

COLUMBUS, OHIO, May 17, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a bond, in the penal sum of \$5,000, with sureties as indicated, to cover the faithful performance of the duties of the official as hereinafter listed:

F. O. Biehn, Resident District Deputy Director in Adams County—National Surety Corporation.

The above listed bond is undoubtedly executed pursuant to the provisions of sections 1183 and 1182-3, General Code, providing so far as pertinent as follows:

“Sec. 1183. * * * Such resident district deputy directors shall * * * give bond in the sum of five thousand dollars. * * *”

“Sec. 1182-3. * * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds * * * shall be approved as to the sufficiency of the sureties by the director (of highways) and as to legality and form by the attorney general, and be deposited with the secretary of state * * *.”

Finding said bond to have been properly executed in accordance with the above statutory provisions, I am hereby approving it as to form and returning it to you herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4270.

SCHOOL DISTRICT—VILLAGE SCHOOL DISTRICT DEFINED—MISNOMER OF DISTRICT DOES NOT AFFECT LEGALITY OF RESOLUTION CALLING ELECTION FOR EXTRA TAX LEVY UNDER AM. S. B. #46, GENERAL ASSEMBLY.

SYLLABUS:

1. *A school district which contains within its boundaries an incorporated village and having a tax valuation of \$500,000 or more, is a village school district, and the board of education for such a district should adopt a name which is indicative of the class of district to which the district belongs and use that name in its proceedings and transactions, even though the district may have been created under a different designation and is generally known by a different name.*

2. *Where the taxing authority of a political subdivision passes a resolution providing for a special election within the subdivision on the question of additional tax levies, in pursuance of Amended Senate Bill #97 of the second special session of the 90th General Assembly, as amended by Amended Senate Bill #46 of the 91st General Assembly, and in that resolution inadvertently refers to the political subdivisions by a name other than the one by which the subdivision had ordinarily been known, and certifies a copy of the said resolution to the board of elections of the proper county or counties in the*

manner provided by Section 5625-17, General Code, it is the duty of the said board of elections to hold and conduct such election in conformity with the provisions of said Section 5625-17, General Code, on the date specified in the said resolution.

COLUMBUS, OHIO, May 18, 1935.

HON. A. NEWTON BROWNING, *Prosecuting Attorney, Washington, C. H., Ohio.*

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

“On the 30th day of March, 1935, a resolution authorized by the Amended Senate Bill No. 97, Second Special Session, 1933, passed on November 19th, 1934, was passed by the Board of Education in Jeffersonville, Ohio, providing for the submission of the question of levying a tax of three mills in excess of the ten mill limitation for current expenses for the year 1935.

The resolution states in part as follows:

‘Be it resolved by the Board of Education of Jefferson Village School District of Fayette County, Ohio, two-thirds of all members of said board concurring:’

and said resolution is signed by the board members and underneath the signatures appears the following: ‘Members of Board of Education of Jefferson Village School District, Fayette County, Ohio.’

In March 1921, a resolution was passed by the county Board of Education of Fayette County, Ohio, to create a school district to be known as ‘Jefferson School District’ (quoting from the resolution.) Jefferson School District from the resolution was to include Jefferson Township Rural School District and Jeffersonville Village School District. In other words the resolution of March, 1921 created or attempted to create a school district which would include Jefferson Township and the Village of Jeffersonville, Ohio, as a single school district. So far as the records show in the office of the Board of Education and the Auditor’s office, there is no ‘Board of Education of Jefferson Village School District of Fayette County, Ohio.’ This resolution was certified to the Board of Elections on the 30th day of March, 1935.

The following are the taxing districts in Jefferson Township: Jefferson-Green Rural School District; Jefferson-Ross Rural School District; Jefferson-Union Rural School District and Jeffersonville Corporation, the latter being the village of Jeffersonville.

I should like to have your opinion as to whether or not the Board of Elections may proceed to hold a special election under the terms of the resolution passed on the 30th day of March, assuming of course, that said resolution is in all respects correct except as to the name of the Board of Education passing the same.”

It appears from your inquiry that the school district in question, the board of education for which passed a resolution calling a special election for the submission of the question of extra tax levies within the district, and in that resolution styled itself as the “Board of Education of Jefferson Village School District, Fayette County, Ohio”, was created in 1921, by the joining of what had formerly been the Jefferson Township Rural School District and the Jeffersonville Village School District. In the resolution of the county board of education creating the new school district, the district was called the “Jefferson School District.” It contained within its boundaries at that time, and still

does, the incorporated village of Jeffersonville, and, I am informed, has a tax valuation of more than \$500,000. This district is therefore really a village school district regardless of what it may have been or may be called. Section 4681, General Code, provides as follows:

“Each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district.”

