

2233.

APPROVAL, BOND OF LEON C. HERRICK, DIRECTOR OF HIGHWAYS AND PUBLIC WORKS, IN THE SUM OF \$10,000, WITH NEW AMSTERDAM CASUALTY COMPANY, SURETY.

COLUMBUS, OHIO, July 2, 1921.

HON. HARRY L. DAVIS, *Governor of Ohio, Columbus, Ohio.*

DEAR GOVERNOR:—Attached I transmit, with my approval endorsed thereon as to form, the bond of Leon C. Herrick in the sum of \$10,000, with New Amsterdam Casualty Company as surety, covering the faithful performance by Mr. Herrick of his duties as director of highways and public works.

By the provisions of section 154-14 the bond upon receiving your approval as to security and amount, should be filed in the office of the secretary of state.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2234.

SCHOOLS—SUPERINTENDENT OF EXEMPTED VILLAGE SCHOOL DISTRICT MAY BE ELECTED FOR TERM OF NOT LESS THAN ONE YEAR NOR MORE THAN FOUR YEARS—SEE SECTION 7691 G. C.

A superintendent of an exempted village school district may be elected for a term of not less than one year nor more than four years, pursuant to section 7691 G. C.

COLUMBUS, OHIO, July 2, 1921.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of the following request:

“The following is submitted to you for an opinion:

When and for what length of time may a superintendent of an exempted village school district be employed?”

Section 7690 G. C., as recently amended in H. B. 111, 109 Ohio Laws, reads as follows:

“Each city, village or rural board of education shall have the management and control of all of the public schools of whatever name or character in the district except as provided in laws relating to county normal schools. It may elect, to serve under proper rules and regulations, a superintendent or principal of schools and other employes, including, if deemed best, a superintendent of buildings, and may fix their salaries. * * *.”

Section 7702 G. C. reads, in part, as follows:

"The board of education in each city school district at a regular meeting, between May 1 and August 31, shall appoint a suitable person to act as superintendent of the public schools of the district, for a term not longer than five school years, beginning within four months of such appointment and ending on the 31st day of August. * * *"

Section 7703 G. C., as recently amended in H. B. 180, 109 Ohio Laws, page 553, reads as follows:

"Upon his acceptance of the appointment, such superintendent, subject to the approval and confirmation of the board, may appoint all the teachers, and for cause suspend any person thus appointed until the board or a committee thereof considers such suspension, but no one shall be dismissed by the board except as provided in section seventy-seven hundred and one. But any city or exempted village board of education, upon a three-fourths vote of its full membership, may re-employ any teacher whom the superintendent refuses to appoint. Such superintendent shall visit the schools under his charge, direct and assist teachers in the performance of their duties, classify and control the promotion of pupils, and perform such other duties as the board determines. He must report to the board annually, and oftener if required, as to all matters under his supervision, and may be required by it to attend any and all of its meetings. He may take part in its deliberations but shall not vote."

Section 4679 G. C., as amended in H. B. 180, 109 Ohio Laws, page 552, reads:

"The school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts, rural school districts and county school districts."

A careful search of the school laws amended by acts of the last legislature has been made, and no provision is to be found that specifically states the term for which the superintendent of an exempted village school district is to be employed. Nor is there a statement in the law that specifically relates to the length of the term of the superintendent of a village school district.

Section 4679 G. C., supra, creates a new kind of school district, to-wit, an exempted village school district. Having existed without being formally named in the law as a separate district since the adoption of the school code in 1914, such district is not unknown or unfamiliar, being new only as the legal name of the district.

Section 4688 G. C., as amended in H. B. 180, 109 Ohio Laws, page 552, reads:

"The board of education of any village school district containing a village which according to the last census had a population of three thousand or more, may by a majority vote of the full membership thereof decide to be exempted from the supervision of the county board of education. Such village school district by notifying the county board of education of such decision before May first in any year, shall be exempt from the supervision of the county board of education for the following school year which begins September first thereafter. The village once so exempted shall be styled an exempted village school district and shall remain so until the board of education thereof by a majority vote of the full membership determines that

it desires to be supervised by the county board of education and notifies the county board of education on or before May first in any year to that effect."

As amended this section, except for the declaration that "once so exempted shall be styled an exempted village school district," is not different from the repealed section. Under its provisions any village having a population of three thousand or more may be an exempted school district one year and a village school district the next, if its board so decides. Specifically created and catalogued among Ohio school districts, this formality gives its distinction when districts are named in the law that must be noticed. Though named in the law, it is created only by the votes of three-fourths of the full board membership. Its chief distinction is that it becomes exempt from supervision by the county board of education. What other differences there may be are left by the law to the inference and implication of the language of the statute. The laws that before specifically referred to village districts, which might or might not be exempted districts, no longer apply to exempted village school districts unless such exempted village districts are mentioned therein.

