

which he performs as a justice constitute the "proximate cause" of the collection. Such being the case, it seems inevitable that he is receiving a reward other than is allowed by law for the performance of his official duties when he receives a commission upon amounts collected through his official efforts. It must be borne in mind that, once an action is brought in the justice court, the duty is imposed by law upon the justice to proceed to render judgment and to have execution issued thereon, and his fees for these services are such only as are prescribed by law. These duties he owes to any member of the public, and it certainly is contrary at least to the spirit of the law if one member of the public, by the payment of additional amounts, may secure better efforts in the performance of those official duties.

I am not unmindful of the well established rule that criminal statutes are to be strictly construed and will not be extended beyond their plain import. I feel, however, that instances such as you cite are plainly a violation of the statute in question.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that:

1. There is no provision of law prohibiting a justice of the peace from engaging in the collection business, and he may accept fees for collections made, even though such collections be effected through court action in any court other than his own.

2. Where a justice of the peace engaging in the collection business, effects a collection by means of suit brought in his own court and receives a fee therefor, he is receiving a reward other than is provided by law, for the performance of his official duties, in violation of Section 12916 of the General Code.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

2035.

VILLAGE SCHOOL DISTRICT—REQUIREMENTS TO BECOME EX-EMPTED VILLAGE SCHOOL DISTRICT OUTLINED—SPECIAL FACTS INVOLVING CREATION OF NEW SCHOOL DISTRICT DISCUSSED.

*SYLLABUS:*

*For a village school district to become an exempted village school district, it is necessary that it contain a village that had a population of three thousand or more, as shown by the last Federal census, or that the procedure outlined in Section 4688-1, General Code, be complied with.*

COLUMBUS, OHIO, June 26, 1930.

HON. JESSE K. GEORGE, *Prosecuting Attorney, Steubenville, Ohio.*

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

"On July 12, 1929, the Director of Education of the State of Ohio recommended to the Jefferson County Board of Education the consolidation of the Grover Village School District, Warren Special District and Warren Township Rural School District, and that the pupils of the Deyormanville and the Lincoln Districts of the Warren Township Rural School District be sent to the Dillonvale Village School District.

Pursuant to such recommendation, the county board created a new district under the name of Warren Consolidated District, consisting of the territory embraced in said Grover Village District, Warren Special District and Warren Township Rural District, but did not then pass upon the recom-

mentation to send the pupils of the Deyormanville and the Lincoln District to the Dillonvale Village School District.

On March 22, 1930, the county board of education received notice and a copy of the resolution passed by the board of education of the Warren Consolidated School District, by which it decided to be exempted from the supervision of the county board of education.

April 15, 1930, the county board passed a resolution to transfer the Olzeski Addition, which was then in the Mt. Pleasant Village School District to the Dillonvale Village School District. This action had been petitioned for by a majority of the citizens of the district so transferred, and so far no objection has been made to such transfer. The county board in this resolution also transferred the territory embraced in the Deyormanville and Lincoln Districts, which were then a part of the Warren Consolidated School District, and also being part of the territory exempted from the jurisdiction of the county board in the above named resolution of exemption. This resolution transferring these local districts purported to be under the authority of Section 4736 of the Code.

On May 17, 1930, the county board amended or corrected its minutes of the meeting of April 15th to read that a new school district be created under Section 4736 to include the present Dillonvale Village District, the one room school districts of Deyormanville and Lincoln in the Warren Consolidated District, and also the Olzeski Addition located in the Mt. Pleasant Village School District. Said new district to be known as the Dillonvale Village School District.

The county board, at its meeting of April 15th also appointed the members of the board of education for such district, but at neither meeting did the board make any division of the assets or debts of the various districts so changed.

On May 14th a remonstrance was filed with the county board by sixty-five qualified electors residing in the local districts, known as the Deyormanville and Lincoln, the same constituting more than a majority of the electors in each district, and at a meeting of the county board on May 17th it was decided that the hearing and further action on the remonstrance be deferred until a meeting on June 3, 1930.

I desire your opinion on the following propositions:

*First:* Has the county board any authority to transfer to the Dillonvale Village School District any of the territory embraced in the Warren Consolidated School District now claimed to be exempted from the jurisdiction of the county board?

*Second:* Does the filing of the remonstrance by a majority of the qualified electors of the Deyormanville and Lincoln Districts defeat the action of the county board at their meeting of April 15th, or at their meeting of May 17th?

*Third:* Under these circumstances, is the action of the county board controlled by Section 4736 of the General Code or Section 4692 of the General Code?

*Fourth:* Does the failure of the county board to make an equitable division of the school funds and the debts of these districts defeat the transfer of the territory or defeat the creation of the new district?"

The pertinent provisions of Sections 4681, 4688, 4692, 4688-1 and 4736, General Code, read as follows:

Sec. 4681. "Each village, together with the territory attached to it for

school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district."

