

"In regard to the number of trustees which shall be necessary to execute a deed for a cemetery lot, section 3448, supra, merely provides that such deed shall be executed 'by the trustees.' The general rule is set forth in 29 Cyc. 1434, wherein it is said:

'Where official authority is conferred upon a board of commission, composed of three or more persons, such authority may be exercised by a majority of the members of such board.'

In the case of *State, ex rel., vs. Wilkesville Township*, 20 O. S. 288, it was held that the execution of certain bonds by two township trustees when the third trustee was absent from the state, was sufficient compliance with the statute providing that 'the trustees may * * * issue bonds.' There is no provision in section 3448, supra, to the effect that these deeds shall be executed by all of the trustees, and the execution of such a deed by at least two members of the board, does, in my view, constitute a sufficient compliance with the section."

In the other opinion, that of Opinions of the Attorney General for 1929, volume II, page 1390, it was held in the third branch of the syllabus:

"Where there is a vacancy in the board of township trustees, two trustees constitute a quorum to transact such business as does not expressly require unanimous vote."

At page 1391 of the opinion it is stated:

"Coming now to your third question, viz., whether the remaining two members of the board of trustees can function until the third is appointed: The rule is that unless otherwise provided, a majority of the board of township trustees shall constitute a quorum to transact business. (*State vs. Wilkesville Tp.* 20 O. S. 288)."

In view of the foregoing discussion, I am of the opinion in specific answer to your question that under section 3370, General Code, two members of a board of township trustees, being a majority of such board, may, at any legal meeting of the board, by resolution, determine the size and location of the three road districts as provided for in paragraph 2 of such section and thereafter assign to each member of said board, by majority vote, the district in which each member must take charge of the maintenance and repair of the roads therein.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2293.

BOARD OF EDUCATION—CLERK—ELECTED BY BOARD—TERM MAY NOT EXTEND BEYOND LIFE OF BOARD.

SYLLABUS:

1. *Each board of education, upon its organization on the first Monday of January after the election of members of such board, in accordance with Section 4747, General Code, should elect a clerk.*

2. *A board of education is without authority to elect a clerk for a term extending beyond the life of the board.*

3. *Regardless of the length of term for which a board of education elects a clerk, that term will not extend beyond the time when the succeeding board of education organizes in compliance with Section 4747, General Code.*

COLUMBUS, OHIO, February 17, 1934.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

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

“The following is a copy taken from the Township Journal of the record on the hiring of the Clerk of the Township School Board:

‘Jan. 1, 1933, Monday.

Nominations for clerk.
 O. F. Ashworth nom. Ray Bobo
 Sec. by Niggemeyer
 No more nom.
 Roll Call
 Ashworth
 Yes Niggemeyer
 Ruth
 Burson
 Motion by Ashworth sec. by Ruth to pay Clerk \$175.00
 per year for clerk services.
 Roll Call
 Ashworth
 Yes Ruth No Niggemeyer
 Motion by Niggemeyer to pay the clerk 1% of the money
 paid out of the general funds beginning Jan. 1st, 1933,
 sec. by O. F. Ashworth.
 Roll Call
 Niggemeyer
 Ashworth
 Yes Ruth Bobo not voting
 Burson
 Feb. 7, 1933.

Motion by Ashworth sec. by Ruth to accept the Bond of
 Ray Bobo, clerk signed by Ray Bobo, Mary Bobo and Frances
 Biehl, amt. of bond \$500 for a period of 2 years. All vote Yes.’

I wish you would advise me whether or not this clerk, Ray Bobo, can insist on retaining his office for 1934, as the new Trustees have elected a new clerk and Bobo refuses to give up the books.”

Pertinent to your inquiry, is Section 4747, General Code, which reads as follows:

“The board of education of each city, exempted village, village and rural school district shall organize on the first Monday of January after the election of members of such board. One member of the board shall be elected president, one as vice-president and a person who may or may not be a member of the board shall be elected clerk. The president and

vice-president shall serve for a term of one year and the clerk for a term not to exceed two years. The board shall fix the time of holding its regular meeting."

The above statute clearly directs each board of education to organize on the first Monday in January after the election of members of such board, and to elect its officers including a president, vice-president, and clerk. The terms of office of the officers of the retiring board expire with the life of the board. A board of education is not permitted under the law to elect officers for terms which will extend beyond the life of the board electing them.

In an opinion of my predecessor, which will be found in the reported Opinions of the Attorney General for 1932, page 88, it is said:

"With respect to elected boards, the apparent intent of the law is that they shall elect their own officers and that they shall not elect them for terms running beyond the life of the board. This is evidenced by the provision that the term of a clerk be limited to two years at most, or for no longer time than until a new board organizes. It should be noted that the life of a board of education is two years. That is to say that the terms of some members on the board expire each two years and new members are elected, providing the scheme of electing boards of education, and of the organization of those boards, as set up by the school code of 1904, is carried out."

I am therefore of the opinion in specific answer to your question that the board of education for the school district to which you refer, that organized on the first Monday of January, 1934, should elect its own clerk, and that the former clerk has no right to the position, regardless of the length of term for which the former board had attempted to elect him.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2294.

PUBLIC DANCE—"BARBECUE" NOT GIVING PUBLIC DANCE WITHIN MEANING OF SECTION 13393, GENERAL CODE WHEN.

SYLLABUS:

A proprietor of a so-called "barbecue" who serves light lunches and refreshments, and who furnishes a small dance floor and permits his patrons to dance as an incident to the real business of the "barbecue" but does not advertise that he is conducting a dance, and charges no admission other than the cost of food and refreshments, and where the music is furnished by a music box which is operated by the placing of a coin in the machine by one of the patrons, is not giving a public dance within the meaning of section 13393, General Code.

COLUMBUS, OHIO, February 17, 1934.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

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