In section 4679, *supra*, appears the specific mention of exempted village school districts; section 4688, *supra*, provides for exemption from supervision of the county board of education; section 7705, *supra*, provides for the re-employment of a teacher not appointed by the superintendent of a city district or by an exempted village district; section 7858-1 G. C., as amended in H. B. 180, 109 Ohio Laws, says, in part: "The board of education of an exempted village school district may by resolution provide for a board of school examiners. Such board shall consist of the superintendent of schools of the district," etc.; and in section 7700 G. C., as amended in H. B. 143, 109 Ohio Laws, in the last sentence says: "The superintendent of public instruction shall send each month to the county, city and exempted village superintendents of the state a list of superintendents, principals or teachers whose certificates granted by the state board or local boards of examiners have been suspended, or where cause exists for suspension of such certificates."

In fact, in so far as a search of the amended school laws is concerned, no other sentences or phrases of the law, except those hereinabove quoted, state or hint that an exempted village school district may have a superintendent. If it be not inferred that such exempted village school districts may have a superintendent, then these sentences are meaningless in so far as they refer to such exempted village districts. It is not to be presumed that the legislature in enacting a law does a vain thing, and it is the presumption that where possible at all statutes are to be given force and effect. So it must be said that the law contemplates the election of a superintendent by the board of education for exempted village school districts.

Section 7705 G. C., though amended in H. B. 200, 109 Ohio Laws, reads:

"The board of education of each village and rural school district shall employ the teachers of the public schools of the district, for a term not longer than three years, to begin within four months of the date of appointment. The local board shall employ no teacher for any school unless such teacher is nominated therefor by the county or assistant county superintendent except by a majority vote of its full membership. In all high schools and consolidated schools one of the teachers shall be designated by the board as principal and shall be the administrative head of such school."

This section is the same as before amended in so far as the term of teachers in the districts named therein is concerned. And it was under the force and effect of this statute before amendment that the practice of electing a superintendent of a village school district for a term not to exceed three years grew up, though this law spoke only of teachers then, as it now does.

Section 7690 G. C., *supra*, gives control of the schools into the hands of the board of education, and provides that it may elect a superintendent, principal, and other employes, but like section 7705, *supra*, it names only city, village and rural boards. Exempted village school districts are not named.

Section 7691 G. C. reads:

“No person shall be appointed as a teacher for a term longer than four school years, nor for less than one year, except to fill an unexpired term, the term to begin within four months of the date of the appointment. In making appointments teachers in the actual employ of the board shall be considered before new teachers are chosen in their stead.”

It is provided that no person shall be appointed a teacher for a term longer than four years or less than one year, except to fill an unexpired term, and while it speaks, perhaps, only of persons as teachers, yet the duty imposed is one for the board of education to perform, and since the board may employ a superintendent by force of section 7690 G. C., by analogy such person so employed will come under the provisions of section 7691 G. C. as to term, unless otherwise excepted therefrom.

Section 7691 G. C. is a general section, applying to all districts, being older in point of enactment than section 7702 or 7705, which refer, respectively, to city and village and rural school districts only. So also in section 4744, which provides for terms for county superintendents, as well as in section 4739, as amended in H. B. 200, 109 Ohio Laws, providing for terms of assistant county superintendents, formerly called district superintendents.

It will be observed that this general section 7691, as to terms is modified by the sections referred to in the above paragraph, the term of the city superintendent being not to exceed five years, that of the village, county, assistant county and rural district superintendent being not to exceed three years, and these sections must be read as excepting said terms from the term laid down in the general and older section 7691; that is, sections 7702, 7705, 4744 and 4739 being later enactments than section 7691, specifically naming certain districts from which exempted village school districts are excluded, modify the terms of persons employed by the board of education.

In the absence of a statement of a specific term for exempted village school districts, and since it must be presumed that the law intends such districts to have superintendents, the school statute in every other case placing a term limit on all persons employed as teachers or superintendents, by analogy it follows that the superintendent of an exempted village school district has a term, and has the term set out in section 7691 G. C.

It is therefore the opinion of this department that a superintendent of an exempted village school district may be elected by the board, and for a term of not less than one year nor more than four years, pursuant to section 7691 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General,