

1431.

APPROVAL, BONDS OF CITY OF MANSFIELD, OHIO, IN AMOUNT OF \$15,900 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, July 16, 1920.

Industrial Commission of Ohio, Columbus, Ohio

1432.

APPROVAL, BONDS OF CITY OF MANSFIELD, OHIO, IN AMOUNT OF \$42,000 FOR WATERWORKS IMPROVEMENTS.

COLUMBUS, OHIO, July 16, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1433.

APPROVAL, BONDS OF CITY OF MANSFIELD, OHIO, IN AMOUNT OF \$10,000 FOR GARBAGE AND REFUSE DISPOSAL PLANT.

COLUMBUS, OHIO, July 16, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1434.

SCHOOLS—TO DISSOLVE CONTRACT BETWEEN TEACHER AND BOARD OF EDUCATION BY PAYMENT OF SUM OF MONEY ILLEGAL—SUCH CONTRACTS DISSOLVED BY RESIGNATION, EXPIRE, OR ARE TERMINATED FOR CAUSE.

1. *To dissolve a contract between a school teacher and a school board by payment of a sum of money by the board is neither an express nor implied power of the school law.*
2. *Such contracts are dissolved by resignation or expire or are terminated for cause.*
3. *Sinecures are not favored by the law and money expended for such purpose is misuse of school funds.*

COLUMBUS, OHIO, July 17, 1920.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your letter requesting the opinion of this department on matters stated therein, as follows:

“MARION, OHIO, June 7, 1920.

To the Attorney-General of Ohio:

Your opinion is respectfully requested on the following proposition:

The superintendent of schools of a city school district is regularly employed for a period of five years, which employment is evidenced by a written contract. Three years of this period have expired. The board desires to rescind this contract. The superintendent agrees to surrender all rights under such contract for the sum of \$2,000.00 cash.

Question: Has the board the legal authority to pay such superintendent the said sum of \$2,000.00 or any other sum for the surrender by him of all rights under said contract?

GEORGE T. GERAN,
City Solicitor,
Marion, Ohio.'

We respectfully request your reply to such question.

The terrible financial condition of most of the school boards of the state, a condition under which every degree of economy should be exercised, necessitates us asking the further question:

Question 2: Can a board of education under such conditions retain such superintendent in an advisory capacity and legally appoint another person to assume the duties of superintendent under the title of assistant superintendent or other title?"

The school law in so far as express provisions are to be found is stated in the following section:

"Sec. 7699 G. C. Upon the appointment of any person to any position under the control of the board of education, the clerk promptly must notify such person verbally or in writing of his appointment, the conditions thereof, and request and secure from him within a reasonable time to be determined by the board, his acceptance or rejection of such appointment. An acceptance of it within the time thus determined shall constitute a contract binding both parties thereto until such time as it may be dissolved, expires, or the appointee be dismissed for cause."

"Sec. 7700 G. C. All resignations or requests for release from contract by teachers, superintendents, or employes, must be promptly considered by the board, but no resignation or release shall become effective except by its consent."

"Sec. 7701 G. C. 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 if the board vote upon roll call in favor of such dismissal."

"Sec. 7708 G. C. If the board of education of any district dismisses a teacher for any frivolous or insufficient reason, the teacher may bring suit against such district. If, on trial of the cause a judgment be obtained against the district, the board thereof shall direct the clerk to issue an order upon the treasurer for the sum so found due to the person entitled thereto, to pay it out of any money in his hands belonging to the district, applicable to the payment of teachers. In such suits process may be served on the clerk of the district, and service upon him shall be sufficient."

You will observe that contracts between the board of education and its appointees are *dissolved*, or *expire*, or the appointee is *dismissed for cause*.

Of these three methods your statement of facts indicates that the contract you have in mind is sought to be dissolved by what is known as compromise and settlement. Such a method implies that loss, great inconvenience or a dispute has arisen

between the parties, making a conclusion of the contract mutually desirable, and that a consideration of two thousand dollars for release from the unexpired term of the contract moving from the board of education to the superintendent of schools is required to dissolve the same.

The large sum demanded should, indeed, make the board of education hesitate to act in the manner indicated. It is doubtful that so much damage or loss can accrue to the board or that it is empowered to so act until it has proceeded to exhaust all other means of relief afforded by the law under the circumstances.

In the syllabus in *Ward vs. Board of Education*, 11 O. D. C. 671, the court says:

“Although a teacher may have a vested right in a contract * * * yet a contract between a teacher and a board of education is subject to the general rules governing contracts.”

