

candidate for office, and is elected to such office, that fact alone does not make such person ineligible to the office to which he was elected."

However, an examination of the above opinion, as well as of Section 4785-16, General Code, clearly indicates that a county coroner could not be a candidate for re-election while he is a member of the board of elections, without violating the express provisions of Section 4785-16, General Code. In other words, he would not be eligible to retain his standing as a member of the board of elections but if he did, such would not invalidate his election as county coroner. A person violating Section 4785-16, General Code, could no doubt be removed from his position with the board of elections by appropriate proceedings.

Without further extending this discussion, it is my opinion:

1. A coroner who is not a candidate for election, may be a member of a county board of elections, if it is physically possible to perform the duties of both offices.

2. A coroner who is a candidate for election, may not at the same time be a member of a county board of elections.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5295.

SCHOOL FOUNDATION LAW—METHOD OF DISTRIBUTING
PROCEEDS UNDER SUCH LAW—CONFLICT BETWEEN
SECTIONS 7595-li AND 4744-1, G. C.

SYLLABUS:

1. *To the extent that the Provisions of Section 7595-li, General Code, as enacted June 12, 1935, in what is known as the School Foundation Law (House Bill No. 466, of the 91st General Assembly) relating to funds for the use of a county board of education for the payment of salaries and contingent expenses are inconsistent with the provisions of Sections 4744-1, 4744-2 and 4744-3, General Code, relating to the same subject and being enactments of an earlier date, said Sections 4744-1, 4744-2 and 4744-3, General Code, are repealed by implication, otherwise, all these statutes being in pari materia, should be regarded as parts of a connected whole and harmonized so far as possible, without doing violence to any.*

2. *In accordance with a budget of operating expenses prepared and submitted to the Director of Education by each county board of education*

on or before December 1st of each year, as directed by Section 7595-li, General Code, funds for the use of such county board of education in the payment of salaries and contingent expenses for the ensuing year should be apportioned by the Director of Education among the several districts of each county school district on the basis of pupils in average daily attendance, and the amount so apportioned to each school district should be deducted by the Director of Education from the shares of the local districts in the state public school fund thereafter distributed during the year, in pursuance of Section 7595-1, General Code.

3. Funds necessary for the use of a county board of education as determined from its budget submitted to the Director of Education the total amounts of which have been deducted proportionately from the amounts distributable from the state public school fund to the several districts in the county school district, should be remitted by the Auditor of State, after certification to him by the Director of Education, by warrant drawn on the Treasurer of State to such county board of education and should be deposited by said county board of education in the treasury of the county to the credit of a separate fund known as the county board of education fund, and expended therefrom by warrants through the county auditor in pursuance of vouchers signed by the president of the county board of education.

COLUMBUS, OHIO, March 25, 1936.

HON. A. NEWTON BROWNING, *Prosecuting Attorney, Washington C. H., Ohio.*

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

"There seems to be some conflict between Section 7595-li (a part of the Traxler-Kiefer Act) and Section 4744-3 of the General Code of Ohio, the latter section not having been repealed by the Traxler-Kiefer Act. In October, 1935, when making the August settlement, our County Auditor withheld \$4,150.00 from the various school districts in the county, as provided by Section 4744-3, General Code. This would seem to be unnecessary, in view of the provisions of Section 7595-li, which became effective June 12, 1935.

I should like to have your opinion as to whether or not the two sections are reconcilable, or a repeal of Section 4744-3, General Code, took place by implication."

In some respects the provisions of Section 7595-li, General Code, as enacted on June 12, 1935, which relates to funds for the use of

county boards of education in the payment of salaries and contingent expenses, are totally inconsistent with the provisions of Sections 4744-1, 4744-2 and 4744-3, General Code, of earlier enactment, and to that extent the provisions of the later section must be regarded as having repealed by implication the earlier statutes. Said Section 7595-li, General Code, reads :

“On or before the first day of December, 1935, and each year thereafter, each county board of education shall prepare a budget of operating expenses for the ensuing year for the county school district and shall certify the same to the director of education who shall apportion the cost represented by such budget among the various districts of the county school district on the basis of pupils in average daily attendance. The amounts so apportioned shall be certified to the clerks of the various school districts and in the case of each district such amount shall be deducted by the director of education from the share of the district in the state public school fund.

The director of education shall certify to the auditor of state the total of such deductions of the districts of the county school district; whereupon the auditor of state shall issue his warrant in such amount on the treasurer of state in favor of the county board of education of each county, to be deposited to the credit of a separate fund, hereby created, to be known as the county board of education fund.”

It clearly appears from the above statute that it is the intention of the law that funds for the use of a county board of education are to be made available from the State Public School Fund distributable to local districts as provided by Section 7595-1, General Code, whereas formerly these funds were derived from the proceeds of local taxation for school purposes and deducted by the county auditors from the proceeds of those taxes before distribution to the local school districts within the several county school districts, in accordance with Sections 4744-1, 4744-2 and 4744-3, General Code, which sections have not been expressly repealed. Section 4744-1, General Code, provides that the salary of the county superintendent of schools should be fixed by the county board of education and paid out of the county board of education fund on vouchers signed by the president of the county board. The section further provides for the employment of a stenographer or clerk for the superintendent and for the payment of traveling expenses for the superintendent. It further provides that the total of these salaries and expenses should be prorated among the several school districts in the county school district.

