484.

APPROVAL, TEN GAME REFUGE LEASES.

COLUMBUS, OHIO, June 5, 1929.

HON. J. W. THOMPSON, *Chief, Division of Fish and Game, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval as to form, the following leases which describe lands to be used for State Game Refuge purposes, as authorized under the provisions of Section 1435 of the General Code:

No.	Lessor.	Acres.
2002	J. Goodwin, Sharon Township, Medina County	50
2003	M. A. Arnold, Sharon Township, Medina County	60
2004	Vivian Sadler, Sharon Township, Medina County	103
2005	Thomas Waltz, Sharon Township, Medina County	25
2006	Clara and Chatfield Ott, Sharon Township, Medina County	135.50
2007	W. A. Raw, Sharon Township, Medina County	60
2008	E. R. Stauffer, Sharon Township, Medina County	211.50
2009	Vincent J. Waters, Sharon Township, Medina County	90
2010	H. L. Crane, Sharon Township, Medina County	121.35
2011	H. L. Crane, Sharon Township, Medina County	30.50

Upon examination, I have found said leases in proper legal form, and have endorsed thereon my approval as to form, and return them to you herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

485.

SCHOOLS—"CONSOLIDATED" DEFINED—HOW SUSPENDED SCHOOLS RE-ESTABLISHED—SALE OF VACATED BUILDINGS AFTER FOUR YEARS—EXCEPTIONS.

SYLLABUS:

1. *By a "consolidated school," as the term is used in Section 7730-1, General Code, as amended in 1925, is meant a school made up by the combining of two or more schools, brought about through the suspension of one or more schools, as authorized by Section 7730, General Code, and the assignment of the pupils of the suspended school or schools to another school which thus becomes a consolidated school.*

2. *Any school suspended by authority of Section 7730, General Code, shall be re-established upon the filing of a proper petition therefor in accordance with the statute, provided there is a suitable school building in the territory of such suspended school, as it existed prior to such suspension.*

3. *In order to protect the rights of the petitioners mentioned in Section 7730, General Code, the building and real estate located in the territory of a school which has been suspended by authority of said Section 7730, General Code, in which property the board of education has legal title, shall not be sold until after a period of four*

years has elapsed from the date of such suspension, unless the said building has been condemned for school purposes by the Director of Industrial Relations, or unless a new building is erected or is in process of erection in the immediate vicinity of the suspended school which will serve the territory of the suspended school in substantially the same manner as before suspension of the school, or unless the material of the schoolhouse so discontinued, or its equivalent in value is needed in the erection of a consolidated school or other school building to house the pupils of the suspended school.

COLUMBUS, OHIO, June 6, 1929.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

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

"The question has arisen in this county as to whether or not a rural board of education may suspend all of the one room schools in the district under Section 7730, and then move said buildings or tear the same down and erect a consolidated school within the district, and then transport the pupils to said consolidated school.

Section 7730-1 provides, among other things, that if the material of the school house, so discontinued, is needed in the erection of a consolidated school, or other school building, the school house, so discontinued, may be torn down, etc. The statute to me does not seem clear as to what is meant by a consolidated school. The question in my mind is 'In the event all of the one room schools in the district were suspended and the material used for the erection of a consolidated school at one place in the district, if that would not constitute practically the same as a centralized school, and it would require a vote of the people of the district?'

Under the Attorney General's Opinions of 1922, page 739, it would seem that said school buildings could not be moved or torn down until after the four year period from the time of the suspension thereof, however, Section 7730-1 provides that they may be torn down before said four year period has elapsed in the case of the erection of a consolidated school so that it seems to me the question resolves itself as to an interpretation of the statute as to what is meant by a consolidated school."

Sections 7730 and 7730-1, General Code, provide in part as follows:

Sec. 7730. "The board of education of any rural or village school district may suspend by resolution temporarily or permanently any school in such district because of disadvantageous location or any other cause, * * * Whenever such suspension is had on the direction of the county board of education then upon the direction of such county board, or upon the finding by the board of education ordering such suspension that such school ought to be re-established, such school shall be re-established.

Upon petition filed with a local board of education between May 1 and August 1 of any year signed by the parents or guardians of twelve children between seven and fifteen years of age, living in the district and enrolled in school, whose residences are nearer to a certain school which has been suspended than to any other school of the district, asking that such suspended school be reopened, the local board of education shall reopen such school for the ensuing school year provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension."

Sec. 7730-1. "In order to protect the rights of the petitioners mentioned in Section 7730, where a school has been suspended through either or any of the proceedings mentioned in such section, the school building and real estate located in the territory of such suspended school and in which property the board of education has legal title, shall not be sold by the board of education of the district until after four years from such date of suspension of said school unless the said building has been condemned for school use by the director of industrial relations of Ohio; *provided, however, that if a new building has been erected or is in process of erection to house the children of the territory affected, the building and grounds of such school so discontinued may be sold, and the money shall be used for the payment of the new building, for other permanent improvements or repairs, or be paid into the sinking fund, or if the material of the school house so discontinued is needed in the erection of a consolidated school or other school building, the school house so discontinued may be torn down, and the material used in the erection of the new school building or sold and the money applied as herein provided.* * * * " (Italics the writer's.)

For many years the law has permitted the consolidation of schools when it has appeared advantageous to do so. In 1878 when many school districts consisted of several subdistricts the Legislature passed an Act in which it was provided that "two or more subdistricts may be consolidated." (75 O. L. 120, Section 20.)

Similar provisions are contained in subsequent revisions of the school laws. Upon the adoption of the school code of 1914 subdistricts were abolished. However, the Legislature then recognized that school districts, particularly rural districts, usually contained a number of schools that had formerly been in subdistricts, and that district school systems were maintained by the conducting of school at a number of places in the districts.

Previous to 914, there had been in force laws authorizing the "centralization" of schools by vote of the people, in township districts, and this same right was preserved in the Act of 1914 as to rural school districts, by Section 4726, General Code (104 O. L. 139), as also was the right of boards of education in either rural or village school districts to suspend any or all schools of such districts and provide for the conveyance of the pupils who formerly had attended such suspended school to another school in the same or another district. (Section 7730, General Code, 104 O. L. 139).

Although the words "consolidate" or "consolidated" did not appear in Section 7730, General Code, as enacted in 1914, or in subsequent revisions of the statute, it generally has been considered that when a school is suspended and the pupils conveyed or assigned to another school the latter school is spoken of as a "consolidated school," as distinguished from a "centralized school" established by authority of popular vote, in accordance with Section 4726, General Code.

The term "consolidated school" as used by the Legislature upon adoption of the school code of 1914, appears to have been used to mean a school with more than one schoolroom, in contradistinction to one room schools. This seems to have been the meaning attributable to the term as used in defining elementary schools of the first and second grade. (Section 7655-3 and 7655-4, General Code, 104 O. L. 127 and 128).

Former Attorneys General in applying the term "consolidated" to schools, used the word in its broad sense as meaning union or joinder of schools effected by authority of Section 7730, General Code, thus distinguishing a school, maintained for the schooling of pupils from suspended schools in one or more other schools to which the pupils are assigned, from a "centralized school" established in accordance with Section 4726, et seq.

In an opinion reported in Opinions of the Attorney General for 1916, Volume I, page 498, after discussing the provisions of Section 4726, General Code, with respect to centralization of schools, it is said:

> "I might add that the board of education of a rural school district may effect this same result under provision of Section 7730, G. C. (106 O. L. 398), without a vote of the people by suspending all of the schools in said district and conveying the pupils attending such schools to centralized schools established by said board of education at such points in said district as said board in the exercise of its discretion may determine."

In Opinions of the Attorney General for 1917, Volume I, page 305, is reported an opinion, the syllabus of which reads as follows:

> "When centralization is had as provided by General Code, Section 4726, it applies to the entire school district affected and the electors of the entire district shall be permitted to vote.
>
> Two or more schools are consolidated or united under the provisions of Section 7730, G. C., by the board of education without vote."

