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SINKING FUND COMMISSIONERS OF SCHOOL DISTRICT—MAY BE ABOLISHED WHEN—SECTION 2295-14, GENERAL CODE, DISCUSSED—CLERK OF BOARD OF EDUCATION OF SCHOOL DISTRICT MAY ACT AS CLERK OF BOARD OF SINKING FUND COMMISSIONERS OF DISTRICT—BOARD MAY FIX SALARY OF CLERK.

SYLLABUS:

1. *There is no authority for the abolition of the board of sinking fund commissioners of a school district except that contained in Section 2295-14, General Code. By force of the terms of this section, a board of sinking fund commissioners of a school district is automatically abolished when all bonded indebtedness of the district incurred prior to January 1, 1922, is paid.*
2. *The clerk of the board of education of a school district may lawfully act as clerk of the board of sinking fund commissioners of the district, without extra pay.*
3. *A salary for the clerk of the board of sinking fund commissioners of a school district may be fixed by the said board.*

COLUMBUS, OHIO, May 16, 1933.

HON. JACKSON E. BETTS, *Prosecuting Attorney, Findlay, Ohio.*

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

“The Superintendent of the Arcadia School District inquired of me on behalf of the Board of Education, (1) if the sinking fund commission of the school district could be abolished, (2) if the clerk of the board of education could perform the work of the board of commissioners without extra pay, and (3) who determines the salary of the clerk of the sinking fund commission.”

A board of commissioners of the sinking fund for school districts in the state of Ohio is created by Section 7614, General Code, which section, after providing that the board of education of every school district shall provide by a tax levy for the payment of the annual interest on its bonded indebtedness, for the payment of its serial bonds as they mature and for a sinking fund for the extinguishment of its “other bonded indebtedness” provides further that the sinking fund for the extinguishment of its “other bonded indebtedness” “shall be managed and controlled by a board of commissioners designated as “the board of commissioners of the sinking fund of district.”

It further provides that this board shall be composed of five electors to be appointed by the common pleas court of the county in which the district is chiefly located, except that in city or village districts the board of commissioners of the sinking fund of the city or village may be the board of the school district. The commissioners are to serve without compensation and must give bonds such as the board of education shall require and approve, the cost of which bonds, together with all other necessary expenses of the commissioners, are to be paid by them out of the funds under their control.

The phrase "other bonded indebtedness", as used in the above statute, for which a sinking fund to be managed and controlled by sinking fund commissioners is to be established, refers to indebtedness created by bonds issued prior to January 1, 1922.

Former Section 2295-12, General Code (109 O. L. 344) provided in substance, that all bonds issued by any county, municipality, school district, township or other political subdivision, after January 1, 1922, should be serial bonds maturing in substantially equal installments. Inasmuch as there was no necessity for a sinking fund for the payment of such serial bonds the legislature as a part of the same act in which said Section 2295-12, General Code, was enacted, enacted Section 2295-14, General Code (109 O. L. 347). Said Section 2295-14, General Code, as then enacted, provided in part, as follows:

"The board of sinking fund trustees of any county or municipality or the board of sinking fund commissioners of any school district shall continue to exercise the powers provided in sections 2976-18 to 2976-27 inclusive, 4511 to 4522 inclusive, 3932 and 7613 to 7619 inclusive of the General Code and all other provisions of law relating to its powers, until all outstanding bonds of such county, municipality or school district to be retired by means of a sinking fund shall have been paid; and thereupon it shall be deemed to be abolished and its functions and powers relating to the purchase and sale of securities, receipt, deposit and investment of taxes, assessments and other funds raised for the payment of bonds and funded debts, the application of such funds to the payment of bonds and other indebtedness and all its other powers and functions as set forth in said provisions of law as amended in this act shall be deemed to be transferred to the treasurer of the county, municipality or school district, and all moneys, securities, and other assets then in the custody and possession of such board shall be transferred and delivered to such treasurer."

Said Section 2295-12, General Code, was repealed in 1927. Its provisions, however, were substantially incorporated in present Section 2293-12, General Code. Section 2295-14, General Code, a portion of which is quoted above, was amended at the session of the legislature following its first enactment. Its terms, so far as material, were not substantially changed upon its amendment. As so amended, and as it now exists, it expressly provides that the board of sinking fund commissioners of a school district shall continue until all outstanding bonds of the school district issued previous to January 1, 1922, shall have been paid, and thereupon said board of commissioners shall be deemed to be abolished and its functions and powers transferred to the treasurer of the school district. There are no other provisions of law directing or authorizing the abolition of a board of sinking fund commissioners of a school district.

It will be observed from the terms of Section 7614, General Code, that no express provision is made therein for the employment of a clerk. The statute does provide that necessary expenses of the commissioners shall be paid out of the funds under their control. Unless some one of the members of the board performed the clerical work necessary for it to properly function the board would necessarily have to have some clerical help to perform this work. I am of the opinion that the board would have implied authority to employ a clerk and if necessary, to pay that clerk. There is no reason why one of the members of

the board could not do this clerical work himself, nor is there any reason why the board could not accept such clerical assistance as might be given to it free of charge. If the clerk of the board of education performed this work for the sinking fund commissioners without extra pay, it would clearly be within the powers of the commissioners to accept his services. There is nothing incompatible between a clerkship of a board of sinking fund commissioners for a school district and clerkship for the board of education. The salary for a clerk of the sinking fund commissioners, if any is to be paid, should be fixed by the board.

In specific answer to your questions I am of the opinion:

1. There is no authority for the abolition of the board of sinking fund commissioners of a school district except that contained in Section 2295-14, General Code. By force of the terms of this section, a board of sinking fund commissioners of a school district is automatically abolished when all bonded indebtedness of the district incurred prior to January 1, 1922, is paid.

2. The clerk of the board of education of a school district may lawfully act as clerk of the board of sinking fund commissioners of the district, without extra pay.

3. A salary for the clerk of the board of sinking fund commissioners of a school district may be fixed by the said board.

Respectfully,

JOHN W. BRICKER,

Attorney General.

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LIBRARY ASSOCIATION—MAY CONTRACT TO RENDER LIBRARY SERVICE TO COUNTY AND MUNICIPALITY—COUNTY UNAUTHORIZED TO ESTABLISH BRANCHES IN CONJUNCTION WITH SUCH ASSOCIATION—SEVERABLE CONTRACT MAY BE ENFORCED AS TO VALID PART.

SYLLABUS:

1. *A library association which is the owner of a library and a building in which to house the same, and is partly maintained by taxes levied by a municipality and a county, is not such a library as is intended by Section 4005-1, General Code.*

2. *The board of county commissioners of a county may contract with a library association or other organization owning or having the full management or control of a library or a board of trustees appointed by authority of law and having the management or control of a library for the free use of the people of the county, notwithstanding the fact that said library association, organization or trustees have already contracted to furnish free library service to a municipality. The library must be maintained for the free use of all the residents of the county.*

3. *Where a contract has been entered into by a municipality or a board of county commissioners with the library association or other organization owning or having the full management or control of a library for the free use of said library for all of the people of a municipality or of the county, the amount*