

against certain levies which would affect one way or the other the budget desired by the board of education, and those connected with school administration. Speaking upon the superintendent of schools in a city school district, Opinion 422, issued on June 23, 1919, to the Superintendent of Public Instruction, uses the following language on page 685, Opinions of the Attorney-General, Volume I, to wit:

"The superintendent of a school district, as indicated before, has been employed primarily as the executive officer of the board of education in its dealings with teachers, parents and pupils. In a great many matters *he is the agent of the board of education* and it is through him that complaints are received from the public.

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Relative to question 3, which reads: 'what is the interpretation of that portion of section 7703, which reads "and perform such other duties as the board determines," this means that the superintendent, as an employe of the board of education, shall *perform any other duties that the board placed upon him* that are reasonable and within the scope of school affairs and which are not prohibited by statute."

In reply to your inquiry you are therefore advised that it is the opinion of this department that under the provisions of section 4526 G. C., setting forth the powers and duties of the board of tax commissioners in a city, the position of superintendent of city schools is incompatible with the office of member of the board of tax commissioners (4523) in such city, and the two positions may not be held by one and the same person at the same time.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3292.

BOARD OF EDUCATION—MAY NOT PAY MUTUAL TELEPHONE COMPANY ASSESSMENTS.

A board of education may not pay mutual telephone company assessments.

COLUMBUS, OHIO, July 3, 1922.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your request for the opinion of this department on the question as to whether a board of education may pay mutual telephone company assessments. In answering this question your attention is invited to the recent decision of the Supreme Court in the case of Clarke vs. Cook, 103 O. S., —, decided on November 22, 1921, wherein a board of education was limited to doing those things for which authority was expressly granted by the statutes or could be clearly implied therefrom. Investigation shows that nowhere in the General Code is a board of education given any express authority to pay mutual telephone company assessments nor can such authority be implied. It is entirely possible that the reason for this failure to grant authority is because of the clear language of section 6 of article 8 of the Constitution of Ohio, which reads as follows:

"No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation or association; provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit. (Adopted Sept. 3, 1912.)"

You are therefore advised, in answer to your inquiry, that it is the opinion of this department that a board of education may not pay mutual telephone company assessments.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3293.

ARTICLES OF INCORPORATION OF INSURANCE COMPANY UNDER SECTION 9445 G. C.—FIVE INCORPORATORS MUST BE CITIZENS OF OHIO.

At least five of the incorporators of an insurance company organized under sections 9445 et seq. G. C., must be citizens of Ohio.

COLUMBUS, OHIO, July 3, 1922.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of June 29, 1922, with which you enclosed for approval the articles of incorporation of The Gold Bond Mutual Benefit Company, Cincinnati, Ohio, was duly received.

The articles disclose that the only statute under which this company could be incorporated is section 9445 of the General Code. The articles bear the signatures of only five incorporators, and recite that "a majority" of the incorporators are citizens of Ohio, whereas the statute clearly requires that at least five thereof must be citizens of this state. Hence, the articles should be corrected so as to show that the five incorporators are citizens of Ohio. The articles also state that the corporation is being organized under the "general corporation laws" of the state, whereas they should refer to section 9445, et seq. of the General Code, since those are statutes specially providing for the incorporation of the company.

We are therefore returning the articles to you for correction in the respects above outlined.

Respectfully,
 JOHN G. PRICE,
Attorney-General.