See also Opinions of the Attorney General for 1919, Volume I, page 796; Volume II, pages 1536, 1593 and 1597. In the Opinion of 1919, Volume I, page 796, the distinction between centralization and consolidation was considered, and it was there held as stated in the syllabus:

> "The question of centralization of schools must be submitted to the whole of a rural school district and not to a part of such district.
>
> Centralization is the bringing together of all the schools of a township or rural district while consolidation is the combining of two or more schools brought about through suspension. Questions of centralization of schools are governed by Sections 4726 and 4726-1, G. C.; consolidation of schools is accomplished under Section 7730, G. C."

In Opinion No. 2166, rendered under date of May 28, 1928 by my immediate predecessor it is said:

> "Consolidation of schools by the suspension of certain schools and the transportation of the pupils residing in the territory of the suspended school to other schools may be accomplished by virtue of the provisions of Section 7730, General Code, without submitting the same to a vote of the electors residing in the territory effected by such consolidation."

From the foregoing, and upon consideration of the context of Section 7730-1, General Code, it seems clear that the term "consolidated," as used in that section, refers to a school organized and maintained from the union or joinder of two or more schools, brought about by reason of the suspension of one or more schools, and the housing of the pupils of the suspended school or schools in one school center, regardless of the number of rooms in which the school is conducted.

Section 7730, General Code, as enacted in 1914, made no provision for re-establishing a school which had once been suspended, neither did it prohibit such re-establishment or provide that the suspension amounted to an abandonment of the school. In fact, the use of the term "suspended" would imply the possibility of re-establishment. At any rate, if an intention existed, to re-establish a school which had been

suspended, the matter was left to the discretion of the authorities in charge of the school.

In 1915, the statute was amended by the insertion of the following proviso:

> "Provided, however, that any suspended school as herein provided, may be re-established by the suspending authority upon its own initiative, or upon a petition asking for re-establishment, signed by a majority of the voters of the suspended district, at any time the school enrollment of the said suspended district shows twelve or more pupils of lawful school age."

The Supreme Court of Ohio in the case of *State ex rel.* vs. *Board of Education,* 95 O. S. 367, held that the word "may" as used in the above proviso should be read "shall" and that the duty of a board of education to re-establish a suspended school, when proper petition had been filed therefor in accordance with the statute, was mandatory. In the course of the opinion, Judge Johnson said:

> "It will be observed that in this section there is no reference to centralization, nor to the abolition entirely of the suspended district. The use of the term 'suspend' necessarily implies the possibility of a revivor or re-establishment, and the terms of the proviso indicate, of course, that the legislature contemplated the reopening of any 'suspended school'."

While I know of no reported case or opinion of this office wherein the question arose as to the rights of the petitioners mentioned in Section 7730, supra, when a school building no longer existed for the suspended school, apparently some difficulty had been encountered in this respect by reason of school boards disposing of the school buildings after suspending schools, or the buildings having been destroyed or rendered unfit for use by reason of the ravages of time or the elements, or for some other cause, thus rendering it impractical and in many instances almost impossible to re-establish the school, although the duty, in accordance with the holding of the Supreme Court and the mandatory language of the statute itself as amended in 1917 (107 O. L. 638), wherein the word "may" was changed to "shall," was mandatory upon the filing of the proper petition therefor.

The Legislature thereupon, in 1920, amended Section 7730, General Code, by adding, to the provision for the re-establishment of a suspended school upon petition, the proviso; "provided there is a suitable school building in the territory of such suspended school as it existed prior to suspension." (108 O. L. Part II, 1172).

At the same time, Section 7730, General Code, was amended as noted above, in 1920, Section 7730-1, General Code, was enacted (108 O. L. Part II, 1173). The purpose of the latter section, as stated in the statute itself, was, "to protect the rights of the petitioners in Section 7730, General Code."

As then enacted, said Section 7730-1, General Code, provided that under no circumstances should the school building and real estate located in the territory of a suspended school be sold until after four years from the date of the suspension of the school, unless the school building had been condemned for school purposes by the Chief Deputy of the Division of Workshops and Factories and Public Buildings. The additional proviso in Section 7730-1, General Code, underscored in the quotation of the statute above, was inserted by amendment in 1925 (111 O. L. 500).

It will be noted that this proviso sets forth two situations under either of which the rights of the petitioners to have a school re-established in the manner provided for in Secion 7730, General Code, are lost. First: "If a new building has been erected or is in process of erection to house the children of the territory affected." Second: "If the material of the school house so discontinued is needed in the erection of a consolidated school or other school building."

