

Under Section 2845, I contend that I should have collected the amount of eighty-three dollars and forty-seven cents (\$83.47) as follows:

Fifty-nine dollars and ninety-five cents (\$59.95) on the amount distributed not coming into Olga Eppley's possession.

Twenty dollars (\$20.00) on the 1st two thousand paid to Olga Eppley.

Three dollars and fifty-two cents (\$3.52) on the balance over two thousand (\$2,000.00) dollars paid to Olga Eppley.

Mr. Fisher, attorney for Olga Hall Eppley, claimed that I should receive one per cent on the first two thousand dollars (\$2,000.00) and one-third of one per cent on the balance, making a total of forty-three dollars and fifty cents (\$43.50).

The question was left to Judge Daugherty who decided with Mr. Fisher. Please advise me as to which is correct. If Judge Daugherty and Mr. Fisher are correct, there has been hundreds of dollars collected that would belong to heirs in partition suits in this county."

If I correctly understand the letter of the sheriff, above quoted, the court, in its judgment in the instant case taxed as costs in said case, the amount of forty-three dollars and fifty cents, as a poundage fee for the sheriff.

It is unnecessary to point out that this office is without jurisdiction and that it would be improper for it to assume to review the judgments and proceedings of a court of competent jurisdiction. If a party believe himself to be aggrieved by the judgment or decree of a court, the proper remedy should be pursued in the court rendering such judgment or decree, or in a higher court of competent jurisdiction. In the instant case, if it be desired to take any further action as to the question of court costs, a motion to retax costs should be filed by an interested party and passed on by the court rendering the judgment.

It is also unnecessary to say that the judgment or decree of a court of competent jurisdiction, unless and until reversed or modified, is binding in so far as the parties thereto are concerned; and your department is obviously without authority to question such judgment decree, or to make a finding contrary or inconsistent therewith.

For these reasons, I feel that it would be improper for me to render an opinion in the instance case on the question presented by you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2305.

AGREEMENT—BETWEEN BOARD OF EDUCATION OF CLEVELAND
AND TRUSTEES OF WESTERN RESERVE UNIVERSITY—AP-
PROVED.

SYLLABUS:

Proposed agreement between the City Board of Education of the City of Cleveland, and the trustees of Western Reserve University considered and approved.

COLUMBUS, OHIO, July 2, 1928.

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

GENTLEMEN:—I am in receipt of your letter, enclosing for my consideration a copy of an agreement recently entered into between the board of education of the city

school district of the City of Cleveland, Ohio, and the board of trustees of Western Reserve University, located in the City of Cleveland.

In view of the terms of this agreement, you request my opinion in answer to the following specific question:

“May the Board of Education of the Cleveland City School District legally enter into the arrangement indicated by the action of the board as set forth in the enclosed clipping?”

A copy of the agreement which you submit with your inquiry is as follows:

“AGREEMENT

This agreement is entered into by and between the Board of Trustees of Western Reserve University (herein referred to as the Board of Trustees) and the Board of Education of the City School District of the City of Cleveland (herein referred to as the Board of Education).

Whereas, the Board of Trustees is now maintaining in the College for Women of Western Reserve University a Department of Education and also a Department of Nursery-Kindergarten-Primary Training; and

Whereas, The Board of Education is now maintaining a normal school, known as the Cleveland School of Education; and

Whereas, both of the parties hereto, in co-operation with each other, are jointly maintaining a summer school for the training of teachers and also various extension courses for teachers, known as the Senior Teachers' College, under a certain contract between the parties hereto under date of October 4, 1920; and

Whereas, it is deemed advisable for the public good that both parties hereto should exert every possible effort to facilitate through co-operation the widest and most complete use of the combined material and professional equipment of Western Reserve University and the Board of Education in all branches of educational service; now, therefore, it is agreed

I. ORGANIZATION.

(1) The Board of Trustees agrees to establish a School of Education of Western Reserve University for the training of school administrators, supervisors, and teachers of all grades on a parity with the other professional schools of the University.

(2) The Board of Trustees agrees to transfer to the School of Education of Western Reserve University all of its interest in the Department of Education in the College for Women and the Department of Nursery-Kindergarten-Primary Training, as well as the Senior Teachers' College and the summer session together with such equipment, collections, and credits as are now vested in these departments.

(3) Consistently with the provisions of this agreement, the Board of Education agrees to maintain the Cleveland School of Education in accordance with the present standards together with practice and observation schools.

II. ADMINISTRATION AND FACULTY.

(1) The administrative detail of the School of Education of Western Reserve University shall be vested in an Administrative Board, consisting

of the President of the University, the President of the Board of Education, or other designated member of the Board, the Superintendent of Schools of the City of Cleveland, the Dean of Administration of Western Reserve University, and the Dean of the School of Education.

(2) The Administrative Board of the School of Education shall have full administrative responsibilities, subject to the powers of the Board of Trustees as defined by its By-laws; to establish curricula, requirements for admission, promotion and degrees; to administer discipline; to nominate for appointment to the teaching staff and other positions; to recommend candidates for degrees; to determine tuition and other fees; to prepare the annual budget in consultation with the financial officers of the two contracting parties, for submission to the Board of Education and the Board of Trustees, and otherwise to administer the school. The President of the University shall be ex-officio Chairman of the Board.

(3) The Board of Trustees shall appoint a Dean of the School of Education of Western Reserve University, with the approval of the Board of Education, with such duties and powers as are associated with that office under the By-laws of the University.

(4) It is understood and agreed that the members of the faculty of the Cleveland School of Education shall become members of the faculty of the School of Education of Western Reserve University.

III. OPERATION.

(1) Each of the parties hereto agrees to put at the disposal of the School of Education of Western Reserve University all of its facilities in so far as their use by the School of Education does not interfere with the proper use of such facilities by other divisions and departments for which these facilities are provided.

(2) The curriculum of the School of Education of Western Reserve University shall include courses now being offered in the Cleveland School of Education, it being the intent and purpose of the parties hereto and in so far as may be legally possible, that the Cleveland School of Education be merged with the School of Education of Western Reserve University.

(3) Students now enrolled in the Cleveland School of Education shall be enrolled in the School of Education of Western Reserve University. All students admitted hereafter shall comply with the requirements for admission to be established by the Administrative Board herein provided for.

(4) The Board of Trustees agrees to appropriate for the budget of the School of Education for the period from June, 1928, to June, 1929, a sum at least equal to the sum expended during the corresponding current period for the Department of Education of the College for Women, for the Nursery-Kindergarten-Primary Training Department, and for the Senior Teachers' College and the Summer Session, and to undertake in the future to foster the school in accordance with the best University standards.

(5) The Board of Education agrees to appropriate for the maintenance of the Cleveland School of Education for the budget, for the period from June, 1928, to June, 1929, a sum at least equal to the net sum so expended during the corresponding current period.

(6) It is agreed by the parties hereto that income from tuition during the period from June, 1928, to June, 1929, shall be reserved for the use of the school.

This agreement shall be effective as soon as approved by joint resolution of the Board of Education and the Board of Trustees, and shall continue in effect until June 30, 1929, and from year to year thereafter.

In witness whereof the parties have caused this instrument to be executed by their properly designated officers at Cleveland, Ohio, this----- day of -----, 1928.

Approved—Ayes: -----, -----, -----, -----
Nays: -----.”

It appears that the board of education of the Cleveland City School District maintains a city normal school for the training of teachers, by authority of Section 7647, General Code. Western Reserve University, a private educational institution, has heretofore maintained as part of the university, a department of education in the college for women of the university and a department of nursery-kindergarten-primary training. It also appears that the city board of education and the university have heretofore co-operated in the maintenance of summer schools for teacher training, and in promulgating various extension courses for teachers.

