Generally, the property of institutions such as those enumerated in your letter is used exclusively for charitable purposes; but if not so used, their property does not come within the exemption defined in Section 5353 of the General Code.

Section 5349, General Code, provides that public schoolhouses and houses used exclusively for public worship, the books and furniture therein and the ground attached to such building necessary for the proper occupancy, use and enjoyment thereof, and not leased or otherwise used with a view to profit, public colleges and academies and all buildings connected therewith, and all land connected with public institutions of learning not used with a view to profit, shall be exempt from taxation.

It is clear that annuities, as such, do not come within the provisions of Section 5349, General Code, and therefore church schools are taxable unless they are institutions used exclusively for charitable purposes and come within the provisions of Section 5353, General Code. The same may be said in regard to missions and church extension work. It is evident that orphans' homes and homes for old people are not taxable if said homes come within the definition of institutions used exclusively for charitable purposes.

Specific facts in regard to the various associations and activities referred to in your communication are not stated and I am therefore unable specifically to answer your question in regard to the various associations and activities named in your letter; although ordinarily such associations are institutions owning property used exclusively for charitable purposes, and if so used such property is exempt from taxation. If upon ascertaining all the facts in connection with the annuities in question further advice from this department is desired, consideration will be given to such questions as you desire to submit.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1968.

BOARD OF EDUCATION—NO AUTHORITY TO ARBITRARILY DISMISS COUNTY SUPERINTENDENT—MUST FOLLOW SECTION 7701, GENERAL CODE.

SYLLABUS:

A county board of education does not have the power at its discretion or arbitrarily to dismiss a county superintendent of schools before the expiration of his term of appointment, but must proceed in the dismissal of such superintendent in accordance with the provisions of Section 7701, General Code.

COLUMBUS, OHIO, April 14, 1928.

HON. HOWARD J. SEYMOUR, *Prosecuting Attorney, Ravenna, Ohio.*

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

"On June 29th, 1927, you rendered at our request your opinion No. 675, covering the legality of the election of a county superintendent by a county

board of education at a special meeting. The question now arises in continuation of the above stated facts whether this appointment of a county superintendent for the period of three years at the March 19th special meeting was voidable, and whether the county board of education acted within its authority when at its regular meeting, July 15th, 1927, five days before the expiration of the time set by the statute, No. 4744, for the hiring of a superintendent, they entertained a motion to reconsider the appointment of March 19th and definitely rehired the county superintendent for a period of one year at a stated salary.

It develops that the appointment of March 19th aroused many protests from taxpayers to the board members, none of these, however, were in the form of written communications to the board. Under this state of facts, the county superintendent has served from August 1st up to the present time and the board is preparing the appointment of a successor from August 1st next. The county superintendent maintains that he has a definite three-year contract and cannot be removed until the end of the three-year term from August 1st, 1927, no charges having been laid against him before the board to which he had opportunity to defend himself. Would greatly appreciate your advising as to whether the board acted within its authority in reconsidering the three-year contract at its July 15th meeting, five days before the statutory period for hiring the superintendent, and two weeks before the term of employment commenced.

If the three-year term of employment is effective, by what method can the board remove the county superintendent?"

In Opinion No. 675 referred to in your inquiry, rendered to you under date of June 29, 1927, there was considered the question of the legality of the appointment of a county superintendent of schools which appointment had been made at a meeting of the county board of education, after notice to all the members of the board and their active participation in said meeting, which had been held one week later than the time for the regular meeting of the board, no meeting having been held at the last previous time for holding a regular meeting.

It was held in said opinion that even though a meeting of the board held as above stated, might be construed technically to be a special meeting, an appointment of a county superintendent at such a meeting, which was subsequently ratified by the board at its next regular meeting, was legal, if no protests were filed and no action taken questioning its legality. In the course of the opinion, I said:

"Relying upon the fact that the conflict of meetings on March 19th was inadvertent, and assuming that there has been no protest filed by an elector of the county, I am of the opinion that the irregularity in the method of the election of the county superintendent is not such that renders the same void. If, however, it was claimed by electors of the county that they were misled and had no opportunity to protest the election of the county superintendent, and there were good grounds for the protest, such election might be held by a court to be voidable."

It now appears, as stated in your present inquiry, that this same board of education, at a regular meeting held about four months later, viz. on July 15, 1927, undertook to rescind its former action by passing a motion to reconsider the appointment of the county superintendent formerly made and by affirmative action to re-appoint

the same person county superintendent of schools for *one* year instead of for *three* years as was done at the former meeting.