In the former case, it is provided that the "buildings and grounds of such school so discontinued may be sold." In the latter case "the school house so discontinued may be torn down and the material used in the erection of the new school building, or sold, and the money applied as herein provided." Apparently, the clause with respect to the application of the money as herein provided, refers to the application of the money set forth in the first proviso, which says that "the money shall be used for the payment of the new building, for other permanent improvements or repairs, or be paid into the sinking fund."

No mention is made in the last portion of the proviso of selling the school lot, but obviously, if the building is torn down there does not remain a "suitable building in the territory of such suspended school as it existed prior to such suspension," and therefore, the school could not be re-established in accordance with the terms of Section 7730, supra, and there would not be any reason why the lot of land on which the building stood should be kept any longer.

The trend of legislation pertaining to this subject as shown by its history, seems clearly to have been, at least until 1925, to preserve to school patrons the right to demand the privilege of attending a school in their immediate neighborhood. This is stated in Section 7730, General Code, as last amended in 1921 (109 O. L. 288), as preserving this right to those school patrons who live "nearer to a certain school which has been suspended than to any other school of the district."

The purpose of the provisions of the statute giving to the patrons of the school the right to have the school re-established, and requiring the board of education to hold the school buildings for a period of four years, for that purpose, is, as stated by the Supreme Court in *State ex rel.* vs. *Board of Education,* 95 O. S. 367, at page 375, to secure to the residents of the rural or village school district which has twelve or more pupils of lawful school age, the privilege of residents of other similar districts, that have not been centralized by affirmative vote of the people pursuant to the statute with reference to centralization; that is to say, that where the schools have not been centralized by the affirmative vote of the people, and the board of education takes it upon itself to consolidate the schools and in the plan of consolidation suspends certain schools, the residents, having not participated in a vote of centralization which would result in the suspension of their school, shall have saved to them the right, by way of petition, to have the school reopened and thus secure for them the same rights upon re-establishment of the school as do residents in other districts where the schools have not been suspended.

Bearing in mind the evident intent of the Legislature, as stated by the Supreme Court, and the clear purpose of the legislation on this subject, as disclosed by its history, I have no difficulty in reaching the conclusion that in the first part of the proviso in Section 7730-1, General Code, above referred to, wherein the language "a new building has been erected or is in process of erection" is used, that language refers to a building in substantially the same location as the old building, that is, a building which would serve the patrons of the district in a manner similar to that which the old building served them, and I so held in Opinion No. 129, rendered under date of February 27, 1929, wherein it is stated in the second branch of the syllabus:

> "The expression used in Section 7730-1, General Code, 'provided however that if a new building has been erected or is in process of erection to house the children of the territory affected, the building and grounds of such school so discontinued may be sold' will be construed to mean a new building in substantially the same location as the old, to the end that the residents of the territory affected will have substantially the same school privileges as before, so far as attending school is concerned, upon the erection of the new building."

Moreover, this conclusion is fortified by the fact that the term "consolidated school" is not used in this portion of the proviso, and if this language were to be construed to mean the erection of a consolidated school building the second portion of the proviso would not have been necessary. The first part of the proviso would then include all cases which could possibly come within the second portion of the proviso, when, as a matter of fact, they were both incorporated in the statute at the same time.

I do have difficulty in reconciling the second part of the proviso above referred to with what seems to have been the obvious intent of the Legislature in enacting the legislation with reference to this subject as gathered from its history and the expressions of the Supreme Court in the case of *State ex rel.* vs. *Board of Education,* supra, and especially is it difficult to reconcile this portion of the statute with the first line of the statute. This seems to me like taking away with one hand what is offered with the other, as from a practical standpoint, there could never exist a situation in which money for the erection of a consolidated school building or any other school building is not needed. Such buildings, as everyone knows, are constructed with borrowed money, the proceeds of bond issues, and of course while the material itself in an old school house might not be needed in the erection of a consolidated school building, its equivalent in money, if it had any value, would always be needed, and for that reason, if the statute is to be construed in accordance with its plain terms, it practically destroys all rights which petitioners mentioned in Section 7730, General Code, would have.