It is now proposed by the University to establish a school of education for the training of school administrators and teachers, on a parity with its other professional schools, and for this purpose to transfer all its interest heretofore centered in the department of education in the college for women, the department of nursery-kindergarten-primary training, the extension courses for teacher training, and the co-operative summer school for teacher training, to the newly established school of education.

To provide for the administrative details of the management of the school of education of the university, an administrative board is created. Apparently, for the purpose of securing co-operation between the normal school maintained by the city board of education and the school of education of the university, the agreement provides that the city board of education may not only be represented on the administrative board by two members, the superintendent of the city schools, and either the president, or some designated member of the city board of education, but also that the members of the faculty of the Cleveland Normal School shall, by virtue of their position, become associated with the college of education of the university, as members of its faculty.

This arrangement, if carried out, manifestly will lead to close co-operation of the two schools and to co-ordination of the educational and training facilities of the schools, to the end that the graduates from the two schools will be on a parity with each other as to educational and training qualifications, and would, I believe, operate to the advantage of the schools and the benefit of the public school system of the city.

For the authority of boards of education to contract with colleges or universities for the purpose of obtaining in the school district instruction in special, technical, professional or other advanced studies, your attention is directed to Section 7650-1, General Code (112 O. L. 115), enacted by the 87th General Assembly, which reads as follows:

“The board or boards of education of any city school district or districts may enter into contract for a term not exceeding one year upon such terms and conditions as each board may deem expedient with each other, or with the trustees or other duly authorized officials of any college or university legally organized within the meaning of the provisions of Section 7650 of the General Code of Ohio, for the purpose of obtaining in such school district instruction in the special, technical, professional or other advanced studies

which may be pursued in such college or university beyond the scope of the public high school. In like manner such board or boards of education may contract for a term not exceeding one year with each other or with a private corporation or association not for profit, maintaining and furnishing a museum of art, science or history, or providing musical instruction, for the purpose of obtaining in such school district such instruction or other educational services as can be rendered to the schools by such private corporation or association."

It will be observed from the provisions of the foregoing statute, that the details of any agreement made under authority thereof are left to the discretion of the boards of education making the same, limited only by what might amount to an abuse of discretion, and the constitutional limitations on the extension of the credit of the state in the aid of private institutions, as contained in Article VIII, Section 4 of the Constitution of Ohio, which reads as follows:

"The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever."

The agreement as drawn does not presume to take away any part of the control of the public school system of the state from the duly elected public officials charged by law with the operation of the public schools. It permits the use of the facilities of the normal school by the school of education of the university only in so far as such use "does not interfere with the proper use of such facilities by other divisions and departments for which these facilities are provided." This provision obviously, by its terms, cannot result in an illegal diversion of public school funds.

The agreement does not, in my opinion, bind the members of the city board of education to serve on the administrative board created for the purpose of administering the affairs of the school of education of the university. The city board of education is elected for the purpose of administering the public schools of the city of Cleveland, of which the normal school is a part. If these members feel that by serving on this board they are rendering the work of the normal school more efficient, there can be no objection to their doing so, and in fact they should be commended for it. No agreement, however, can so operate as to require persons who may be elected to a city board of education, in the future, to serve on this board. It will be observed that a contract authorized by the terms of Section 7650-1, *supra*, must be limited in its operation to a term not exceeding one year. In my opinion, the agreement submitted is not illegal, and so far as appears on its face, is unobjectionable.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2306.

DOGS—FAILURE OF COUNTY COMMISSIONERS TO APPOINT DOG WARDEN NOT BAR TO CLAIM—HOW CLAIM IS SECURED—LAW LIBERALLY CONSTRUED.

SYLLABUS:

1. *The failure of a board of county commissioners to appoint a dog warden and deputies, as provided by Section 5652-7, General Code, is no bar to such board of com-*