Section 4744-2, General Code, provides that on or before the first day of August of each year the county board of education shall certify to the county auditor the number of teachers to be employed for the ensuing year in the several school districts within the county school district and also the number of assistant county superintendents employed, and their compensation and the compensation of the county superintendent, and the amounts to be apportioned to each district for the payment of its share of these salaries and the contingent expenses of the county board of education. Section 4744-3, General Code, provides:

“The county auditor when making his semi-annual apportionment of the school funds to the various village and rural school districts shall retain the amounts necessary to pay the salaries of the county and assistant county superintendents and for contingent expenses as may be certified by the county board. Such amounts shall be placed in a separate fund to be known as the ‘county board of education fund.’ The provisions of this section shall be in full force and effect on and after January 1, 1934.”

It is apparent that in so far as the provisions of Sections 4744-1, 4744-2 and 4744-3, General Code, with respect to the deductions to be made by the county auditor from the proceeds of local taxation in the school districts of a county school district, of funds for the use of the county board of education for operating expenses, are concerned, those of Section 7595-li, General Code, with respect to the same matter are utterly irreconcilable therewith and therefore the provisions of the latter must prevail.

The irreconcilability of the provisions of Section 7595-li, General Code, with respect to the deposit of the funds for the use of a county board of education after receipt of those funds, is not clear, and as the statutes are in *pari materia*, they should be reconciled if possible. The legislature at the time of the enactment of Section 7595-li, made no provision whatever as to where the deposit to the credit of the county board of education fund should be made, or as to in whom the custody of the fund is to be reposed or how the money is to be expended.

A county board of education does not have corporate existence and is not authorized by law to secure a depository or to deposit funds in a bank, nor does it have a treasurer as stated by the Supreme Court in the case of *State ex rel. v. Kurtz et al.*, 110 O. S., 332-337. The county superintendent of schools is by statute made the secretary of his county board of education, but no mention is made in the law of his being the treasurer and it cannot be said that he is impliedly made treasurer

or custodian of any funds. No provision is made for him to give a bond nor does any authority exist for the county board of education to require him to give a bond. Heretofore there was no question as to the custody of the board of education fund and the legislature has not seen fit to make any new provision with reference thereto or to disturb the existing law relating to the question. Moreover, the expression, "to be deposited to the credit of a separate fund hereby created, to be known as the county board of education fund," as used in Section 7595-li, General Code, cannot be construed, in my opinion, to mean a fund in a bank or in any other depository than the county treasury. The legislature would not, in my opinion, create a fund in a bank, and give it a distinctive name. The depository meant by this expression is, in my opinion, the county treasury.

At the time of the enactment of Section 7595-li, General Code, the legislature made no provision as to the manner of expenditure of the county board of education fund. As a matter of fact, there has never existed any express provision of statute as to the manner in which this fund should be expended except as to the manner of payment of the salary of the county superintendent of schools, as contained in Section 4744-1, General Code. In this statute it is provided that the salary of the county superintendent of schools should be paid out of the county board of education fund, on vouchers signed by the president of the county board. The Legislature did not repeal this provision. It has been the universal practice, I am informed, for all expenditures that are made by county boards of education to be made by means of warrants drawn by the county auditor on the county treasury in payment of vouchers presented to the county auditor and signed by the president of the county board of education.

In conclusion, I am of the opinion :

1. To the extent that the provisions of Section 7595-li, General Code, as enacted June 12, 1935, in what is known as the School Foundation Law (House Bill No. 466, of the 91st General Assembly) relating to funds for the use of a county board of education for the payment of salaries and contingent expenses are inconsistent with the provisions of Sections 4744-1, 4744-2 and 4744-3, General Code, relating to the same subject and being enactments of an earlier date, said Sections 4744-1, 4744-2 and 4744-3, General Code, are repealed by implication, otherwise, all these statutes being in *pari materia*, should be regarded as parts of a connected whole and harmonized so far as possible, without doing violence to any.

2. In accordance with a budget of operating expenses prepared and submitted to the Director of Education by each county board of

education on or before December 1st of each year, as directed by Section 7595-1i, General Code, funds for the use of such county board of education in the payment of salaries and contingent expenses for the ensuing year should be apportioned by the Director of Education among the several districts of each county school district on the basis of pupils in average daily attendance, and the amount so apportioned to each school district should be deducted by the Director of Education from the shares of the local districts in the state public school fund thereafter distributed during the year in pursuance of Section 7595-1, General Code.

3. Funds necessary for the use of a county board of education as determined from its budget submitted to the Director of Education the total amounts of which have been deducted proportionately from the amounts distributable from the state public school fund to the several districts in the county school district should be remitted by the Auditor of State, after certification to him by the Director of Education, by warrant drawn on the Treasurer of State to such county board of education and should be deposited by said county board of education in the treasury of the county to the credit of a separate fund known as the county board of education fund, and expended therefrom by warrants through the county auditor in pursuance of vouchers signed by the president of the county board of education.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5296.

APPROVAL—PETITION CONTAINING A PROPOSED CONSTITUTIONAL AMENDMENT AND A SUMMARY OF THE SAME.

COLUMBUS, OHIO, March 25, 1936.

MR. CHARLES H. HUBBELL, *10401 Almira Avenue, Cleveland, Ohio.*

DEAR SIR: You have submitted for my examination a written petition signed by one hundred qualified electors of this state containing a proposed constitutional amendment and a summary of the same under the provisions of Section 4785-175, General Code. It is proposed to amend the Constitution by the adoption of seventeen new sections, 9a to 9q, both inclusive, of Article XV, which sections shall read as follows:

“Article XV, Section 9a

It shall be lawful to sell or to offer for sale intoxicating liquor, or to keep, maintain or operate a hotel, inn, tavern, house,