents of the district. At the succeeding session of the legislature a provision was added to that section authorizing a board of education to reopen a suspended school upon the filing of a proper petition to that effect. (106 O. L., 396, 398). The added portion of the section as then enacted did not direct the reopening of the school in mandatory language as does the present statute. The pertinent portion of the statute then read as follows:

"Provided, however, that any suspended school as herein provided may be reestablished by the suspending authority upon its own initiative or upon a petition asking for re-establishment signed by a majority of the voters of the suspended district at any time the school enrollment of the said suspended district shows twelve or more pupils of lawful school age."

While the statute existed in that form the Supreme Court held, in the case of *State ex rel. Myers* vs. *Board of Education,* 95 O. S., 367, that, although the statute made use of the word "may" in providing for the reopening of the suspended school upon petition of the residents of the district, the duty to reopen the school upon the filing of the proper petition therefor was mandatory. It was said by the court that to construe the statute otherwise would render that provision of the statute entirely meaningless and vain, inasmuch as other portions of the statute clearly authorized the board to reopen the school on its own initiative without the filing of the petition.

If the duty to reopen a school upon petition would be mandatory when the statute merely provided that the school "may" be reopened, that duty is clearly mandatory when the statute provides, as it now does, that the school "shall" be reopened upon the filing of the proper petition.

Your inquiry goes to the question of whether or not that mandatory provision of the statute must be held to have been modified or amended by reason of the provisions of Section 7600, General Code, as the same was amended in 1929. (113 O. L., 292).

Said Section 7600, General Code, provides for the distribution of the proceeds of the state tax levy of 2.65 mills for school purposes directed to be made by Section 7575, General Code. In substance it provides that the proceeds of that levy collected in school districts outside of city and exempted village districts in each county shall be placed in the "county board of education fund" and shall be known as a "county education equalization fund"; that the proceeds of this fund shall be apportioned by the county board of education to each school district and part of district within the county outside of city and exempted village districts on the basis of the number of teachers and other educational employes therein and the expense of transporting pupils as determined by a survey of the county school district which the county board of education is directed by the terms of the statute to make, on or before the first day of April in each year to determine the number of teachers and other educational employes and the number of transportation routes necessary to maintain the schools of the county school district, and

the balance according to the ratio which the aggregate days of attendance of pupils of such districts respectively bears to the aggregate days of attendance of pupils in the entire county outside of city and exempted village school districts.

A great deal of discretion is imposed in a county board of education in making the survey spoken of in the statute and the attendant apportionment of funds. It seems manifest that the intent of the law is that this apportionment shall be as nearly equitable as possible. From the very nature of the matter, however, this apportionment cannot be made with mathematical exactitude and it is possible that some inequality will creep into the apportionment as finally made. This statute must be construed with reason and with a practical sense of its limitations in mind. It is not possible for a county board of education to determine, prior to April first in any year the exact number of teachers that will be employed or the exact number of transportation routes that will exist in the county school district during the ensuing year. The law enjoins upon local boards of education the duty of controlling and maintaining the schools of their districts and consequently of determining the policies to be followed and the number of teachers and transportation routes to be utilized. Many local districts have not employed their teachers for the ensuing school year prior to April first of any calendar year, nor have they determined definitely the extent of the transportation of pupils that will be carried on during the ensuing year or the exact number of transportation routes. I cannot believe the legislature intended by providing that the county board of education should make a survey to determine the necessary number of teachers and transportation routes in the county district that the local boards are absolutely bound by the county board's estimate. At best, the county board's determination is but an estimate—it cannot be otherwise. To hold that this estimate is final and binding on local district boards of education would be equivalent to taking from these local boards all discretion with respect to these matters and would, in effect, repeal by implication the statutory delegations of power to local boards of education to control and manage the schools of their respective districts and to determine the transportation routes and the number of teachers to be employed in those schools, which must be determined to some extent, by the limitations placed on the amount of funds available, as will be shown by their several budgets. These budgets are not finally adopted until long after April first of any year.

It is perfectly apparent that if schools not in existence or in contemplation on April first of any year are opened after that date and therefore after the survey spoken of is made, it will result in some inequalities in the apportionment of the county educational equalization fund. The same would be true if any local district found that its finances would not permit of as many transportation routes as the county board of education had estimated in its survey, or if a district became an exempted village district by authority of Section 4688-1, General Code, after the survey is made, or if a school building burned or was condemned after the survey was made and it was impossible to rebuild or repair it thus necessitating its abandonment and the suspension of the school and the assignment of the pupils to other schools.

If we are to say that a school may not be reopened on petition of the school patrons, as authorized by the terms of Section 7730, General Code, after April first of any year because to do so disarranges, and to some extent upsets the calculations of the county board of education in the making of its survey and the apportionment of the county educational equalization fund as directed by Section 7600, General Code, then we must say that no school may be suspended by authority of this statute after the survey is made, because the suspension of the school

affects these calculations to the same extent as would the reopening of a school which had previously been suspended and was not in existence at the time the survey was made.

