

The consideration to be paid to the State of Ohio for the use of this water is a flat rental of \$4,500.00 per year. Finding said rentals to be in all respects just and reasonable, the same is likewise hereby approved.

My approval is endorsed upon the lease forms submitted, all of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

206.

HOUSE BILL NO. 357—FIXING QUALIFICATIONS FOR A DIRECTOR OF EDUCATION AND MAKING SUPERINTENDENT OF PUBLIC INSTRUCTION HIS ASSISTANT—UNCONSTITUTIONAL.

SYLLABUS:

The provisions of House Bill No. 357, if enacted into law, would be unconstitutional.

COLUMBUS, OHIO, March 18, 1929.

HON. S. K. MARDIS, *Chairman, School Committee, House of Representatives, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication requesting my opinion with reference to the constitutionality of the terms of House Bill No. 357. The title and text of said House Bill No. 357 (omitting parts thereof not pertinent to your inquiry, are as follows:

“A BILL

To amend Sections 154-3, 154-5 and 2250 of the General Code, to create the offices of Director of Education and Assistant Director of Education and defining their powers and duties, also to define the duties and powers of the state Superintendent of Public Instruction.

Be it enacted by the General Assembly of the State of Ohio:

SECTION I. That Sections 154-3, 154-5 and 2250 of the General Code be amended to read as follows:

Sec. 154-3. Administrative departments created:

The following administrative departments are created: * * *

The Department of Education, which shall be administered by * * * a Director of Education as director thereof. The Director of Education shall be a graduate of a four-year course of a reputable college, and shall have at least ten (10) years' experience in the public schools of Ohio, five years of which shall have been as city, county or village superintendent, and all duties and powers now vested in the state Superintendent of Public Instruction shall be vested in the Director of Education. * * *

Sec. 154-5. Assistant Director.

There shall be created the office of assistant Director of Education, who shall be the state Superintendent of Public Instruction, with such duties and powers as the Director of Education shall prescribe. He shall be paid only the salary now paid to the Superintendent of Public Instruction, which is four thousand (\$4,000) dollars.

Sec. 2250. Salaries of appointive state officers and employes:

The annual salaries of the appointive state officers and employes herein enumerated shall be as follows: * * *

* * * Director of Education, six thousand five hundred dollars.

* * *

SECTION 2. That existing Sections 154-3, 154-5, 2250 of the General Code and all acts inconsistent herewith are hereby repealed."

Corresponding portions of Sections 154-3, 154-5 and 2250, General Code, now in force, read as follows:

Sec. 154-3. "The following administrative departments are created:

* * *

The Department of Education, which shall be administered by the Superintendent of Public Instruction, as director thereof; * * *

Sec. 154-5. In each department there shall be an assistant director, * * * "

Sec. 2250. "The annual salaries of the appointive state officers and employes herein enumerated shall be as follows:

* * *

Superintendent of Public Instruction as Director of Education, six thousand five hundred dollars. * * * "

The apparent object of House Bill No. 357 is to so amend the present law as to fix the qualifications of a Director of Education, an officer to be appointed by the Governor by force of Section 154-4, General Code; to provide that the Superintendent of Public Instruction shall be an assistant to the Director of Education and perform such duties and have such powers as may be fixed by the Director of Education; and furthermore to fix the salary of the Superintendent of Public Instruction at \$4,000 per year. The office of Superintendent of Public Instruction was created by constitutional amendment, in 1912, upon the adoption of Article VI, Section 4, of the Constitution of Ohio, which reads as follows:

"A Superintendent of Public Instruction to replace the State Commissioner of Common Schools, shall be included as one of the officers of the executive department to be appointed by the governor, for the term of four years, with the powers and duties now exercised by the State Commissioner of common schools until otherwise provided by law, and with such other powers as may be provided by law."

At the time of the adoption of Article VI, Section 4, of the Constitution of Ohio, there existed a state officer known as the Commissioner of Common Schools elected biennially for a term of two years. The office of Commissioner of Common Schools was created by an Act of the General Assembly passed March 14, 1853, 51 O. L. 429, Section 47, S & C 1362 and 1363, by the terms of which act the powers and duties of the Commissioner of Common Schools were fixed. These powers and duties, as so fixed, were changed somewhat, but not materially, from time to time, and, at the time of the adoption of the constitutional amendment above referred to, were embodied in Section 352, et seq., 2275, 2248, 4826 and 7803 and a number of other sections of the General Code of Ohio.

Upon the adoption of the Constitution of 1851, it became well recognized in legislative and judicial as well as civic circles, that the organization and promotion of the public school system of Ohio was a function of State government, and that

by the terms of Article VI of said Constitution there devolved on the State through its General Assembly the duty of making provision for a thorough and efficient system of common schools throughout the State. *Finch vs. Board of Education*, 30 O. S. 37, *Board of Education vs. Volk*, 72 O. S. 469. It was in obedience to this constitutional mandate that the General Assembly passed the Act of 1853, above referred to "To provide for the reorganization, supervision and maintenance of common schools."