Sec. 4688. "The board of education of any village school district containing a village which according to the last census had a population of three thousand or more, may by a majority vote of the full membership thereof decide to be exempted from the supervision of the county board of education. Such village school district by notifying the county board of education of such decision before May first in any year, shall be exempt from the supervision of the county board of education for the following school year which begins September first thereafter. The village once so exempted shall be styled an exempted village school district and shall remain so until the board of education thereof by a majority vote of the full membership determines that it desires to be supervised by the county board of education and notifies the county board of education on or before May first in any year to that effect."

Sec. 4692. "The county board of education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. \* \* \* "

Sec. 4736. "The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall make an equitable division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it. Members of the board of education of the newly created district shall be appointed by the county board of education and shall hold their office \* \* \* "

Sec. 4688-1. "The board of education of a village school district shall, upon the petition of one hundred or more electors of such district, or upon its own motion, duly passed by a majority vote of the entire board, order a census to be taken of the population of such district. One or more persons may be appointed by the board to take such census. Each person so appointed shall take an oath or affirmation to take such census accurately. He shall make his return under oath to the clerk of the board, and certified copies of such return shall be sent to the county auditor and superintendent of public instruction. If the census shows a population of three thousand or more in the village school district, and such census is approved by the superintendent of public instruction, such district shall be exempted from the supervision of the county board of education after due notice is given as is provided in Section 4688."

It appears from your inquiry, that sometime prior to March 22, 1930, the Jefferson County Board of Education, acting by authority of Section 4736, General Code, created a new school district and designated it the Warren Consolidated District. The said new district consisted of the territory formerly embraced in Grover Village District, Warren Special District and Warren Township Rural School District. The district thus formed is a village school district for the reason that it contained what was formerly Grover Village School District, which, in turn, in order to have been a village school district, must necessarily have contained within its boundaries, an incorporated village and have had a tax valuation of at least \$500,000. (Section 4681, General Code, supra.)

Thereafter, on April 15, 1930, the county board of education undertook to incorporate in one school district all of Dillonvale Village School District, a part of Mt. Pleasant Village School District and a portion of the said Warren Consolidated District. The minutes of the proceedings of the county board of education for the meeting of April 15, 1930, are somewhat indefinite with reference to whether the board was acting at that time under the provisions of Section 4692, General Code, and merely transferred portions of Mt. Pleasant Village School District and the Warren Consolidated School District to the Dillonvale Village School District or whether they sought to create a new school district, in accordance with the provisions of Section 4736, General Code. The minutes of this meeting were corrected, however, at the next regular meeting, to show what actually was done, and it appears from this correction that the board meant to act under Section 4736, General Code, and thereby create a new school district consisting of all of Dillonvale Village School District and portions of Mt. Pleasant Village School District and Warren Consolidated School District.

It is very evident that the board on April 15, 1930, intended to act under Section 4736, General Code, and thereby create a new school district, because at the time, it appointed a new board of education for this district which would not have been done if the intention had been to merely transfer certain territory to Dillonvale Village School District under and in accordance with Section 4692, General Code.

On March 22, 1930, the county board of education of Jefferson County School District received a notice to the effect that the board of education of the Warren Consolidated School District had decided to be exempted from county supervision, together with a copy of the resolution passed by the said board of education on March 18, 1930, by which it decided to become an exempted village school district. If the Warren Consolidated School District did in fact become an exempted village school district prior to April 15, 1930, the action of the county board on that date, creating a new school district and incorporating therein a portion of the said Warren Consolidated School District would be ineffective, so far as its affecting the territory of the Warren Consolidated School District is concerned, for the reason that when a village school district becomes an exempted village school district it no longer is a part of the county school district as it formerly had been, and the county board of education no longer possesses the power to change its boundaries by virtue of either Section 4692 or 4736, General Code. See Section 4684, General Code.

Section 4688, General Code, specifically provides that when the board of education of a village school district containing a village with a population of 3,000 or more, decides by a majority vote of its full membership to be exempted from the supervision of the county board of education and notifies the county board to that effect before May first of any year it shall be exempted from such supervision for the following school year beginning September first thereafter, and shall continue to be exempted until action is taken by the local board to again come under the supervision of the county board of education.

If a village district does not contain a village with a population of 3,000 or more, but in fact has a population of 3,000 or more, it may become an exempted village school district by following the procedure outlined in Section 4688-1, supra, that is by having a census taken, which census must be approved by the Director of Education. The authority granted in said Sections 4688 and 4688-1, General Code, is the only authority for village school districts to become exempted village school districts, and in my opinion, unless a district contains a village, which by the last federal census had a population of 3,000 or more, or follows the procedure outlined in Section 4688-1, General Code, it cannot become an exempted village school district.