The right to renounce or dissolve a contract by mutual consent or by compromise and settlement is, perhaps, one of the general rules the court has in mind. Such right surely exists and is very frequently invoked in contracts between individuals or between corporations and individuals. Yet this general rule is not the one being applied by the court in the case cited.

In *Finch vs. Board of Education*, 30 O. S. 46, the opinion says:

“Owing to the very limited number of corporate powers conferred on them, boards of education rank low in the grade of corporate existence, and hence are properly denominated *quasi* corporations. * * *

The duty defendant owes the municipal corporation of the city of Toledo is a public and not a private duty. The fund that it is authorized to levy upon the property of the school district is a trust fund, devoted by law to educational purposes only. * * *”

And so the court in this case denies the plaintiff damages for an injury to a pupil attending school in the absence of an express statutory provision for the same.

In the case presented by your question it is much to be doubted that the board of education may use the funds at its command for the purpose of releasing itself from its contract with a teacher, and such is certainly the case where the board has not exhausted all other means afforded it by the law. Another means that the law provides is to dismiss, after hearing, for cause.

In view of the fact that the law provides especially for the tenure of the teacher's office and surrounds his discharge with unusual care and certain mandatory provisions to be found in sections 7701 and 7708, quoted above, and from the further fact that the funds at the disposal of the board are in the nature of trust funds for educational purposes only, the termination of a teacher's contract by compromise and settlement is not one within the law open to exercise by boards of education.

In *Youmans vs. Board of Education*, 13 O. C. C. 207, 7 O. C. D. 269 the court says:

“The courts have no power to interfere with the discretion of the board of education in the appointment of teachers, unless such discretion has been abused grossly; and injunction will not lie to control such discretion.”

The converse of that dicta is equally true, i. e., that the courts have no power to interfere with the discretion of the board of education in the discharge of teachers, after hearing, unless such discretion has been abused grossly or is for a frivolous reason. So, it is to be observed that a board of education may dismiss a superintendent or teacher for cause without interference by a court of equity. And in determining to dismiss a teacher in that manner the board acts in “an administrative capacity only.”

Frederick vs. Board of Education, 18 O. C. C. (N. S.) 435:

"A court of equity is without jurisdiction to interfere by injunction to prevent the trial and dismissal of a teacher by a school board."—Id.

It is fair to say that the foregoing leads to the conclusion that the dissolution of a contract with a teacher in the manner indicated in your inquiry is not favored by the law. No express provisions of law are to be found either to affirm or deny such termination of it and neither is there to be found a case directly citing the point under discussion.

Holding to the view that school funds are trust funds for educational purposes only, as it does, the school law does not permit boards of education to create sinecures no matter how long or how efficient the services of any employe may have been.

Such assistants or principals as are necessary for the well-being and thoroughness of school activities are matters left wholly to the discretion of the board of education for each district by the law. But to employ someone to assume the duties of another when that one has for some reason, such as herein set up, become unable to perform such duties, though receiving the pay therefor and presumably so employed, is not a proper use of school funds under the law. If a board has erred in the judgment it exercises in a lawful manner in its selection of teachers for its schools, and no board is presumed to be incapable of error of judgment in the management of all its affairs, the law has provided adequate remedy for the same, of which such board is at liberty at all times to avail itself.

And without attempting to say what may be the implied powers of a board of education, if any, to dissolve contracts relating to buildings, grounds, etc., by the method known as compromise and settlement should occasion arise, and in view of the particularity of the law in respect to contracts with teachers, and their avoidance, it is the opinion of this department that both of your questions must be answered in the negative.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1435.

SCHOOLS—HOW SCHOOL DISTRICT IN WHICH EXISTING TAX LEVIES DO NOT EXCEED TEN MILLS MAY QUALIFY FOR PARTICIPATION IN RESERVE IN STATE COMMON SCHOOL FUND BY VOTING AN ADDITIONAL LEVY OF THREE MILLS—TOTAL LEVY EIGHTEEN MILLS EXCLUSIVE OF STATE HIGHWAY LEVY AND OTHER SIMILAR LEVIES.

In order to qualify for participation in the reserve in the state common school fund a school district, in which there is no levy for interest and sinking fund purposes and no other special tax outside the ten mill limitation, so that the aggregate levy for local purposes is ten mills or less, must vote additional taxes for school purposes in such amount, expressed in terms of rate, as to bring the total levy in the district up to eighteen mills, exclusive of state highway levy and other similar levies.

COLUMBUS, OHIO, July 17, 1920.

HON. EUGENE WRIGHT, *Prosecuting Attorney, Logan, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date requesting an opinion on the following question: