

You will, of course, realize that I have not sufficient facts before me to give you a categorical answer to your question. The contract in question appears to be reasonable upon its face, but there may be other aspects to the particular situation of which I am not advised, which might ultimately lead to the conclusion that a contract for such a length of time, for this particular kind of service, would be unreasonable. While ordinarily it would appear unnecessary to make a contract covering engineering services for local improvements for any considerable length of time, yet in this particular instance such a contract may have been advantageous to the village in question. Under the circumstances, it seems to me that the decision of the question is one ultimately for a court, to whom all the facts should be submitted.

Accordingly I do not feel justified in doing more than to express the rules governing the decision of questions of this character, as indicated above.

This discussion is limited to the question of the power of the municipality to enter into a contract of this character. There are other circumstances attendant upon the execution of the contract which might affect in one way or another its legality and concerning which I am expressing no opinion.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1897.

VILLAGE BOARD OF EDUCATION—AUTOMATICALLY CREATED UPON
INCORPORATION OF A NEW VILLAGE—CANNOT LAWFULLY AS-
SUME DEBTS OF OLD DISTRICT.

SYLLABUS:

There being no authority for a board of education in a village school district which is automatically created upon the incorporation of a new village, to assume or pay any of the debts of the school district of which its district had formerly been a part, it can not lawfully assume or pay any of such debts.

COLUMBUS, OHIO, March 26, 1928.

HON. CHAS. B. COOK, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I am in receipt of your communication in which you enclose a letter from the clerk of the board of education of Geneva Rural School District, and request my opinion with reference thereto. The clerk's letter is as follows:

"Previous to the incorporation of the Village of Geneva on the Lake, the territory which was incorporated in said village was a part of the Geneva Rural School District. The said Geneva Rural School District previous to said incorporation were owing for back tuition for sending high school pupils to Geneva Village schools something between \$13,000 and \$14,000. After the incorporation of the Village of Geneva on the Lake, the territory included therein was formed into a Village School District known as the board of education of Geneva on the Lake Village and the question has arisen between the

board of education of Geneva on the Lake and that of the Geneva Rural School District as to whether or not the Village of Geneva on the Lake could pay a portion of the back tuition and if so, in what way this could be legally done.

At the time of said separation the question arose as to the division of the money in the hands of the board of education of Geneva Rural School District and also the question as to the liability of the Geneva Village District to the payment of certain bonds which were outstanding and issued for the purpose of building a new school building by the Geneva Rural District. These two questions were submitted, either by your office or by the county superintendent to the Attorney General and he rendered an opinion to the effect that Geneva on the Lake was not entitled to any division of said funds and were not liable in any way for the payment of the bonded indebtedness. The question of back tuition, as I understand it, was not submitted.

Will you kindly render us your opinion on this matter or if you so desire, submit the question to the Attorney General for his opinion."

On May 2, 1927, the Village of Geneva on the Lake was incorporated, comprising territory the whole of which prior to the incorporation of the village, had been contained within the territorial boundaries of Geneva Township Rural School District. Under the law, the territory within the newly created village automatically became a separate school district, known as Geneva on the Lake Village School District.

My previous opinion referred to in the above letter was Opinion No. 691, rendered under date of July 6, 1927, in which several matters when considered, relating to the status of the Geneva Rural School District and Geneva on the Lake Village School District, after the incorporation of the Village of Geneva on the Lake was effected. It appeared that no school property belonging to what had formerly been Geneva Rural School District lay within the territory included in the new village, and it was held in said Opinion No. 691, as follows:

"Where no school property belonging to a rural school district is located within the territory carved from the district and incorporated as a village with a tax valuation of more than \$500,000.00, the new village school district thus created is not chargeable with any of the indebtedness of the rural school district nor can it receive any of the funds belonging to the rural school district. The rural district consisting of the territory remaining after the incorporation of the village retains all the funds in its treasury and is charged with the retirement of its indebtedness, and should be paid the proceeds of all taxes collected from levies which it had made prior to the creation of the village school district carved from its territory."

In the course of the opinion, it was stated:

"As it appears from your statement that no school property belonging to the Geneva Township Rural School District as formerly constituted lies within the territorial boundaries of the newly created village, no question arises as to the title to school property or the assumption by the new village district of any of the debts of the old district. There is no statutory provision for the division of the funds in the treasury of a school district upon the creation of a new district from a part of the territory included within the old district by the process whereby the new village district was created in this instance.

It is said in Ruling Case Law, Schools, Section 10:

'The Legislature having plenary power over school districts may provide for the division of the property and the apportionment of debts when a portion of the territory and property of one district is transferred to another. In the absence of such provision the rule of the common law obtains and that rule leaves the property where it is found and the debt on the original debtor.'

It therefore follows that the Geneva Township Rural School District retains all the funds now in its treasury, retains title to the school property lying within its territory and is charged with the payment of all the debts of the original district."

"All the debts of the original district" spoken of above include not only bonded indebtedness but other indebtedness as well.

As there is no authority for boards of education in village school districts, automatically created upon the incorporation of villages, to assume or pay any of the debts of the school district of which their district had formerly been a part, I am of the opinion they are not permitted to do so.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1898.

OHIO STATE DENTAL BOARD—SECRETARY, INSPECTOR AND STENOGRAPHER IN UNCLASSIFIED CIVIL SERVICE—SECTION 486-8, PARAGRAPH 8, GENERAL CODE, CONSTRUED.

SYLLABUS:

The Ohio State Dental Board may appoint persons to the positions of secretary, inspector and stenographer to said board exempt from the classified civil service of the state. The position of secretary to the Ohio State Dental Board is such that it cannot in any view be considered as one in the classified service. As to the other two positions, to wit, those of inspector and stenographer, the dental board, if it desires to exempt said positions and the incumbents thereof from the classified civil service, should designate said positions and incumbents in the unclassified service as authorized by paragraph 8 of Section 486-8, General Code.

COLUMBUS, OHIO, March 26, 1928.

HON. RAY R. SMITH, *Secretary Ohio State Dental Board, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, reading as follows:

"We are in receipt of a letter from the Civil Service Commission, placing the three salaried officers of this board (the secretary, the stenographer and the inspector) on a civil service basis.

We are desirous of knowing whether or not this includes all three of the above mentioned as specified in the enclosed letter."

In the letter referred to in your communication, which is thereto attached, the State Civil Service Commission, after referring to the payroll of the incumbents