

4628.

TEACHERS—DUTY OF COUNTY BOARD OF EDUCATION TO EMPLOY
NECESSARY TEACHERS WHERE LOCAL BOARD FAILS.

SYLLABUS:

Where a board of education of a rural or village school district fails to employ a teacher or teachers for any or all of the schools of the district necessary for the proper functioning of the school or schools before the time or approximately the time for the schools to open, it becomes the duty of the county board of education of the county school district to which such district belongs, to employ said teacher or teachers in the same manner as the local board is authorized to do.

COLUMBUS, OHIO, September 20, 1932.

HON. FRED W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion with reference to the following matter:

“The Board of Education of Scioto Township, Jackson County, Ohio, is composed of five members, the clerk being a member of the Board. In attempting to appoint a teacher for the High School, one member cannot vote due to the fact that one of the teachers in prospect is his daughter. Two of the Board vote for one person as teacher and the other two, including the clerk, vote for another person for the position. Since it is a tie vote, is it possible for the clerk to break this tie by casting two votes, one as a member of the Board and another under the provision that allows the clerk to vote in case of a tie? In case this is not possible, could you suggest a way for this tie to be broken?”

Where the proposition to employ a teacher who is the daughter of one of the members of the board of education is before the board the father of the proposed teacher is disqualified to participate in the employment of such person by reason of the terms of Section 12932, General Code. This fact, however, does not prevent a person from being employed in a village or rural school district if it is done upon the nomination of the county or assistant county superintendent of schools and the affirmative action of a majority of the members of the board who are qualified to act in the premises, in a valid and duly authorized meeting of the board. If the proposed teacher is not nominated by the county or assistant county superintendent of schools it requires the affirmative action of a majority of the full membership of the board. (Section 7705, General Code.) Each one of the majority so acting must necessarily be qualified to act in the premises, else the employment cannot be consummated.

The effect of the disqualification of one of the members of a board of education is to reduce the number of members qualified to act, to four, and where the proposition to employ a teacher results in a tie vote and the board fails to employ anyone else for the particular teaching position the result is that no employment is made.

If the board persists in this course of action until time or approximately the time for the schools to open, it becomes the duty of the county board of education, by force of Section 7610-1, General Code, to employ a teacher for the school in question. This section provides in part:

"If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, or * * to elect a superintendent or teachers, * * the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. * *"

The Supreme Court in the case of *State ex rel. vs. Beamer*, 109 O. S., 133, at page 139, said, with reference to the above provision of the statute:

"Under Section 7610-1, General Code, the duty of the county board of education is measured by the duty of the board of education in the district."

There is no provision of law authorizing the clerk of a board of education, as such clerk, to vote under any circumstances on any proposition before the board.

I am therefore of the opinion, in specific answer to your question, that the tie vote spoken of by you may not be broken by the clerk. If the members of this board persist in their course of action and fail to employ a teacher for the school in question before the time, or approximately the time for school to open, it becomes the duty of the county board of education by virtue of Section 7601-1, General Code, to employ a teacher for the school in question.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4629.

VILLAGE SOLICITOR—COUNTY COMMISSIONERS MAY NOT PAY ANY PART OF COMPENSATION OF LEGAL COUNSEL FOR VILLAGE.

SYLLABUS:

A board of county commissioners may not make an allowance for the compensation in whole or in part of legal counsel provided for a village by a village council under authority of section 4220, General Code.

COLUMBUS, OHIO, September 20, 1932.

HON. LUCIAN YOUNG, *Prosecuting Attorney, Caldwell, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

"Will you kindly inform me of your opinion as to the following questions:

1. Under section 4307 as interpreted in 93 O. S. 42, are county commissioners required to make an allowance for legal counsel employed by a village under section 4220?

2. May they make such an allowance if they desire to so do?"
Section 4307, General Code, relative to solicitors of cities, reads: