

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1315.

SUPERINTENDENT OF SCHOOLS—WHERE EMPLOYED BY BOARD OF EDUCATION, RURAL—CONTRACT—RE-EMPLOYMENT—SALARY—SPECIFIC CASE CONSIDERED.

SYLLABUS:

Employment of superintendent of schools by a board of education—Specific case considered.

COLUMBUS, OHIO, October 19, 1939.

HON. ROBERT E. FULLER, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your request for my opinion as to the legal effect of certain proceedings taken by a certain rural board of education in your county. In your letter you state:

“The following facts appear of record with respect to actions taken by a Board of Education of a rural school district of our county. (I quote from the Clerk’s minutes without, however, using the names of the persons involved.)

May 8, 1939, Special Session:

‘Moved by A.—, seconded by B.—, to employ X.— as Superintendent for one year.

Vote: A.— Yes
B.— No
C.— No
D.— No
E.— Yes.’

Thereafter, at a regular meeting on May 16th, the resignation of B.— as a Member of the Board was presented and accepted, and at a subsequent meeting, prior to June 26th, F.— was appointed by the remaining members to fill the vacancy caused by the resignation of B.—.

Adjourned Session, June 26, 1939:

'E.— moved that Mr. X.— be rehired one year, seconded by A.—.

Vote: A.— Yes
F.— Yes
C.— No
D.— No
E.— Yes.'

I am advised that the Mr. X. referred to, had been employed as local superintendent in this particular district under a contract that expired on September 1, 1939. The question now presented is whether or not the procedure as taken by the board of education was proper, and resulted in the employing of Mr. X. for the school year 1939-1940.

From the foregoing statement of facts, it appears that the board of education as constituted on May 8, 1939, did not desire to re-employ Mr. X. However, after the personnel of the board had changed, by reason of the resignation of one member and the appointment of some other person to fill the vacancy, the board was of a different mind and it was then its desire, as evidenced by the proceedings of the board which were had on June 26, 1939, to re-employ Mr. X. The statutory provisions of law in force on June 26, 1939, relating to the employment of teachers in rural school districts are contained in Sections 4752, 7705 and 7699, of the General Code of Ohio. The pertinent provisions of these statutes are as follows:

Sec. 4752. "Upon a motion to adopt a resolution authorizing the purchase or sale of real or personal property or to employ a superintendent or teacher, janitor or other employe or to elect or appoint an officer or to pay any debt or claim or to adopt any text book, the clerk of the board shall publicly call the roll of the members composing the board and enter on the records the names of those voting 'aye' and the names of those voting 'no.' If a majority of all of the members of the board vote aye, the president shall declare the motion carried. * * *"

Sec. 7705. "The board of education of each village, and rural school district shall employ the teachers of the public schools of the district, for a term not longer than three school years, to begin within four months of the date of appointment."

Sec. 7699. "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."

It has been generally considered that a contractual relation arises as between a teacher or other appointee of a board of education and the board, if the appointee enters upon the performance of his or her duties under appointment with the knowledge of the board and the board acquiesces in such action, just as effectually as though the formalities of Section 7699, General Code, as to notice and acceptance had been strictly complied with.

In the absence of special rules adopted by the board, a motion to reconsider the action taken on May 8, 1939, when a motion to employ Mr. X. had been made and lost, would have been in order before again taking up the matter for consideration, but under strict rules of parliamentary procedure, it probably would have been too late for reconsideration, as this should ordinarily be done at the same meeting the matter to be reconsidered had been acted upon or an adjourned session of that meeting. However, the practice with respect to administrative boards has always been that any action taken may be reconsidered or rescinded at any time, at the same meeting or a later meeting, provided no rights have become vested in the interim on account of the action originally taken. I know of no instance where it has been held by the courts that this may not be done. In the instant case, the board did not choose to act by a motion to reconsider but acted upon a new, original motion, and under the circumstances, as it clearly appears to have been the will of the majority of the board to employ Mr. X., it is my opinion that the making and carrying by a majority vote of a motion to employ Mr. X. on June 26, 1939, resulted in his being employed in accordance with the motion, provided, of course, it was followed by notice and acceptance as provided by Section 7699, General Code, or by his entering upon the performance of his duties under the appointment with the knowledge and acquiescence of the board. Clearly, the provisions of Sections 4752 and 7705, General Code, were properly complied with.

In an Opinion of a former Attorney General (Opinions of the Attorney General for 1929, page 683) it is said :

"The records of a board of education should not be judged too strictly. If the intent of the board can be gathered from the face of the record, courts, in passing on the force and effect of the proceedings of the board, will be governed by the apparent will of the board, even though by a strict application of the principles of parliamentary law another result would be reached."

In the case of *State ex rel. v. Evans, et al.*, 90 O. S., page 243, at page 251, Judge Wanamaker said:

“Obviously the proceedings of boards of education, of county commissioners, township trustees and the like must not be judged by the same exactness and precision as would the journal of a court.”

In *Madden v. Smeltz*, 2 O. C. C., 168, it is said:

“It is not to be expected that the technical rules of parliamentary law, which are enforced for convenience in governing and controlling legislative bodies, should be vigorously applied to the proceedings of a village council.”

McQuillin, in the Second Edition of his work on *Municipal Corporations*, Section 636, quotes with approval the language of the Supreme Court of Wisconsin, in *Hark v. Gladwell*, 49 Wis., 172, 177, where, in speaking of county boards, it is said:

“It will not do to apply to the orders or resolutions of such bodies nice verbal criticism and strict parliamentary distinctions because the business is transacted generally by plain men not familiar with parliamentary law. Therefore, their proceedings must be liberally construed in order to get at the real meaning and intent of the body.”

See also *Whitney v. Hudson*, 69 Mich., 189.

Assuming that the action of the board of education taken on June 26, 1939, with respect to the re-hiring of Mr. X. was followed by proper notice and acceptance as provided by Section 7699, General Code, or that Mr. X. entered upon the performance of his duties as superintendent with the acquiescence of the board, it is my opinion that a contractual relation between the board and Mr. X. arose, and that he was properly and legally employed as superintendent of schools in the district to which you refer.

Respectfully,

THOMAS J. HERBERT,
Attorney General.