By the terms of this act and subsequent amendments thereto, the Commissioner of Common Schools was constituted a State officer entrusted with the exercise of such supervisory control over the public school system of the State as comes within his jurisdiction as such State officer. During the course of all the legislation on the subject from 1853 to 1912, the Commissioner of Common Schools, although his position and duties were never very definitely fixed and much was left to his discretion, remained the head of the State system of common schools, in so far as the State supervision of the system was carried on, and he was the only State officer empowered to exercise any administrative control over the common school system of the State as such.

The vital subject of inquiry in determining whether or not House Bill No. 357 is constitutional is whether or not it is in conflict with said Article VI, Section 4, of the Constitution of Ohio.

This necessitates the determination of the proper construction to be placed on said constitutional provision, and its interpretation in the light of the intention evinced by the composite minds of the members of the constitutional convention who framed the terms of the provision and the people who by their votes adopted it.

Concededly, the effect of House Bill No. 357, if enacted, will be to place at the head of the State Department of Education a State officer, other than the Superintendent of Public Instruction, to be appointed by the Governor, and known as a Director of Education, and to place the Superintendent of Public Instruction in a subordinate position, under the said Director of Education, with duties not fixed by law but by the said Director of Education.

The cardinal rule of construction in the interpretation of constitutional provisions and statutes is to determine the intention of the persons who framed and adopted those provisions in the first instance, and that intention is to be gathered if possible, from the language used. The fact that the constitutional provision, Article VI, Section 4, *supra*, fixes the powers and duties of the Superintendent of Public Instruction to be those "now exercised by the State Commissioner of Common Schools" would seem to indicate that it was the intention, as so expressed, to substitute the Superintendent of Public Instruction for the State Commissioner of Common Schools, and thus place him unqualifiedly at the head of the State's control of the public school system and constitute him the chief administrative public school officer of the State. Such interpretation, however, from this language alone is not conclusive, especially in view of the fact that, in addition to providing that the Superintendent of Public Instruction shall have the powers and duties now exercised by the State Commissioner of Common Schools, additional provision is made "until otherwise provided by law."

This conclusion is fortified, however, by a consideration of the use of the words "superintendent" and "replace" as used in the text of the constitutional provision above referred to. "Superintendent" is defined by Webster, as:

"One who has the oversight and charge of some place, institution, organization, enterprise, affair, etc."

Bouvier's Law Dictionary defines "superintendent" as follows :

"One who has the power of direction and control over the acts or labor of others."

Clearly, if an officer is to be placed in charge of the public school system of the State, as would be indicated from the use of the word "superintendent" and that officer is to "replace" the person who had before been at the head of that system, there can not be much question but what it was the intention of the framers of the constitutional provision that the Superintendent of Public Instruction was to be the head of the system of Public Schools of the State of Ohio, and any attempt upon the part of the Legislature to displace that officer and place someone else at the head of the system would be invalid.

If there should remain any doubt as to the proper interpretation to be placed on Article VI, Section 4 of the Constitution of Ohio, after considering the language of the section itself, it is proper to look to the proceedings of the Constitutional Convention wherein the section was framed, to determine the intent of the framers of the provision as stated by themselves.

In Corpus Juris, Volume 12, page 711, it is held :

"The proceedings of the constitutional convention and the debates while powerless to vary the terms of the Constitution are nevertheless valuable aids in determining the purpose and consequent meaning of a doubtful provision. * * * where the proceedings clearly point out the objects and purposes of the doubtful provision, the aid to be obtained is valuable as a means of interpretation. Where the proceedings of a convention are to be examined, the history and condition of the times, the evils that existed, requiring remedies, the discussions before the people in the election of delegates, and issues under consideration may be consulted with profit. All such details tend to show the intent, as expressed in the work of the convention."

Many courts have had this subject under consideration and are practically unanimous in saying that as an aid to determining the meaning of a provision of a constitution the proceedings and debates in the constitutional convention which framed the provisions may be considered. *Woessner vs. Bullock*, 176 Ind. 166; *Schwartz vs. People*, 47 Col. 483; *Hawley vs. Anderson*, 195 Pac. 358; *Boonville vs. Hockman*, 240 S. W. 135; *Williams vs. Castleman*, 247 S. W. 263; *In re Moore*, 211 N. Y. S. 655; *Greenlund vs. Fenner*, 216 N. Y. S. 357; *Hamilton vs. Davis*, 217 S. W. 431.

Our own Supreme Court, in the case of *State vs. Peters*, 112 O. S. 249, resorted to the journals and proceedings of the Constitutional Convention of 1912, in determining the proper construction to be placed on a constitutional provision framed in that convention.