The fundamental purpose of providing that boards of education shall not sell school buildings and school lots, of schools that are suspended by authority of Section 7730, General Code, is, as stated in the statute, "in order to protect the rights of the petitioners mentioned in Section 7730, General Code," and apparently the Legislature did not intend to take away that protection else that portion of the statute would not have been retained in the amended statute of 1925. In fact if the rights of the petitioners are not to be protected, the simplest and most effective way of taking that protection away from them would have been to repeal Section 7730-1, General Code, entirely. Apparently, the Legislature meant the language of the amendment to be reconcilable with the other portions of the statute and with Section 7730, General Code, which was not amended in any way at that time. If the language of the proviso above referred to is positively irreconcilable with the idea of protecting the rights of the petitioners mentioned in Section 7730, General Code, the rule of construction followed in *Industrial Commission of Ohio* vs. *Hilshorst,* 117 O. S. 337, might well be applied, which if applicable, would render the second portion of the proviso nugatory, and justify its being entirely disregarded. The rule of construction referred to, as stated in the second branch of the syllabus of the Hilshorst case, supra, is as follows:

> "Where the provisions of an act are in irreconcilable conflict, that provision which is most in harmony with the fundamental purpose of the statute must prevail."

Are these different provisions of the statute irreconcilable? Is there not a possible construction to be placed on the language of the proviso referred to, so as to harmonize it with the fundamental purpose of the statute? I think there is, although to do so will confine the application of the provision that school property of suspended schools must be held for four years to protect the rights of the petitioners mentioned in Section 7730, General Code, within narrow limits.

The primary rule for the construction of statutes is to give effect to the intention of the Legislature, and that intent is to be gathered from the construction of the

statute or act as a whole, giving effect to each and every part of the statute or act, and to the language of the different parts of the act, by reconciling each part with every other part, if at all possible.

There may be instances of suspension of schools and assignment of the pupils thereof to other schools where no school building is about to be, or need be erected, where the school facilities so far as buildings are concerned, are ample to house all pupils of the suspended district without erecting a new building. There also may be instances where, even though a new building is to be erected to house the pupils of the suspended district, ample funds are provided therefor before the school is suspended, so that the materials in the school building of the suspended school will not be needed for the consolidated school or other building which is to be erected. Under those circumstances, clearly, the portion of the proviso referred to would have no application, and to that extent the terms of the proviso may be reconciled with the principle of protecting the rights of the petitioners mentioned in Section 7730, General Code, by holding the school property of suspended schools for four years before disposing of it.

The language of the statute is clear, however, and admits of but one construction in cases where the material of a school house, discontinued by reason of the school having been suspended by authority of Section 7730, General Code, is needed in the erection of a consolidated school or other school building. In such cases the schoolhouse so discontinued may be torn down and the material used in the erection of the new school building, or sold and the money applied upon the payment of the new building, for other permanent improvements or repairs, or be paid into the sinking fund, and in such cases, inasmuch as the building is torn down, and no suitable building longer exists for the re-establishment of the school, the rights of the petitioners mentioned in Section 7730, General Code, are cut off and there is no necessity for the holding of the school lot for a period of four years, thus permitting the board to dispose of the school lot within the four-year period.

I am therefore impelled to the conclusion that the provisions of Section 7730-1, General Code, requiring school boards to hold school buildings and school lots for four years after the date of the suspension of such school, in order to protect the rights of the petitioners mentioned in Section 7730, General Code, are applicable only in cases where a new school building is not erected in the immediate vicinity of the suspended school to house the children of the suspended school, or where the material of the schoolhouse so discontinued is not needed in the erection of a consolidated school or other school building.

In specific answer to your inquiry, as to what is meant by a consolidated school, as the term is used in Section 7730-1, General Code, it is my opinion that "consolidated school" as there used, means a school made up by the combining of two or more schools brought about through suspension of schools as authorized in Section 7730, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

486.

APPROVAL, NOTES OF CINCINNATI CITY SCHOOL DISTRICT, HAMILTON COUNTY, OHIO—$325,000.00.

COLUMBUS, OHIO, June 6, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.