Aside from the fact that boards of education being creatures of statute, are limited in the exercise of their power to the powers expressly granted, there is another

reason in my opinion, why the methods provided in the statute referred to, for a village school district to become an exempted village school district are exclusive. Upon the adoption of the School Code, in 1914, the general plan adopted for the supervision of the schools in village and rural school districts was by county school district supervision. The provision for exemption from such county supervision was in the nature of an exception, and statutes providing for such exception must therefore be strictly construed.

It will be observed that the statutes do not provide that a school district with a population of 3,000 or more, at the last federal census may become an exempted village school district but that a district containing a village with a population as shown by the last federal census, of 3,000 or more, or a district which follows the procedure outlined in Section 4688-1, General Code, may become an exempted village school district.

I am informed that Warren Consolidated District, as created by the Jefferson County Board of Education, in the early part of 1929, contained a population of more than 3,000 and did contain a population of more than 3,000, at the time of the last federal census in 1920, but it did not contain a village which, at the last federal census had a population of 3,000 or more, nor had any attempt been made to comply with the provisions of Section 4688-1, General Code, prior to March 18, 1930, when its board of education passed a resolution deciding to be exempted from the supervision of the county board of education.

I am therefore of the opinion that the board of education of Warren Consolidated District had no authority on March 18, 1930, to pass a resolution as it did, deciding to be exempted from the supervision of the county board of education of Jefferson County School District, and that the action of the board at that time in that respect, was a nullity and that the district was still a part of the Jefferson County School District on April 15, 1930. The Jefferson County Board of Education on said date had the power to include in a new district then formed, Deyormanville and Lincoln districts of the Warren Consolidated Rural School District.

Although I do not have before me a map showing the boundaries of these several districts in detail, I understand that the territory included in the new district created by the Jefferson County Board of Education on April 15, 1930, is all contiguous. If it is not, the action of the board will of course be ineffective as to any territory which is not contiguous. Section 4685, General Code.

The action of the board in creating a new district from Dillonvale Village District, portions of Mt. Pleasant and Warren Consolidated Districts, might have been defeated by the filing of a proper remonstrance within thirty days from the time the action of the county board in creating the new district was taken. A proper remonstrance in this case would necessarily have had to be signed by a majority of the electors residing in the territory affected, that is a majority of the electors residing in Dillonvale District, Mt. Pleasant District and Warren Consolidated District. *Durst et al. vs. The State, ex rel Watmouth et al*, 119 O. S., 262.

From your statement, it appears that no such remonstrance was filed. That question is therefore not important here. The remonstrance filed by the residents of Deyormanville and Lincoln Districts, parts of the Warren Consolidated District, was of no effect whatever.

The statute, Section 4736, General Code, provides that upon the creation of a new district, by authority of the said statute, there shall be made an equitable division of the funds and indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. This was not done on April 15, 1930, when the board created the new district, or at any time since, according to your letter. It is not too late to make this equitable division, in my opinion. The making of the equitable division is a duty which the board is required to perform,

but there is no reason why it must be done at the same time the resolution is passed creating the district. In my opinion, the failure to do so at that time will not defeat the action taken.

Based on the foregoing discussion, I am of the opinion, in specific answer to your questions:

(1) The county board of education of Jefferson County School District possessed the power on April 15, 1930, to create a new school district by authority of Section 4736, General Code, and include in such district a portion of Warren Consolidated School District, which at that time claimed to be exempted from the jurisdiction of the county board, but which in fact was not so exempted.

(2) The filing of the remonstrance by a majority of the qualified electors of the Deyormanville and Lincoln School Districts had no effect whatever on the action of the county board of education of Jefferson County School District taken at their meeting of April 15, 1930, or at their meeting of May 17, 1930. I am reliably informed that the resident electors in the territory affected by the action of the board on April 15, 1930, were considerably more than one hundred and thirty.

(3) The county board of education of Jefferson County School District, on April 15, 1930, clearly meant to create a new school district, by authority of Section 4736, General Code.

(4) The failure of the county board of education of Jefferson County School District to make an equitable division of the school funds and debts among the districts affected by the creation of the new school district which was created by said county board on April 15, 1930, did not defeat the action of the county board so taken. There devolved on the said county board of education the duty to make this equitable distribution of the funds and indebtedness between the districts affected, but such distribution may lawfully be made at a later date.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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2036.

APPROVAL, BONDS OF RIPLEY VILLAGE SCHOOL DISTRICT, BROWN COUNTY, OHIO—\$30,000.00.

COLUMBUS, OHIO, June 26, 1930.

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

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2037.

PARK COMMISSIONERS—CONTRACTS OVER \$500.00 MUST FIRST BE APPROVED BY CITY BOARD OF CONTROL.

**SYLLABUS:**

*No contract may be entered into by a board of park commissioners created by authority of Section 4053, General Code, in excess of \$500.00, except the awarding thereof be upon the approval of the Board of Control.*