

authority with respect to the right of assessment must be sought in the general law. In this instance there is, of course, direct authority to include the cost of the preliminary and other surveys as a part of the improvement. The interpretation of the Supreme Court has been that this cost must be paid directly from the special funds available for the improvement and cannot be first paid out of the general fund and subsequently reimbursed. It may possibly be that, under charter authority, the city may make such provision as will satisfy the objection of the Supreme Court by providing that such of its engineers as are employed upon these special improvements shall be compensated directly from the special funds provided for such projects. I feel, however, that as long as the present method of payment of the engineers is continued this engineering expense cannot be charged as a part of the cost of the improvement.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2166.

SCHOOLS—DIFFERENCES BETWEEN CONSOLIDATION AND CENTRALIZATION—CONSOLIDATION OF FIVE SCHOOLS OF MIAMI TOWNSHIP RURAL SCHOOL DISTRICT INTO ONE, WITHOUT VOTE OF ELECTORS, EFFECTED BY SECTION 7730, GENERAL CODE—CENTRALIZATION OF SCHOOLS MUST BE SUBMITTED TO ELECTORATE, UNDER SECTIONS 4726 AND 4726-1, GENERAL CODE.

SYLLABUS:

1. *Consolidation of schools by the suspension of certain schools, and the transportation of the pupils residing in the territory of the suspended school, to other schools may be accomplished by virtue of the provisions of Section 7730, General Code, without submitting the same to a vote of the electors residing in the territory affected by such consolidation.*
2. *There is no authority for submitting the question of consolidation or centralization of schools to a vote of the electors residing in the territory effected by such centralization or consolidation, except as contained in Sections 4726 and 4726-1, General Code.*
3. *The practical difference between the centralization of schools as authorized by Sections 4726 and 4726-1, General Code, and consolidation of schools by suspension of certain schools and transportation of pupils to other schools, as authorized by Section 7730, General Code, is that in centralization of schools the question must be submitted to a vote of the electorate, and the centralization must include all the schools of a rural school district, or all the schools of several districts either rural or village, located within a civil township, and the further difference that when centralization is effected, it must be continued for a period of three years, and then may not be discontinued except by a vote of the people, as is provided for centralization in the first place; whereas, consolidation may be effected by combining two or more schools of a district, and cannot be made absolute so long as a suitable school building exists in the territory of any suspended school involved in the consolidation.*
4. *When a board of education suspends a school, by authority of Section 7730, General Code, and assigns the pupils residing in the territory of the suspended school to other schools, it is forbidden to dispose of the schoolhouse in which the suspended school was conducted until after a period of four years from the date of such suspension, because of the right to have such school reestablished upon petition, as provided by Section 7730, General Code, unless the said building has been condemned for school use by proper state authorities.*

COLUMBUS, OHIO, May 28, 1928.

HON. CARL Z. GARLAND, *Prosecuting Attorney, Batavia, Ohio.*

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

“Miami Township Rural School District is a single rural school district in which there are five school buildings located at various locations in the district.

The members of the Board are desirous of abandoning four of the school buildings and erecting a new school building for all of the territory of the district at one point therein.

I was always of the opinion that the members of a school board had the right and authority to abandon any schools as they wished and keep up those they wished, providing transportation is provided according to law and was of the further opinion that ‘centralization of schools’ was a term used when more than one school district was involved, however, I wish to ask the following questions on the above statement of facts:

1st. Would the abandoning of four of the five school buildings, as mentioned above, and placing of the pupils in the remaining fifth building constitute centralization in accordance with Section 4726 of the General Code?

2nd. Would it be necessary to submit the proposition to a vote of the people in order to abandon four school buildings in a single district and place all of the pupils in the whole district in one building?

3rd. Would the school board have authority to submit the question of abandoning of certain school buildings in a district and using only one of the number for school purposes, to the electors of the district?”

Sections 4726, 4726-1, 4727 and 7730, General Code, read in part as follows:

Section 4726. “A rural board of education may submit the question of centralization, and, upon the petition of not less than one-fourth of the qualified electors of such rural district, or upon the order of the county board of education, must submit such question to the vote of the qualified electors of such rural district at a general election or a special election called for that purpose. * * *”

Section 4726-1. “In townships in which there are one or more school districts, the qualified electors of such school districts may vote on the question of centralizing the schools of said township districts, or of special school districts therein, without interfering with the existing school district organization until the result of the election shall have been determined. * * *”

Section 4727. “When the schools of a rural school district have been centralized such centralization shall not be discontinued within three years, and then only by petition and election, as provided in Section 4726. * * *”

Section 7730. “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, and teachers’ contracts shall thereby be terminated after such suspension. Whenever the average daily attendance of any school in the school district for the preceding school year has been below ten the county board of education

may, before the first day of August, direct the suspension and thereupon the board of education of the village or rural school district shall suspend such school. Whenever any school is suspended the board of education of the district shall at once provide for the assignment of the pupils residing within the territory of the suspended school to such other school or schools as may be named by the said board of education. Upon such suspension the board of education in authority over such village or rural school shall provide for the transportation of all pupils so assigned, who reside in the territory of the suspended school and who live more than two miles by the nearest traveled highway from the school to which they have been assigned, to a public school in the rural or village district or to a public school in another district, except when in the judgment of such board of education confirmed by the judgment of the county board of education such transportation is unnecessary.

Ten days' notice of such suspension shall be posted in five conspicuous places within such village or rural school district by the board of education after the resolution providing for such suspension is adopted. 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."

In a number of former opinions of this department it has been held that provision may be made for the taking of pupils, who formerly attended the public schools conducted in several school buildings, to a centrally located school building, either by authority of Section 4726 or 7730, General Code.

There is however, some practical difference in the result of the action taken under these two statutes, as will hereafter appear. In an opinion reported in Opinions of the Attorney General for 1916, Volume I, page 498, after discussing the provisions of Section 4726, General Code, with respect to centralizing the schools, it is said:

"I might add that the board of education of a rural school district may effect this same result under provision of Section 7730, G. C. (106 O. L. 398), without a vote of the people by suspending all of the schools in said district and conveying the pupils attending such schools to centralized schools established by said board of education at such points in said district as said board in the exercise of its discretion may determine."

In Opinions of the Attorney General for 1917, Volume I, page 305. is reported an opinion the syllabus of which reads as follows:

"When centralization is had as provided by General Code Section 4726, it applies to the entire school district affected and the electors of the entire district shall be permitted to vote.

Two or more schools are consolidated or united under the provisions of Section 7730 G. C. by the board of education without vote."

See also Opinions of the Attorney General for 1919, Volume I, page 796; Volume II, pages 1536, 1593 and 1597. In the opinion of 1919, Volume I, page 796, the distinction between centralization and consolidation was considered, and it was there held as stated in the syllabus:

“The question of centralization of schools must be submitted to the whole of a rural school district and not to a part of such district.

Centralization is the bringing together of all the schools of a township or rural district while consolidation is the combining of two or more schools brought about through suspension. Questions of centralization of schools are governed by Sections 4726 and 4726-1 G. C.; consolidation of schools is accomplished under Section 7730 G. C.”

In the course of the opinion it was said:

“In reply to your question as to what is centralization, and as to whether it can be distinguished from consolidation, it is advised that centralization is the case where all the schools of a rural school district take action towards centralizing their educational activity, while consolidation is where two or more schools join together in their educational activity and hence a lesser amount of territory is usually involved in consolidation than in centralization. * * *

It often occurs that the very thing accomplished by centralization is later accomplished by processes of consolidation under Section 7730 G. C. and a board of education, under such section, has clear authority to suspend those schools which are no longer advantageous to operate. It follows, therefore that after a sufficient number of schools have been discontinued and transportation provided to a neighboring district school, in many instances the district will be practically centralized without having taken advantage of Section 4726 G. C.”

Section 7730, General Code, has been amended since the rendition of the opinions hereinbefore referred to, but no change has been made therein which would materially affect its pertinency to your inquiry.

It will be observed that centralization of schools, when authorized and directed by a vote of the people, may be accomplished by the board of education of one rural school district, by virtue of Section 4726, supra or by the boards of education of all the school districts, whether rural or village districts in a township, by virtue of Section 4726-1, supra. When this is accomplished, the centralization shall not be discontinued for three years, and then only by petition and election, as provided for centralization in the first place.

When under Section 7730, General Code, schools are consolidated by order of the county board of education, any schools suspended must be re-established if the county board so orders. When under said section schools are consolidated, either by order of the county board of education or otherwise, any school involved in the consolidation, which has been suspended, must be re-established, if a petition be filed therefor by the parents or guardians of twelve children between seven and fifteen years of age living in the district and enrolled in the school, whose residences are nearer to the school, which has been suspended, than to any other school of the district, asking that such suspended school be reopened; provided that there be a suitable school building in the territory of such suspended school as it existed prior to suspension.

A suspended school is at all times, so long as a suitable school building exists in the territory of such suspended school, subject to re-establishment, and a board of education is forbidden by the terms of Section 7730-1, General Code, from selling the building or real estate located in the territory of a suspended school until after four years from the date of such suspension.

In Opinions of the Attorney General for 1922, page 739, it was held:

“Where a school has been suspended under the provision of Section 7730 G. C., the board of education cannot move a school house in which the suspended school was conducted until after a period of four years from the date of such suspension because of the rights of the petitioners, mentioned in Section 7730 G. C., the sole exception being where such building has been condemned for school use by proper state authorities.”

Specifically answering your questions in the order asked, it is my opinion:

First, the abandoning of four of the five school buildings, and the conducting of school in the remaining fifth building, as stated in your letter, does not constitute the centralization of the schools, as centralization is provided for in Section 4726 of the General Code. It amounts to consolidation of the schools, and may be effected by virtue of the provisions of Section 7730, General Code.

Second, consolidation of schools by the suspension of certain schools and the transportation of the pupils residing in the territory of the suspended school to other schools may be accomplished by virtue of the provisions of Section 7730, General Code, without submitting the same to a vote of the electors residing in the territory effected by such consolidation.

Third, there is no authority for submitting the question of consolidation or centralization of schools to a vote of the electors residing in the territory effected by such centralization or consolidation, except as contained in Sections 4726 and 4726-1, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2167.

OFFICE—REMOVAL OF COUNTY RECORDER FOR NEGLECT OF DUTY—
COMPLAINT FILED IN COMMON PLEAS COURT—VACANCY—AP-
POINTMENT BY COUNTY COMMISSIONERS—ELECTION FOR UN-
EXPIRED TERM.

SYLLABUS:

1. *Under the provisions of Section 38, Article II of the Constitution of Ohio, laws may be passed providing for the removal of a county officer only upon complaint and hearing, and a statute providing for the summary removal of a county officer without a complaint and opportunity to be heard, would be unconstitutional.*
2. *Sections 10-1 to 10-4, General Code, enacted pursuant to the mandate contained in Section 38, Article II of the Constitution of Ohio, prescribe the procedure to be followed for the removal of a county officer guilty of misconduct in office.*
3. *Where a county recorder has refused or wilfully neglected to perform the official duties imposed upon him by law, or has been guilty of misfeasance, malfeasance or non-*