

fact, the Southern Ohio Electric Company now holds a pole line lease on this property, the conveyance to the railway company be made subject to the rights of the Southern Ohio Electric Company under said lease without attempting in the deed of conveyance to the railway company to define the rights of the Southern Ohio Electric Company under this lease.

The sale of the property described in the transcript is under the authority of House Bill No. 417, 113 O. L. 521, and inasmuch as it appears from a communication from the director of highways attached to the transcript submitted that no part of the tract of land here in question will be needed for highway purposes, and it appears from the transcript and the recitals therein that you, in your official capacity as superintendent of public works and as director of said department, have made all of the findings of fact necessary under said act and under section 13971, General Code, to be made in order to authorize you to sell this property, I am approving this transcript as to legality and form as is evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof, both of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4449.

APPROVAL, BONDS OF SUMMIT COUNTY, OHIO—\$100,000.00.

COLUMBUS, OHIO, June 23, 1932.

HON. HOWARD L. BEVIS, *Director of Finance, Columbus, Ohio.*

4450.

WILBERFORCE UNIVERSITY—PRESIDENT OF UNIVERSITY MAY NOT BE APPOINTED SUPERINTENDENT OF C. N. AND I. DEPARTMENT.

SYLLABUS:

Question as to the eligibility of the president of Wilberforce University being appointed superintendent of the C. N. & I. Department of such university discussed.

COLUMBUS, OHIO, June 24, 1932.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“The undersigned respectfully asks you for an official opinion on the following stated facts:

At a meeting of the Board of Trustees of the Combined Normal

and Industrial Department of Wilberforce University to elect a Superintendent and Teachers for the next ensuing year, held May 26, 1932, a motion was unanimously adopted deferring the election of the Superintendent of the Combined Normal and Industrial Department until the last Thursday in June, 1932, which is June 30. The management, control and supervision of the C. N. & I. Department is vested by law in nine trustees, five of whom are appointed by the Governor by and with the consent of the Senate, three members are chosen by the Board of Trustees of the University, and the President of the University becomes a member of the Board of the C. N. & I. Department *ex officio*.

Wilberforce University is owned, controlled and operated by the A. M. E. Church and the management, control, and supervision of the institution is vested in a Board of Trustees of twenty-one members. At a meeting of the Board of Trustees of the University held on or about June 7, 1932, three trustees were chosen as members of the Board of Trustees of the C. N. & I. Department at Wilberforce; and a new President of the University was elected, who becomes a member of the Board of Trustees of the State Department *ex officio*. One of the three members of the University trustees is the Bishop of the A. M. E. Church who is in charge of the Third Episcopal District of the A. M. E. Church, which includes the State of Ohio and is the President of the Board of Trustees of the University. Bishop 'X' proposes to the Director of the State Department of Education of Ohio and seeks his cooperation looking forward to the C. N. & I. Department and the A. M. E. Church University Department being brought under one administrator; that the newly elected President of the University who is one of the members of the Trustees of the C. N. & I. Department, be given the administration of the C. N. & I. Department; that the salary of the President of the University be shared equally between the State and the Church; and that the house formerly occupied by the Superintendent of the C. N. & I. Department which is owned by the State of Ohio, be given over to the newly elected President of the University for his use and occupation with all the amenities included therein. It is further proposed that immediate attention be given this matter so that the same may be presented to proper State authorities before June 30, 1932, on which date the Board of Trustees of the C. N. & I. Department meet for the purpose of electing a Superintendent.

Your official opinion is specifically asked on the following matters:

First: Is the President of Wilberforce University, who is also at the same time a member of the Board of Trustees of the Combined Normal & Industrial Department at Wilberforce University eligible to be elected as Superintendent of the C. N. & I. Department?

Second: Is it legal to draw money from the Treasury of the State of Ohio to pay the salary, either in whole or in part, of the President of a sectarian or religious educational institution, who may be employed at the same time as Superintendent of the Combined Normal & Industrial Department for the purpose of placing the State Department and the A. M. E. Church Department under one administrator?

Third: Is it lawful for the trustees of the C. N. & I. Department to take any action by which the President of the University, acting as Superintendent of the C. N. & I. Department, would have a right to use

and to occupy the Superintendent's home, which is State property, the said President being the head of the A. M. E. Church University?

Fourth: Has the Director of the State Department of Education as such any right to determine any of the matters stated in Subdivision 1, 2 and 3, and is it not a matter which belongs exclusively to the Trustees of the C. N. & I. Department in whom the control, custody, management and supervision is vested?"

The sections of the General Code relative to the Combined Normal and Industrial Department of Wilberforce University are Sections 7975, et seq. Section 7976, General Code, reads in part as follows:

"The president of the university shall be ex officio a member of the board."

In Opinion No. 4162, rendered to the Auditor of State under date of March 18, 1932, it was held that a member of the board of trustees of the C. N. & I. Department of Wilberforce University was not eligible to the position of superintendent of such department, not having first tendered his resignation to the board of trustees and such resignation having been accepted by such board.

From an examination of that opinion, it is apparent that since the president of Wilberforce University is a member of the board of trustees of the C. N. & I. Department, he would be ineligible to be elected superintendent of the C. N. & I. Department.

Since the answer to your first inquiry is in the negative, it becomes unnecessary to consider your second and third inquiries.

Upon a consideration of your fourth question, an examination of the statutes of Ohio fails to reveal any authority for the Director of Education to determine any of the matters stated in subdivisions 1, 2 and 3. It is to be noted that by the terms of Section 154-50, General Code, the Director of Education shall be an ex officio member of the board of trustees of the C. N. & I. Department of Wilberforce University with the power to speak but not to vote in such board. However, any determination of such matters by the Director would have no binding effect upon the board of trustees of the C. N. & I. Department of Wilberforce University.

Respectfully,

GILBERT BETTMAN,

Attorney General.