It does not appear what action was taken by the person appointed, by way of accepting the appointment, other than his entering upon and performing the duties of county superintendent of schools since August 1, 1927, the date when his appointment either for one or three years would have become effective. His entering upon and performing the duties of the office would no doubt amount to an acceptance of the appointment, if he had not formally accepted it in writing or other notice to the board or otherwise, but would not be conclusive as to which of the appointments he had accepted. In the absence of a showing of some other form of acceptance, his entering upon the duties of the office on August 1st, 1927, would probably be construed as accepting the later action of the board rather than the earlier.

If, however, after the appointment for three years had been made, the person appointed accepted the appointment, a contract existed between the board and superintendent which could not be set aside by the board by a mere reconsideration of the matter, without conforming to the method provided by statute for dismissing or discharging a superintendent of schools, who had been duly appointed to the position. The fact that the action of the board abrogating the first appointment was taken on July 15, 1927, whereas the term of appointment did not begin until August 1st, does not, in my opinion, make any difference. The contractual relation between the board and superintendent existed as soon as the appointment was made and accepted.

It was not meant by the language of my former opinion wherein I said that under certain circumstances therein stated, "such election might be held by a court to be voidable," that the appointment was voidable, in the sense that it might be voided at the whim of the board or the superintendent. As stated therein, if appeal were made to the courts at the proper time, and showing were made that the rights of the electors of a district had been prejudiced by the board's action in making an appointment in the manner it was made in this case, the court might consider the appointment to be voidable and set it aside.

If, as stated above, the person appointed for three years at the meeting held on March 19, 1927, accepted the appointment before the meeting of July 15, 1927, no action having been taken on the part of the electors to protest the appointment, as there appears not to have been done, the only means by which the superintendent could be dismissed would be by taking action in accordance with Section 7701, General Code, which reads as follows:

> "Each board may dismiss any appointee or teacher for inefficiency, neglect of duty, immorality, or improper conduct. No teacher shall be dismissed by any board unless the charges are first reduced to writing and an opportunity be given for defense before the board, or a committee therof, and a majority of the full membership of the board vote upon roll call in favor of such dismissal."

It will be noted by the terms of the above statute that before an appointee of a board of education may be dismissed, charges of inefficiency, neglect of duty, immorality, or improper conduct must be brought against the appointee, reduced to writing, and an opportunity given for defense before the board or a committee thereof.

In the recent case of *Christmann* vs. *Coleman*, 117 O. S. 1, 157 N. E. 486, it was held:

> "Section 7701, General Code, does not confer upon a county board of education power to dismiss a county superintendent of schools arbitrarily."

"In an action in quo warranto the respondent may justify his retention of the office of county superintendent of schools by proving that his dismissal and discharge therefrom by the county board of education, before the expiration of his term by appointment, was made arbitrarily and without any proof tending to support any of the charges made against him."

In the course of the opinion in the Christmann case, supra, the court said with reference to Section 7701, General Code,

"While neither county boards of education nor county superintendents of schools existed at the time of the enactment of that section, the section is in general terms and in the present tense, and we are of the opinion that it includes, by the words 'each board,' not only the boards of education then or theretofore provided for by statute, but also boards of education thereafter created; that by the words 'appointee or teacher' it includes not only appointees to positions which had then or theretofore been created and teachers for whose employment provision had then or theretofore been made, but also appointees to and teachers for positions thereafter created; that the office of county superintendent of schools having been created and provision having been made for the filling of such office by appointment by the board, and the requirement having been made that such county superintendent should teach, such officer, for the purpose of the authority in that section conferred upon the board of education, falls within either designation of 'appointee' or 'teacher.' * * * "

"The extent of the power of the county board of education to dismiss the county superintendent of schools is found in Section 7701, General Code, and there is found there no power to dismiss at the discretion of the board or arbitrarily."

In specific answer to your inquiry, I am of the opinion that if the person appointed county superintendent of schools at the meeting of March 19, 1927, accepted said appointment, by appropriate action, before July 15, 1927, his term of office continues for three years from August 1, 1927. The only means by which he may be removed before the expiration of his term of appointment is by proceedings in accordance with Section 7701, General Code. If, however, no acceptance had been made of the appointment made by the board on March 19, 1927, the board's action on July 15, 1927, although strictly not in proper form, would amount to the appointment of a superintendent for one year.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1969.

MINOR—MAY LEGALLY BE APPOINTED DEPUTY COUNTY RECORDER.

SYLLABUS:

A minor may legally be appointed to the position of deputy in the office of county recorder and perform the duties of the same.

COLUMBUS, OHIO, April 14, 1928.

HON. FRANK L. MYERS, *Prosecuting Attorney, Mt. Gilead, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, in which you ask my opinion upon a question therein stated, as follows: