to the lawful exercise of the authority of removal. The provision of Civil Code 1910, §264, Par. 3, is not applicable to such a case."

To the same effect, see *Abrams* v. *Horton,* 18 App. Div. 208, 45 N. Y. Supp. 887; *Parsons* v. *Breed,* 126 Ky. 759, 104 S. W. 766; *State, ex rel. Moore* v. *Archibald,* 5 N. Dak. 359, 66 N. W. 234; *Barber* v. *County Judge,* 85 W. Va. 359.

In 46 Corpus Juris, p. 964, it is stated that when the term of office is not fixed by law, the officer is regarded as holding at the will of the appointing power "even though the appointing power attempts to fix a definite term." Again at p. 985 of the same volume, it is said that:

> "The implied power to remove cannot be contracted away, so as to bind the appointing bodies to retain an officer for a definite fixed period."

As heretofore indicated, however, the authorities on this point are not uniform. In Michigan a different rule prevails, since in that state appointments for fixed periods appear to be favored, and the policy of removal at all is almost entirely rejected. *Hallgren* v. *Campbell,* 82 Mich. 255; *Speed* v. *Detroit,* 97 Mich. 198.

The case of *Wiyiarch* v. *Newark,* 4 O. A. 294, is contrary to the general weight of authority established in the other states upon this subject and also contrary to the decision of the Supreme Court in the case of *State* v. *Craig,* supra. This appellate case held as set forth in the syllabus:

> "The statutory provision that all appointees of the board of health 'shall serve at the pleasure of the board,' does not give authority to the board to discharge without cause one appointed for a specified term, and one so discharged may upon tender of his services recover the salary accruing for the remainder of the term."

In its opinion, the Court of Appeals did not refer to or mention a single case in support of its decision, and since the decision is contrary to the weight of authority outside of Ohio and contrary to the principles established by the Supreme Court in the case of *State* v. *Roney* and *State* v. *Craig,* supra, it is not, in my view, controlling.

It is therefore my opinion in specific answer to your inquiry that when a board of elections has appointed an assistant clerk for a definite term, such clerk may be summarily removed by the board at any time prior to the expiration of said term, there being no legal authority for the appointment for a definite term and the board having express authority to remove its assistant clerks.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3263.

BOARD OF EDUCATION—RURAL AND VILLAGE SCHOOL DISTRICTS —POWER TO EMPLOY TEACHER BY MAJORITY VOTE WHEN NOMINATION NOT MADE BY COUNTY SUPERINTENDENT OF SCHOOLS OR HIS ASSISTANTS.

SYLLABUS:

Boards of education in rural or village school districts may employ a teacher to teach in the schools of the district, regardless of any nominations that may have been made by the county superintendent of schools or his assistants, or whether any such nomination has been made, providing it does so by the affirmative action of a majority of the full membership of the board.

COLUMBUS, OHIO, May 27, 1931.

HON. CALVIN CRAWFORD, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge receipt of a request for my opinion, over the signature of one of your assistants, which request reads as follows:

> "A question has arisen as to the interpretation of G. C. 7705 upon which this office desires your opinion, because the question involves the legality of contracts between teachers and Boards of Education, and the writer is not quite sure from your previous opinion, namely, opinion No. 2040, returned June 28, 1930, as to your implications on the question involved. Said opinion is clear as far as it goes, but the local county superintendent insists that before the Board of Education may employ a teacher by a majority vote of the full membership of the Board there must be a nomination first submitted by the county superintendent or his assistant, and said nomination rejected, then, he insists, the Board may proceed by a majority vote of the full membership, to employ."

Opinion 2040, to which you refer, held, as stated in the syllabus:

> "By force of section 7705, General Code, boards of education in rural and village school districts may employ the teachers of the schools of the district though such teachers are not first nominated by the county or assistant county superintendent of schools, providing such employment is done by a majority vote of the full membership of the board."

As the statute, Section 7705, General Code, contains no language, as I read it, requiring a board of education to first formally reject the nomination of a teacher made by a county or an assistant county superintendent of schools before exercising its power to employ a teacher by a majority vote of its full membership, I did not feel it necessary to discuss that question. Said Section 7705, General Code, reads as follows:

> "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 school 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."

The above statute was enacted in practically its present form in 1914, upon the adoption of the school code, which provided for county supervision of schools. (104 O. L. 129-144). At that time, the statute provided that teachers might be

nominated by the district superintendent of the supervision district in which the school was located. Upon the abolition of districts and district superintendents, the statute was amended to read as it now does, substituting for the words "district superintendent of the supervision district in which such school is located" the words "county or assistant county superintendent."

Prior to 1914, the statute extended authority to the board of education of each village, township and special school district to employ the teachers of the public schools of the district without their being nominated by anyone.

It will be observed that the statute, in its present form, extends to the board of education of each village and rural school district the power to employ the teachers of the public schools of the district. The next sentence contains a limitation on that power together with an exception to the limitation. While it is a general rule of law that "exception" must be strictly construed, yet there is nothing in the wording of the statute which may be construed strictly or otherwise to indicate a legislative intent that, before the board may exercise its power by a majority vote of its full membership to employ a teacher who has not been nominated by the county or assistant county superintendent, it must first formally reject a nomination that might have been made by the county superintendent or an assistant county superintendent; nor may such an intention be gathered upon consideration of the history of the statute.

We are not justified in reading something into the statute which is not there. The language of the statute is clear, to the effect that the board of education is the employing authority but, unless it acts by a majority of its full membership, it may not employ a teacher except upon the nomination of the superintendent or assistant county superintendent of schools, and I am of the opinion that the employment of a teacher may be made by a majority vote of the full membership of the board whether there has first been submitted a nomination by the county superintendent or his assistant, or not, and if such a nomination has been made, it is not necessary that that nomination be formally rejected before the board may exercise its power to employ a teacher who has not been nominated by a majority vote of its full membership. If the rule were otherwise there would exist no power whatever to employ a teacher if the county superintendent or one of his assistants failed or refused to make a nomination at all.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3264.

TAX AND TAXATION—EXEMPTION FROM TAXATION OF PERSONALTY—SECTION 5360, G. C., APPLICABLE TO ALL OHIO RESIDENTS WHETHER OR NOT HOUSEHOLDERS.

SYLLABUS:

Section 5360, General Code, extends the tax exemption therein provided, to every person who is a resident of this State, irrespective of whether such person is, or is not a householder.