Said Section 4 of Article VI, of the Constitution of Ohio, was proposed in the Constitutional Convention of 1912 by Mr. Fess from Greene County, and as originally proposed, it provided that an amendment be submitted to Article VI of the Constitution by the addition of Section 4 which it was proposed should read as follows :

"A Superintendent of Public Instruction shall be included as one of the officers of the executive department to be appointed by the Governor for the term of two years, with such powers as may be prescribed by law."

Upon the second reading of said proposal, Mr. Fess spoke briefly as follows (Debates of the Constitutional Convention, Vol. 2, page 1732) :

" * * * I have been anxious that we should make the educational department of the State the most important thing next to the Governor, as it really ought to be. * * * and what I would like to make possible is to create a State Department of Education that would be ranked as it ought to be ranked. * * * If the present commissioner had the power commensurate with the importance of educational work he could do so much more than is possible under the situation now existing. This is what I want to do, to make the head of the Department of Education an appointive officer, so that we can secure efficiency in the department. Give the power to the Governor to appoint the head so that the educators of the state and other people can unite upon some leader and say to the Governor that they would like to have this man. * * * Make it possible for us to get a man like that and put him in office, not for the sake of the politicians but for the sake of the schools of Ohio."

After amending the proposal by striking out "four" and inserting "two," so as to make the term two years instead of four years, the proposal was referred to the committee on arrangement and phraseology.

Later, when the proposal was referred back to the convention from the Committee on Phraseology, some question arose as to the powers of the Superintendent of Public Instruction and the effect of the amendment on the law providing for a school commissioner. It was proposed to amend the proposal so as to take care of this matter and amendments to that effect were suggested. Speaking on this subject, Mr. Fess said: (Debates of the Constitutional Convention, Vol. 2, page 1811).

"The proposal as it was written here would necessitate legislation before the commissioner or superintendent would have any power at all, and it was suggested by some of our legal friends that we ought to put in here that the powers shall be what are now given to the Commissioner of Common Schools, and such other powers, etc. I hope this amendment will carry because we want to have some powers without resorting to the Legislature."

It was then asked by Mr. Harris, of Ashtabula :

"I would ask the author of the proposal if it contemplates that the Legislature must repeal the law providing for the school commissioner?"

to which Mr. Fess replied :

"This provision repeals it."

Mr. Harris then said :

"Not necessarily; it suggests it. I think the suggestion is an excellent one, but at the same time it must be conceded that if the office created by statute known as the school commissioner, which has been for so many years in Ohio an elective office, is not distinctly repealed, while those duties might be assigned to some other office, still that office might remain."

to which Mr. Fess replied :

"In line 4, a Superintendent of Public Instruction to 'replace' the State Commissioner of Common Schools. You cannot have both of them."

Other proceedings were had, and the proposal was officially adopted by the convention in the form in which it now appears in the Constitution. An examination of the proceedings of the convention found on pages 1811, 1812 and 1813, Vol. II, Debates of the Convention, clearly shows, that it was the intention of the framers of this section of the Constitution to make the Superintendent of Public Instruction the head of the public school system of the State. A further expression of Mr. Fess in this connection, found on page 1813, is significant :

“The only thing I wanted to do was to give the present head of the school department more power than simply to be a statistician. Our school head has done a great amount of work with very little authority. We want to give him authority commensurate with the office. I am sure you would be in favor of this if you knew what it is.”

Within a very few minutes after the foregoing remarks were made by Mr. Fess, a vote was taken and the proposal was passed by a vote of eighty-four yeas, and seventeen nays.

From the foregoing, it seems clear that by the terms of the Constitution, as expressed in Section 4 of Article VI, the Superintendent of Public Instruction is a public officer and the head of the public school system of the State, with duties fixed by law, similar to those provided by law for the Commissioner of Common Schools in 1912, and such other duties as since may have been or will be provided by law, and any act of the Legislature placing some other officer at the head of that department and placing the Superintendent of Public Instruction under the head of the public school system, with duties not fixed by law but by the head of the department, would be in contravention of the said section of the Constitution.

I am therefore of the opinion that House Bill No. 357 if enacted, will be unconstitutional.

Respectfully,
GILBERT BETTMAN,
Attorney General.

207.

APPROVAL, BONDS OF EAST CARLISLE RURAL SCHOOL DISTRICT,
LORAIN COUNTY—\$61,000.00.

COLUMBUS, OHIO, March 18, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

208.

APPROVAL, BONDS OF VILLAGE OF OLMSTEAD FALLS, CUYAHOGA
COUNTY—\$39,700.00.

COLUMBUS, OHIO, March 18, 1929.

Industrial Commission of Ohio, Columbus, Ohio.