By the terms of Section 7730, General Code, there is clearly manifested a legislative intent that the suspension of schools by the authority of the statute is to be done prior to August first of any year, and a petition for the reopening of a school so suspended is to be filed before that time. It is probable that the time fixed in the statute would be held to be directory, dependent somewhat on circumstances, but in any event the power to suspend and the right to petition for a reopening of the school for an ensuing school year clearly exists by the terms of the statute, for some considerable time after April 1st, the time when the county board of education is directed to make its survey. If it should be held that by reason of the terms of Section 7600, General Code, directing the county board of education to make the survey spoken of, a local board is precluded from thereafter suspending any schools for the ensuing school year, and petitioners are precluded from asserting their right fixed by the statute to reopen a school which has been suspended, it is necessary to hold, in effect, that Section 7730, General Code, is repealed by the later enactment of Section 7600, General Code.

If Section 7600, General Code, repealed Section 7730, General Code, it will be necessary to hold that it is done by implication, as there are no express words of repeal of Section 7730, General Code, in the act wherein Section 7600, General Code, was enacted.

Repeals by implication are not favored, and such repeals will not be declared unless they are necessarily implied. *State ex rel. Olds* vs. *Franklin County,* 20 O. S., 421-424. Nor will repeals by implication be declared if both acts can be construed to stand together. *Stahl* vs. *State,* 11 C. C., 23.

It has been held that a positive statute, inconsistent with and repugnant to the provisions of a prior one, operates as a repeal of the old statute, without any express words to that effect. This only occurs, however, when the two statutes are wholly incompatible or when, if read together, they lead to wholly absurd consequences and when the repugnancy is clear. *Ludlow's Heirs* vs. *Johnson,* 3 O., 533-564; *Dodge* vs. *Gridley,* 10 O., 173; *Commissioners* vs. *McComb,* 19 O. S., 324; *State* vs. *Franklin County, supra.*

It is said that repeals by implication are abhorred, and new legislation will have such effect only when the two statutes are wholly incongruous and irreconcilable with each other. If they may be reconciled by any reasonable interpretation the latter will not be held to have repealed the former. *Cleveland* vs. *Purcell,* 31 App., 495; *Klein* vs. *Cincinnati,* 33 App., 137; *Cincinnati St. Ry. Co.* vs. *Wheland,* 39 App., 51.

As laws are presumed to be passed with deliberation and with a full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter unless the repugnancy between the two is irreconcilable. Lewis' Sutherland Statutory Construction, Section 267.

Section 7730, General Code, assumes to fix certain positive rights in a district board of education with reference to the suspension of schools, and in the resident patrons of those schools to have the same reopened, in the public interest, and I do not believe that the terms of Section 7600, General Code, are so irreconcilable to those of Section 7730, General Code, that we may say that it was the intention of the legislature to repeal and set aside the positive rights fixed by Section 7730, General Code.

I am of the opinion that the duty of a district board of education to reopen a

school which has been suspended by authority of Section 7730, General Code, upon the filing of a proper petition therefor, as provided by the statutes, is mandatory, and that that duty is not in any wise affected or limited by the terms of Section 7600, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4600.

FOREIGN CORPORATION — DOING BUSINESS IN OHIO WITHOUT COMPLYING WITH FOREIGN CORPORATION ACT — ATTORNEY GENERAL OR PROSECUTING ATTORNEY MAY PROSECUTE SUCH CORPORATION.

SYLLABUS:

1. *When it is brought to the attention of the Secretary of State that a foreign corporation has exercised its franchise in Ohio without complying with the provisions of the foreign corporation act and if the penalty imposed by Section* 8625-25, *General Code, is not paid after the receipt of notice by the foreign corporation pursuant to the provisions of Section* 8625-13, *General Code, it is the duty of the Secretary of State to certify such facts to the Prosecuting Attorney of the county in which such corporation has transacted business or has property or a place of business or to the Attorney General of Ohio for appropriate action.*

2. *When it is brought to the attention of the Secretary of State that a corporation which is making an application for a license under the foreign corporation act has theretofore exercised its franchise in Ohio without having complied with such act the Secretary of State may not collect the penalties set forth in paragraphs* 1 *(a), and* 1 *(b) of Section* 8625-25, *General Code, in addition to the penalties imposed by the first paragraph of such section.*

COLUMBUS, OHIO, September 9, 1932.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your recent request for opinion reads as follows:

> "Directing your attention to Section 8625-25 of the General Code, of Ohio, your opinion is respectfully requested as follows:
>
> First, where it is brought to the attention of the Secretary of State by his independent investigations or otherwise that a foreign corporation wrongfully exercised its franchise in Ohio by reason of non-compliance with the foreign corporation act, what duty, if any, devolves upon the Secretary of State in respect of collecting the penalty of one thousand dollars and the additional penalty of five hundred dollars each month for such violations of the act as provided in the first paragraph of said section?
>
> Second, where it is brought to the attention of the Secretary of State by his independent investigations or otherwise, that a foreign corporation making application for license under the foreign corporation act has