

"It seems clear to us that the word 'institution' in this clause is used to designate the corporation or other organized body instituted to administer the charity, and, that the real estate described as belonging to such institutions has reference to property owned by the institutions; and that to entitle them to hold the property exempt from taxation, they must not only own it, but it must be so used as to fulfill the requirements of the statute."

The above quoted language of Section 5353, General Code, is not identical with the statutory provisions before the court in the case of *Humphries vs. The Little Sisters of the Poor, supra*, but I am inclined to the view that the same construction thereof is required so far as the question here presented is concerned.

It follows, therefore, that, inasmuch as the Young Women's Christian Association referred to by you does not own the property here in question, the facts stated in your communication do not meet the requirement for the exemption of the property under the provisions of Section 5353, General Code, and, by way of specific answer to the question presented in your communication, I am of the opinion that the property therein referred to is not exempt from taxation.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1023.

VACANCY—MEMBER OF VILLAGE BOARD OF EDUCATION—HOW FILLED.

SYLLABUS:

Electors of a village school district are given no authority by law to fill a vacancy in a board of education, but such vacancy must be filled for the unexpired term by a majority vote of the remaining members of the board.

COLUMBUS, OHIO, October 14, 1929.

HON. DON W. MYERS, *Prosecuting Attorney, Elyria, Ohio.*

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

"I am interested in the question relative to the proper method of filling a vacancy in a village board of education for an unexpired term wherein the death of the regular member occurred more than thirty days prior to the next regular election.

I have reviewed G. C. Section 10 which provides that a successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred, unless otherwise provided by law.

G. C. Section 4748, provides:

'Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy.'

This would appear to be within the intent of the expression contained in G. C. Section 10 'unless otherwise provided by law.'

G. C. Section 5004 provides that certificates of nomination for members of the board of education shall be filed with the board of deputy state supervisors of election of the county, not less than sixty days previous to the date of election.

I have included the above review with the thought that it might expedite your answer to my inquiry. It is important that we have your opinion at once, which may be merely an answer to the question without an otherwise extended opinion. If possible, wire me your conclusion of the question at the first available moment."

This opinion is in line with the telegraphic answer sent to you under date of October 4th.

Article XVII, Section 2, of the Constitution of the State of Ohio, provides in part, as follows:

" * * * All vacancies in other (than state) elective offices shall be filled for the unexpired term in such manner as may be prescribed by law. * * * " (Words in parenthesis, the writer's.)

Section 10 of the General Code, provides:

"When an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified. Unless otherwise provided by law, such successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred. This section shall not be construed to postpone the time for such election beyond that at which it would have been held had no such vacancy occurred, nor to affect the official term, or the time for the commencement thereof, of any person elected to such office before the occurrence of such vacancy."

Section 4748, General Code, dealing solely with boards of education, says:

"A vacancy in any board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy."

It is to be observed that under the constitutional provision quoted, the Legislature is given great latitude in providing methods for filling the unexpired terms of other than state elective officers; the General Assembly under this grant of power, has enacted Section 10, General Code, supra, in the nature of a general section, with provision for exceptions, and Section 4748, General Code, supra, as one of the exceptions.

In an opinion found in Opinions of the Attorney General for 1917, Volume 2,

page 1678, it was stated that the electors of a district are given no authority to fill a vacancy in a board of education.

In my Opinion No. 376 dated May 6, 1929, and addressed to the Director of Education, it was stated in the syllabus:

“When a person is elected to fill a vacancy occurring in the membership of a board of education, the person so elected is elected for the unexpired term of the person whose place had become vacant.”

In your inquiry you direct my attention to Section 5004, General Code, which provides that certificates of nomination for members of boards of education shall be filed with the election board of the proper county not less than sixty days previous to the date of election. This is the only provision under which candidates for a village board of education may get their names on the ballot, since the amendment to Section 4963, General Code, by the General Assembly, in 1923, and is not applicable here.

Section 5004, *supra*, refers to “officers to be filled by the electors of a district.” In the case of a vacancy in the membership of a board of education, however, there is no “office to be filled by the electors,” inasmuch as Section 4748, *supra*, definitely says that in case of a vacancy, it shall be filled by the surviving members of such board of education for the *balance of the unexpired term*.

Specifically answering your question, I am of the opinion that a vacancy in the membership of a village board of education is filled by a majority vote of the remaining members of such board, and the person chosen to fill such vacancy holds office for the balance of such term.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1024.

MOTOR VEHICLE LICENSE AND GASOLINE TAXES—MUNICIPALITY'S PORTION APPLICABLE FOR WIDENING STREETS BUT NOT FOR PURCHASING ADDITIONAL RIGHT OF WAY—WHEN COMPETITIVE BIDDING NECESSARY.

SYLLABUS:

1. *The municipality's share of the original two cent gasoline tax provided for in Section 5527, General Code, and the motor vehicle tax may be used by municipalities for widening streets either by way of maintenance and repair or by new construction.*
2. *The money derived from such taxes may not be used by municipalities for the purpose of purchasing additional right of way needed in connection with the widening of any street.*
3. *It is not necessary to let contracts for projects which are to be paid with said money by competitive bidding, unless such contracts are required to be so let by the provisions of Section 4221, General Code, or by the provisions of the charter in cities having a charter form of government.*

COLUMBUS, OHIO, October 14, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads: