

distinctly understood that my statement that the so-called "Thermal System" did not comply with all the requirements of the building code, was not my decision upon the question of whether or not that ventilating system did or did not comply with the statutory provisions of the building code. Hence, as heretofore stated, that statement need not be considered by you as controlling that question.

Your inquiry "as to the duties and authority of the Chief of the Division of Workshops and Factories in passing his opinion or approval on equipment, material, devices, constructions, etc., to be used in Public Buildings" is answered, in my mind, by the provisions contained in section 12600-296, General Code. It is apparent from that section that all plans, drawings or specifications for equipment, type of construction and materials to be used in erecting or altering a public building must be first submitted to and approved by either the municipal building department having jurisdiction or the chief of the division of workshops and factories. The chief of the division of workshops and factories thus has the duty of deciding whether or not a particular device, material or type of construction meets with the requirements of the building code before he can approve or disapprove the plans or drawings and specifications submitted to him prior to the construction of any public building.

It is therefore my conclusion that:

1. The duties of the chief of the division of workshops and factories, in reference to the construction of public buildings, are defined by section 12600-296, General Code.

2. By virtue of the provisions of section 12600-296, General Code, all plans or drawings and specifications relating to the construction, erection, alteration or equipment of a public building must be first submitted to the chief of the division of workshops and factories, except when the plans or drawings and specifications are submitted to a municipal building department having jurisdiction. It is the duty of the chief of the division of workshops and factories, in order to approve or disapprove such plans or drawings and specifications submitted to him, to decide whether or not the construction, equipment or alteration, material or devices to be used, will meet the requirements of the building code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3181.

VILLAGE SCHOOL DISTRICTS—BECOMING CITY SCHOOL DISTRICTS  
BY VIRTUE OF FEDERAL CENSUS—HOW LONG VILLAGE BOARD  
MEMBERS CONTINUE IN OFFICE—WHO FIXES NUMBER OF MEM-  
BERS FOR NEW CITY BOARDS—DETERMINATION OF LENGTH OF  
NEW MEMBERS' TERMS.

*SYLLABUS:*

1. *When, by reason of its attaining a population of 5,000 or more in accordance with a federal census, a village becomes a city and the village school district is thereby advanced to a city school district, the members of the board of education which had theretofore functioned as the village board of education, continue in office until succeeded by the members of the board of education of the new*

city school district, who shall be elected at the next succeeding annual election for school board members and whose terms of office shall begin on the first Monday in January thereafter. See also Opinion 3126 rendered under date of April 7, 1931.

2. The number of members to constitute the new city board should be fixed by the village board a sufficient length of time before the ensuing election for school board members to permit their being elected at this said election.

3. Assuming that the number of members for a new city district which succeeds a former village district by reason of a change in population, is fixed at five prior to the coming November election, two members should be elected at that election for a term of four years and three members for a term of two years, and thereafter three members and two members alternately should be elected at each succeeding general election for members of boards of education for terms of four years.

COLUMBUS, OHIO, April 25, 1931.

HON. RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

“A number of village school districts have recently become city school districts by reason of the fact that as established by the official census they now have a population in excess of five thousand, none however, being in excess of fifty thousand. The following questions arise:

- (1) How long do the members of the old village board continue in office?
- (2) Who fixes the number of members to constitute the new city board?
- (3) Assuming that the members of the new city boards will be five in number and that they will all be elected at the 1931 general November election, which I believe will be the case, what should be the length of their respective terms?”

By force of section 3497, General Code, a village becomes a city when it attains a population of five thousand as shown by a federal census. When a village is advanced to a city by reason of its having attained a population of five thousand, the village school district becomes a city school district by authority of section 4686, General Code. Said section reads as follows:

“When a village is advanced to a city, the village school district shall thereby become a city school district. When a city is reduced to a village, the city school district shall thereby become a village school district. The members of the board of education in village school districts that are advanced to city school districts, and in city school districts that are reduced to village school districts shall continue in office until succeeded by the members of the board of education of the new district, who shall be elected at the next succeeding annual election for school board members.”

In view of the provisions of the above statute, it clearly follows, unless changed by later legislation, that the board of education in a village school dis-

trict continues to function, when the village district becomes a city district by reason of the said village being advanced to a city, until a board of education is selected for the new city district and that the city board is to be selected at the next succeeding election for school officers. It is so held in an opinion of a former attorney general found in the Annual Report of the Attorney General for 1911-12 at page 516. The syllabus of this opinion reads in part as follows:

“When a village school district, by reason of the last federal census, advances to a city school district, the members of the board of education of the old village district, under sections 4686 and 4700, General Code, shall decide the number of members which shall compose the city board of education.

The successors of the members of the board of education in such instance, shall be elected at the next annual election for school board members.”

At the time of the enactment of section 4686, General Code, in its present form, there was in existence section 4745, General Code, which provided in general terms that the term of office of members of each board of education should be four years and that they should hold office until their successors were elected and qualified. This statute was in force at the time of the rendition of the 1911 opinion referred to above.

Since that time, in 1913, an act was passed (103 O. L., 275) known as the Jung Law, which amended all the sections of Chapter 2 of Title 13 of the General Code (Sections 4698 to 4707, inclusive, General Code) relating to boards of education in city school districts. By the terms of these sections, as so amended, city school districts were classified as to population and provision was made for boards of education of varying numbers for the different classes of city districts. When a city district passed from one class to another, by reason of an increase or decrease in population, the board of education, as it had theretofore existed for the district, was sometimes decreased in size, and necessarily when that occurred, some of the former members had to be retired, that is, their terms of office terminated before the full term of four years for which they had been elected had expired. As a part of this act, section 4745, General Code, was amended by adding to its terms an exception. After providing as before, that the terms of each member of a board of education should be four years and that he should serve until his successor was elected and qualified, there was added, “except as may be specifically provided for by chapter 2 of this title” meaning sections 4698 to 4707, inclusive, of the General Code, as they were amended in the act.

It will be noted that no mention is made in the exception added to the statute, of section 4686, General Code, and the question arises as to what effect this fact has on the provisions of said section 4686, General Code, which in effect provided that when a village advances to a city, and the village school district thereby becomes a city school district, the terms of the members of the village board of education terminate as soon as a board is elected for the new city district regardless of how long they had served.

It may be contended that the exception having expressly included within its terms the specific provision “by chapter 2 of this title” must be held to exclude all other provisions of law the effect of which is to end the terms of members of boards of education before the full four years for which they were elected had elapsed, and that therefore the general terms of the statute apply to village boards of education when the village district becomes a city district and vice versa. In

other words, that the provisions of section 4686, General Code, to the effect that the terms of office of members of a village board of education when the village district becomes a city district and of a city board of education when the city district becomes a village district, are ended, and that an entire new board is to be elected under those circumstances, were repealed by implication upon the enactment of section 4745, General Code, in 1913. Repeals by implication are not favored. *Randebaugh v. Shelley*, 6 O. S., 307-316; *State v. Commissioners*, 94 O. S., 296.

The real test in determining the question is the intention of the legislature. This intention should be gathered from the language used by the legislature and incorporated in statutes enacted, and to some extent the circumstances surrounding the enactment of legislation may be considered. It would not be contended that members of the board of education would continue in office for four years in cases where the school district is abolished simply because the legislature failed to negative such a situation in the exception incorporated in section 4745, General Code, as amended in 1913; nor would they continue in office if they should move out of the district, or if, upon a change of boundaries, they ceased to live in the district, even though the statute does not include those contingencies in the exception. Apparently the legislature had in mind those situations only which might be created by the operation of the act then under consideration, and amended section 4745, General Code, accordingly.

Moreover, upon consideration of the language used by the legislature in section 4686, General Code, it seems apparent that, when a village district becomes a city district or a city district a village district by reason of the city or village passing from one grade to the other on account of an increase or decrease in population, it is regarded as an abolition of the old district and the creation of a new district. The legislature speaks of the village or city district succeeding a village or city district, as the case may be, upon the village or city passing from one grade to another, as a "new" district and therefore provides for the election of an entirely new board. The further fact that the legislature saw fit to provide that an entirely new board was to be elected to administer the affairs of the district fortifies the conclusion that the legislature regarded the change as creating a new district.

The territory composing the new district remains the same as that of the former district, contracts of the former district must be carried out and its obligations met, as these could not lawfully be impaired or abrogated, and the old board is continued to administer the affairs of the district in the interim until a new board is elected. There is probably little reason to consider the former district as having been dissolved and an entirely new district created, but the legislature seems to have so looked upon the matter as is evidenced from the specific language used and the fact that provision is made in the statute for the election of an entirely new board for the district.

In view of the specific language of section 4686, General Code, and the history of section 4745, General Code, I am of the opinion that said section 4686, General Code, is dispositive of the question as to when the members of a board of education for a city school district which comes into existence by reason of a village becoming a city as the successor of the former village district, and that its provisions are not in any wise modified by the terms of section 4745, General Code, as amended in 1913.

With respect to the number of members to constitute the new city district, it will be observed that by the terms of section 4698, General Code, city districts are classified into those having a population of less than 50,000, those having a

population between 50,000 and 150,000 and those having a population of more than 150,000. Provision is therein made for boards of different sizes for the three classes of city districts. Section 4699, General Code, provides in part, as follows:

"Within thirty days after this act shall take effect, the board of education of each and every city school district in which the number of members does not conform to the provisions of section 4698 shall by resolution determine within the limits prescribed by said sections the number of members of said board of education. Said resolution shall provide for the classification of the terms of members so that they will conform to the provisions of section 4702, General Code, taking into consideration the terms of office of the existing members whose terms do not expire or terminate on the day preceding the first Monday in January, 1920. \* \* \*"

Section 4702, General Code, reads as follows:

"The term of office of all members of boards of education in city school districts, except as provided in section 4701, shall be four years. All members in office at the time this act takes effect shall serve the unexpired portions of the terms for which they were respectively elected and until their successors are elected and qualified, unless their terms shall expire or shall have been terminated as provided by sections 4698 and 4701.

If the number of members of a board of education of any city school district to be elected at large as fixed pursuant to section 4699 be even, one-half thereof shall be elected in the year preceding, and the remaining half in the year following the calendar year divisible by four. If such number be odd, one-half of the remainder after diminishing the number by one shall be elected in the year preceding, and the remaining number shall be elected in the year following the calendar year divisible by four. All members to be elected from odd numbered subdistricts shall be elected at one and the same election, and all members from even numbered subdistricts shall be elected at the alternate election."

The above statutes contain the only statutory direction for the determination of the number of members to compose a school board in cases where the number is not definitely fixed by the statute, and the only statutory direction for allocating the terms of two years and four years to members of a board of education when a change in the membership of the board becomes necessary to conform to the number fixed or authorized by statute upon a change of population or grade of the district.

It must be admitted that these statutes do not definitely cover the situation here under consideration. At the most they merely evince a legislative policy which should be carried out in so far as possible in a situation such as we have before us. As stated by a former Attorney General, in an opinion found in Opinions of the Attorney General for 1921 at page 373, where there were under consideration the provisions of section 4698, et seq., of the General Code, relating to boards of education in city school districts and their application to a change of status of districts brought about by reason of a federal census:

"An analysis of the law shows that this particular contingency coming but once in each ten years following the Federal census is not fully cared for in the statutes."

Section 4686, General Code, provides that a board of education for a new

city school district coming into existence under circumstances such as we are here considering shall be elected at the next succeeding annual election for school board members after the district is created, and section 4698, General Code, provides that if the district has a population of less than 50,000 the board may consist of not less than three members. Obviously some determination should be made before the election of how many there shall be elected and which ones of those elected shall serve for four years and which for two years so as to conform to the general policy of the law that the terms of all the members of the board will not expire at one time and that part of the board shall be elected every two years. There is no specific statutory direction as to how this shall be determined. In conformity to the provisions of section 4699, General Code, I am of the opinion that this determination should be made by the village board of education which is to hold over and administer the affairs of the district until the board for the new city district is elected and takes office.

