

82.

APPROVAL, BONDS OF SALINE TOWNSHIP RURAL SCHOOL DISTRICT, JEFFERSON COUNTY, OHIO—\$6,630.00.

COLUMBUS, OHIO, January 30, 1933.

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

83.

APPROVAL, NOTES OF ANDERSON TOWNSHIP RURAL SCHOOL DISTRICT, HAMILTON COUNTY, OHIO—\$12,000.00.

COLUMBUS, OHIO, January 30, 1933.

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

84.

COUNTY SUPERINTENDENT OF SCHOOLS—MAY BE APPOINTED FOR TERM OF THREE YEARS—IMMATERIAL THAT TERMS OF MAJORITY OF APPOINTING BOARD EXPIRE BEFORE THREE YEARS.

SYLLABUS:

A county superintendent of schools may be appointed for a term of three years or less, regardless of whether or not the terms of a majority of the appointing board will have expired before the end of the term for which the county superintendent is appointed.

COLUMBUS, OHIO, January 30, 1933.

HON. JOHN F. PORTER, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

“I have been asked the question by members of the County School Board, whether they could hire a superintendent for a period longer than that of the majority of its members. That is, the County Board consisting of five members, three of the members’ terms expire this year, leaving two members to hold over. The question is:

Can the majority of the board engage a superintendent or bind the action of the board for a term longer than the majority of the members?”

In the absence of statute regulating the matter, it is the rule in most jurisdictions that where a board appoints an officer or contracts for services and the duties of the officer or the services to be rendered are duties delegated to the supervision of the board, such appointment or contract for a period beyond the term of the board is not valid. In a number of jurisdictions, however, the rule is otherwise. See 70 A.L.R., 799 and 802 note.

In Ohio the law is somewhat unsettled on this point. The only case directly involving the question is the case of *Franklin County vs. Ranck*, 9 O. C. C., 301. In this case there was involved the validity of a contract for the employment of a janitor for a county court house for the period of a year, the contract having been made on the day preceding the expiration of the term of one of the members of the board. The court said:

"In the absence of some necessity or special circumstances showing that the public good required it, such a contract as the one under consideration, made by an expiring board, and which has the effect to forestall the action of its successor for a year, is not only evidence of unseemly conduct on the part of the members of the board, but, in its object, operation, and tendency, is calculated to be prejudicial to the public interests and against public policy and void."

Under this decision, however, such a contract is prima facie invalid, but its validity will be upheld when it appears that the contract is beneficial to the county.

The general rule with reference to a school board contracting with a superintendent or teacher for a period extending beyond the term of the board, in the absence of statutory provision is different. By the great weight of authority it is held with reference to such contracts that a school board may contract with a superintendent or teacher for a period extending beyond the term of the board. See 70 A. L. R. 802, note, and 29 L. R. A. (N. S.) 657, note.

In the determination of the question presented by your inquiry, we need go no further, in my opinion, than the statute itself. It will be noted that the statute limits a county board of education in the employment of a county superintendent of schools, to employing him for "not longer than three years." By placing a limitation on the power of the county board of education, the legislature has, in my opinion, clearly implied that that power may be exercised within the limitation.

When Section 4744, General Code, was enacted in 1914 (104 O. L. 142), provision was made for the election of a county board of education by the presidents of the boards of education of the various village and rural school districts in the county district, said board to consist of five members. The first board to be elected after the enactment of the law was to consist of one member for a term of one year, one for two years, one for three years, one for four years and one for five years. Each year thereafter one member of the county board was to be elected for a term of five years. See Section 4729, General Code, as enacted in 1914 (104 O. L. 136).

It will be observed that under the law as then enacted, the terms of a majority of the members of a county board of education would have expired in each instance before the term of a county superintendent appointed as provided in section 4744, General Code, would have expired, if he were appointed for a term of three years. If the legislature had intended that a county superintendent could not be appointed for a term to extend beyond the time that the terms of a majority of the appointing board would have expired, there would have been no necessity for

the enactment of the statute containing the limitation as it does.

I am of the opinion, in specific answer to your question, that a county superintendent of schools may be appointed for a term of three years or less, regardless of whether or not the terms of a majority of the appointing board will have expired before the end of the term for which the county superintendent is appointed.

Respectfully,

JOHN W. BRICKER,

Attorney General.

85.

WORKMEN'S COMPENSATION — BY-STANDER CALLED TO ASSIST
SHERIFF IN MAKING ARREST—NOT ENTITLED TO WORKMEN'S
COMPENSATION.

SYLLABUS:

When a person is called upon by the sheriff of a county to aid him in the execution of the criminal laws of the state, such a person, not being an appointee for hire, is not an employe of the county and therefore is not entitled to the benefits of the Workmen's Compensation Law.

COLUMBUS, OHIO, January 30, 1933.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I beg to acknowledge your inquiry which reads as follows:

"It is the desire of the Commission that they have the benefit of your opinion in the following matter:

The sheriff of Defiance County deputized a by-stander to aid him in an emergency, namely an insane person had murdered his wife and had injured the Chief of Police. This by-stander was deputized by the sheriff to aid in apprehending this man and in attempting to apprehend him the party so deputized was injured and died as a result of these injuries.

We would be pleased to have you advise us as to whether or not the person deputized under such circumstances is an employe within the meaning of the Workmen's Compensation Act."

The discussion must necessarily begin with the provisions of the law defining employer and employe under the Workmen's Compensation Act. Section 1465-60 provides that the following shall constitute employers subject to the provisions of this act: "the state and each county, city, township, incorporated village and school district therein". The term "employe", "workman", or "operative", as used in the Workmen's Compensation Act, is defined in section 1465-61, which reads in part as follows:

"Every person in the service of the state, or of any county, city, township, incorporated village or school district therein, including regular members of lawfully constituted police and fire departments of cities and