In the reported Opinions of the Attorney General for 1928, at page 2717, will be found an opinion the first branch of the syllabus of which reads as follows:

“A school district of a county school district, with a total tax valuation of more than \$500,000.00, and containing within the boundaries an incorporated village, is a village school district.”

See also Opinions of the Attorney General for 1928, pages 1512 and 2362; for 1927, pages 1180, 2003 and 2410.

Although the taxing authority of this school district chose to call the district “the Jefferson Village School District” in the resolution providing for a special election under said Amended Senate Bill #97, and there is no taxing district in the county being carried on the auditor’s books or the records of the county board of education by that name, it is the same school district, the same territory as the district which was originally denominated “Jefferson School District” and which it appears from your inquiry is being carried on the auditor’s and treasurer’s records as “Jefferson Union Rural School District.”

Surely the designation “Jefferson Union Rural School District” is a misnomer as the district is not a rural school district nor was that appellation given to it at the time of its creation. The name “Jefferson Village School District”, more aptly fits the true character of the district than either of the other two, and there can be no harm in the district adopting that name.

Courts almost without exception do not draw fine distinctions so far as the name of a political subdivision is concerned where the rights of third parties are involved. In the case of *Cornell University vs. Village of Maumee*, 68 Fed. 418, decided by the Circuit Court for the Northern District of Ohio, it was held:

“Bonds duly and lawfully issued by a municipal corporation cannot be rendered invalid in the hands of a bona fide holder by the fact that such corporation though properly a city, has issued such bonds under the name of a village, it having previously been recognized as a village in an act of the legislature changing its name and having levied and collected taxes, passed ordinances and otherwise acted as a village.”

The legislative recognition of a county illegally and fraudulently organized gives validity to its acts and dealings with third persons. *Commissioners vs. Rose*, 140 U. S., 71. The question of corporate existence cannot be raised in a private litigation by the body assuming to be a corporation, to the prejudice of rights acquired as against such assumed corporation while corporate powers were being assumed and exercised. *Ashley vs. Board*, 8 C. C. A. 455, 60 Fed. 55. In that case the Circuit Court of Appeals held that the question of the legal existence of the county could not be raised in a private litigation, as appears from the language of the first paragraph of the syllabus.

The court say:

"But it is needless to multiply authorities. They are substantially, if not altogether agreed upon the proposition that when a municipal body has assumed under color of authority, and exercised for any considerable period of time, with the consent of the state, the powers of a public corporation of the kind recognized by the organic law, neither the corporation nor any private party can in private litigation question the legality of its existence."

In the case of *State ex rel. Fosdick vs. Mayor, et al.*, 14 O. S., 472, the seventh paragraph of the syllabus reads as follows:

"The issuing of bonds in the name of 'the town of Perrysburg,' instead of in the name of 'the incorporated village of Perrysburg,' when the latter would have been its proper legal designation, is merely a misnomer, which does not affect the validity or obligation of such bonds."

It seems clear from the authorities, that even if an election should be called and conducted in a political subdivision and the legislation and all the proceedings with reference thereto had been carried on under a name other than the name by which the subdivision had ordinarily been called, the legality of the proceedings could not be questioned by third parties.

Inasmuch as the duties of a board of elections in conducting an election called by the taxing authority of a political subdivision in pursuance of the legislation referred to in your inquiry are ministerial, and the manifest intent of the board of education in question, to call such an election, and the fact that the board of elections could not be mistaken as to such an intent or as to the particular district in which this board of education meant for its call for election to apply, I am of the opinion that it is the duty of the board of elections to proceed to hold the special election in question, assuming of course, that the proceedings of the board of education with respect to the terms and the passage of the resolution providing for the election were, except as to the previously used name of the school district, in all respects regular and according to law.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4271.

LIBRARY—LIBRARY ASSOCIATION MAY SHARE IN DISTRIBUTION OF PROCEEDS OF CLASSIFIED PROPERTY TAXES WHEN.

SYLLABUS:

Library associations or organizations established by will or otherwise, that maintain free public library service to all the inhabitants of a county or which by resolution extend that service to all the inhabitants of a county in pursuance of Section 5625-20, may share in the distribution of the proceeds of classified property taxes as provided by Sections 5625-24 and 5639, General Code, provided the library in question has in the past received public aid in the maintenance of its library service or is eligible to or becomes eligible to be granted such aid either directly under laws authorizing the same or by reason of contracts made by virtue of Sections 2455 or 7632 of the General Code of Ohio.