After the number of members to compose the new city board is fixed, it becomes important to fix the terms for which they shall be elected. This, in my opinion, should be done by the same agency, at the same time and in the same manner that the number of members is fixed.

Here again the law is entirely silent so far as any specific direction is concerned. A legislative policy, however, with reference to terms of service of members of a city board of education, and the time of their election, is expressed in Section 4702, General Code. This section, it will be observed, provides that the term of service of city school board members shall be four years, and if the number of members of a board of education of any city school district to be elected at large, as fixed pursuant to Section 4699, General Code, be even, one-half thereof shall be elected in the year preceding, and the remaining half in the year following the calendar year divisible by four, and if the total number of members to compose such a board be odd, one-half thereof less one, shall be elected in the year preceding the calendar year divisible by four and the remainder in the year following the calendar year divisible by four. However, Section 4701, General Code, which is not quoted, provides for the election of members for a term of two years only in order that the provisions of Section 4702, General Code, may operate.

In the absence of any specific statutory direction with respect to this matter, I am of the opinion that after the number of members for a new city district is fixed, the term of service should be fixed in accordance with the rule set out in Section 4702, General Code. For instance, if the number is fixed at five, two members should be elected at the coming November election for a term of four years and three members for two years, and, thereafter, three and two members alternately should be elected at each regular election for the election of members of boards of education for a term of four years each. If the number is fixed at three, one should be elected at the coming November election for four years and two for two years and, thereafter, two and one member alternately for four years each.

In specific answer to your questions in the order asked I am of the opinion:

First, when, by reason of its attaining a population of 5,000 or more in accordance with a federal census, a village becomes a city and the village school district is thereby advanced to a city school district, the members of the board of education which had theretofore functioned as the village board of education, continue in office until succeeded by the members of the board of education of the new city school district, who shall be elected at the next succeeding annual election for school board members and whose terms of office shall begin on the

first Monday in January thereafter. See also Opinion 3126 rendered under date of April 7, 1931.

Second, the number of members to constitute the new city board should be fixed by the village board a sufficient length of time before the ensuing election for school board members to permit their being elected at this said election.

Third, assuming that the number of members for a new city district, which succeeds a former village district by reason of a change in population, is fixed at five prior to the coming November election, two members should be elected at that election for a term of four years and three members for a term of two years, and thereafter three members and two members alternately should be elected at each succeeding general election for members of boards of education, for terms of four years.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3182.

APPROVAL, BONDS OF BEAVERCREEK RURAL SCHOOL DISTRICT,  
GREENE COUNTY, OHIO—\$180,000.00.

COLUMBUS, OHIO, April 25, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3183.

APPROVAL, LEASE FOR OIL AND GAS RIGHTS TO LAND IN NEWTON  
TOWNSHIP, MUSKINGUM COUNTY, OHIO.

COLUMBUS, OHIO, April 25, 1931.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—You have submitted a lease in which you have granted to William S. Foraker, of New Lexington, Ohio, the oil and gas rights to forty-nine acres of land described as follows:

“Situated in the Township of Newton, County of Muskingum and State of Ohio, and being in the South East Quarter of Section No. 15, Township No. 15, Range No. 14 and being bounded as follows:

On the North by lands of John Holloway and G. E. Jarrett.  
On the East by lands of Rufus Burton.  
On the South by lands of E. D. Yost.  
On the West by lands of John Holloway.”

After examination, it is my opinion that said lease is in proper legal form, and I have accordingly endorsed my approval thereon. Of course, it will be necessary for the Governor to indicate his consent before said lease becomes effective. Your attention is further directed to the fact that the signature of the lessee seems to have been attested by only one witness.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*