

3845.

MEMBER BOARD OF EDUCATION—INELIGIBLE TO ACT UNTIL
HE SURRENDERS RIGHTS UNDER CONTRACT TO TRANSPORT
PUPILS—FAILURE TO QUALIFY CREATES VACANCY.

SYLLABUS:

1. *A person who has been elected as a member of a board of education and has a contract with said board to transport pupils can not legally qualify as a member thereof without surrendering his rights under the contract.*

2. *Upon the failure of a person elected as member of a board of education to qualify as required by law, a vacancy is created which the remaining members of the board are required to fill at its next regular or special meeting or as soon thereafter as possible.*

COLUMBUS, OHIO, December 11, 1931.

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon the following:

“At the last regular election Mr. B’s name was written in, and he was duly elected thereby as a member of the Madison Township Board of Education, Pickaway County, Ohio, with his term of office to begin the first Monday in January, 1932. Mr. B never before was a member of this Board of Education. At the time of his election and for a year prior thereto, Mr. B had a contract with the Board of Education of Madison Township aforesaid, to haul pupils to said school by truck. This contract was entered into a year or more ago, and contains a provision that it may be renewed at the end of each year, for another year, but not to exceed three years in all, at the option of Mr. B. Mr. B’s contract for this year will expire at the end of the school year in 1932, and by exercising his option he could again contract with said Board under like terms and conditions as in the original contract, for a period of another year. The present Board of Education under said contract cannot change the provisions of the same, if they accept Mr. B as a proper person thereunder.

The first question for your opinion is—whether or not Mr. B can continue on with his contract made with the old Board of Education and expiring in 1932 at the close of the school year, and at the same time qualify himself and become a member of that Board of Education in January, 1932? If this is answered in the affirmative, can Mr. B then exercise his option under his old contract and continue to transport pupils for the school year of 1932-1933?

The second question for your opinion is—if Mr. B cannot hold his old contract, above referred to, could he wait until the expiration of this school year before he would qualify as a member of said Board, or would the fact that he did not qualify by the first Monday in January create a vacancy therein, so that the balance of the Board of Education would be compelled to appoint a new member?”

Your question of course arises by reason of the provisions of Section 4757, General Code, which section reads as follows:

"Conveyances made by a board of education shall be executed by the president and clerk thereof. No member of the board shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board."

By reason of the plain terms of the above section, it is evident that no member of a board of education shall have a pecuniary interest in a contract such as you describe, during the time he is a member of said board. In some instances statutes prohibit the making of a contract by public officers during the term of office and for a designated period thereafter, but the statute under consideration states in positive language that no member of the board shall have an interest in any contract of the board. It follows that Mr. B can not qualify for the office unless he renounces his rights under the contract.

It is believed that the foregoing disposes of both branches of your first inquiry.

Coming to your second question, you are referred to Section 4748, General Code, which reads as follows:

"A vacancy in any board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy."

Section 4747, General Code, provides among other things that each rural board of education shall organize on the first Monday of January after the election of the members of the board.

The foregoing sections clearly disclose that when a person is elected as a member of a board of education and fails to qualify, a vacancy is created which the remaining members of the board are qualified to fill. It further is clear that the vacancy shall be filled at a regular or special meeting, as soon thereafter as possible.

In specific answer to your inquiries it is my opinion that:

1. A person who has been elected as a member of a board of education and has a contract with said board to transport pupils can not legally qualify as a member thereof without surrendering his rights under the contract.
2. Upon the failure of a person elected as member of a board of educa-

tion to qualify as required by law, a vacancy is created which the remaining members of the board are required to fill at its next regular or special meeting or as soon thereafter as possible.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3846.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE UNITED METAL PRODUCTS COMPANY OF CANTON, OHIO, FOR METAL PARTITIONS FOR STATE OFFICE BUILDING AT AN EXPENDITURE OF \$114,000.00 SURETY BOND EXECUTED BY THE UNION INDEMNITY COMPANY, NEW ORLEANS, LOUISIANA.

COLUMBUS, OHIO, December 11, 1931.

HON. CARMIE A. THOMPSON, *Chairman, State Office Building Commission, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the State Office Building Commission, appointed under Section 1 of House Bill No. 17, of the 88th General Assembly, passed March 14, 1929 (113 O. L., 59), and The United Metal Products Company of Canton, Ohio. This contract covers the construction and completion of contract for Metal Partitions (Branch AA), State Office Building, in accordance with Item No. 1 of the form of proposal dated November 12, 1931. Said contract calls for an expenditure of one hundred and fourteen thousand dollars (\$114,000.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. It is to be noted that the Controlling Board's approval of the expenditure is not required under House Bill No. 621 of the 89th General Assembly, appropriating the money for this contract. In addition, you have submitted a contract bond upon which the Union Indemnity Company of New Orleans, Louisiana, appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workman's Compensation have been complied with.

Finally, it appears that the Governor has approved all the acts of the Commission, in accordance with Section 1 of House Bill No. 17 of the 88th General Assembly.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,
Attorney General.