

4827.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR—WILLIAM R. FLACK.

COLUMBUS, OHIO, December 17, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4828.

BOARD OF EDUCATION—MAY ESTABLISH HIGH SCHOOLS—REPEAL OF SECTION 7663, G. C., IMMATERIAL.

SYLLABUS:

Although former Section 7663, General Code, which specifically authorized a board of education to establish one or more high schools whenever it deemed the establishment of such a school or schools proper or necessary for the convenience or progress of the pupils attending them, or for the conduct and welfare of the educational interests of the district, was repealed in 1929, ample authority still exists for a board of education to establish such schools when it is deemed to be proper or necessary for the conduct and welfare of the educational interests of the district.

COLUMBUS, OHIO, December 19, 1932.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

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

“Under former Section 7663, it was provided that the Board of Education could establish a high school within its district. This section, however, together with other sections preceding and following it, was repealed, effective July 26, 1929, and I have not been able to find any section taking its place.

I would appreciate your advice as to how the local board can establish a high school under the present law.”

A high school is defined by Section 7649, General Code, as a school of higher grade than an elementary school, in which instruction is given in certain enumerated advanced courses of study. Said Section 7649, General Code, is today the same as when enacted in 1902 (95 O. L. 115), when it was known as Section 4007-2, Revised Statutes. In the same act of the legislature wherein said Section 4007-2, Revised Statutes, was enacted, there was enacted Section 4007-1, Revised Statutes, which defined an elementary school as one in which instruction and training are given in certain enumerated elementary branches of learning. Said Section 4007-1, Revised Statutes, was codified as Section 7648, General Code and was amended in 1925 (110 O. L., 415). As amended, this section defined an elementary school very much as it previously had been defined except that there was added, after enumerating the elementary branches of learning in which instruction and training was to be given, the following:

“ * * primarily to students of the first to eighth school years inclusive. If, however, a junior high school is maintained the elementary schools in that district may include only the work of the first to sixth school years inclusive. Moreover an elementary school may include a preparatory kindergarten year; and, under such restrictions as may be prescribed by the director of education, it may include high school branches and may extend beyond the eighth year. * * ”

Upon enactment of the act of 1902, in which appeared Sections 4007-1 and 4007-2, Revised Statutes, referred to above, the term “high school” first appears in the statutory law of Ohio. As a part of this act, Section 4009, Revised Statutes, was enacted specifically authorizing a board of education to establish “one or more high schools.” Said Section 4009, Revised Statutes was codified in 1910 as Section 7663, General Code, and had not since been amended or changed until its repeal in 1929 (113 O. L., 685-687.)

Prior to this time, as early as 1873, boards of education were authorized to establish schools “of a higher grade than the primary schools” (70 O. L., 208, §50).

Since 1902, when the term “high school” was first applied to schools of a higher grade than primary or elementary schools, there has been developed through a long and varied course of legislation a great deal of statutory law relating to high schools. Compulsory school laws have also been enacted requiring all children between six and eighteen years of age to attend school or present a lawful excuse for not so doing. These compulsory school laws visit on the parents, guardian or persons in charge of children between the ages mentioned, severe penalties if they fail to send the children to a public, parochial or private school or have them instructed in the prescribed courses of study suitable to their age and state of advancement.

To mention a few of the statutes relating to high schools:

Section 7645-1, General Code, provides that no person shall be admitted, without condition, to a high school, whose credentials do not show that they have studied in the seventh or eighth grades the Constitution of the United States and the Constitution of Ohio, for a prescribed period.

Section 7651, General Code, provides for the classification of high schools by the director of education.

Section 7652, General Code, defines high schools of the first, second and third grades, as being schools in which the courses of study require normally, four, three and two years respectively, beyond the eighth grade.

Section 7655-7, General Code, provides who shall be admitted to a high school without examination.

Section 7656, General Code, provides for the granting of diplomas to graduates of a high school.

Section 7658, General Code, provides for entrance requirements by high school graduates for matriculation in state supported universities.

Sections 7747, 7748 and 7750, General Code, provide for the payment of tuition by boards of education in districts which do not maintain a high school for resident school pupils eligible to attend high school and who attend a high school in another district. Section 7748, General Code, specifically provides that:

“No board of education is required to pay the tuition of any pupil to high school for more than four school years.”

Sections 7749 and 7749-1, General Code, deal with the transportation of high school pupils, and Section 7764, General Code, provides for the assignment of pupils to high schools.

Upon consideration of the statutes noted above, none of which were disturbed at the time of the repeal of Section 7763, General Code, in 1929, and the compulsory school laws requiring, under severe penalties, children between six and eighteen years to attend school, it would seem clear that the establishment and maintenance of high schools would be authorized without specific authorization therefor.

It is inconceivable that the legislature would require children between the ages of six and eighteen years to attend school when it is a well known fact that there are but eight grades below what are known as the high school grades and normally, these grades are completed by a pupil at the age of fourteen years, without having provision made for the child to pursue the courses of study given in grades higher than the elementary grades, which, of course, involves the establishment and maintenance of what are generally known as high schools so that the pupils will have the means of pursuing these higher courses of study.

Apparently, that was in the minds of the members of the legislature when Section 7663, General Code, was repealed, as will hereafter appear.

It is true that the terms of Sections 7747 and 7748, General Code, authorize and direct the payment of tuition by boards of education in districts which do not maintain a high school for all resident pupils who attend school in other districts, thereby making it possible for all high school pupils to attend a high school at public expense, whether the district of the pupil's residence maintains a high school or not, yet it does not seem consistent with the principle that has always prompted school legislation, to equalize school opportunities as nearly as possible, and to establish, when possible, schools that will be most convenient for the attendance of the largest number of pupils, to stop the future establishment of high schools and require all high school pupils in the state to attend school in some high school established before the repeal of Section 7663, General Code.

It is a well settled principle of law, that the repeal of a statute specifically authorizing the doing of certain acts or the performance of certain duties by public officials signifies an intent on the part of the legislature to do away with the authority or direction which the statute had theretofore contained. This rule, however, does not apply where the legislature in the act of repeal or otherwise, signifies a different intent. After all, the intention of the legislature is the final test.

Section 7663, General Code, was repealed in 1929, in an act of the legislature entitled:

"AN ACT to further supplement Sec. 13767 of the General Code, by the enactment of supplemental sections 13767-3 and 13767-4, to repeal the following sections of the General Code and the appendix thereto, which are obsolete, unconstitutional or unnecessary; 361 * * 7663 * * 15312."

The action of the legislature in the enactment of the above described act, was taken in response to a public demand for reducing the number of our laws, and, in the act mentioned, and several other similar acts passed at about the same time, there were repealed several hundred sections of the Code, for the reason, as stated by the legislature in the title of those acts, that the sections repealed were "obsolete, unconstitutional or unnecessary."

It could not be said that Section 7663 was obsolete or unconstitutional, and no other conclusion can be reached than that the legislature considered it to be "unnecessary", thereby signifying that other sections of the Code extended ample authority to boards of education to do what Section 7663, General Code, specifically authorized them to do, and that the specific authority given by Section 7663, General Code, was unnecessary.

I am therefore of the opinion that the repeal of Section 7663, General Code, did not signify an intent on the part of the legislature to prohibit a board of education from establishing one or more high schools when the establishment of those schools was deemed to be in the educational interests of the district.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4829.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS RESIDENT DIVISION DEPUTY DIRECTOR—WAYNE C.
NEFF.

COLUMBUS, OHIO, December 20, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a bond upon which the name of Wayne C. Neff appears as principal and The Maryland Casualty Company of Baltimore, Maryland, appears as surety, in the penal sum of \$5,000.00, conditioned to cover the faithful performance of the duties of the principal as Resident Division Deputy Director for Division No. 4.

Finding said bond legal and proper as to form, I have endorsed my approval thereon and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4830.

ANTICIPATORY NOTES—MAY BE ISSUED UNDER AMENDED SEN-
ATE BILL NO. 4 AND RETIRED BY ISSUANCE OF BONDS.

SYLLABUS:

Anticipatory notes may be issued under the provisions of Amended Senate Bill No. 4, as enacted at the First Special Session of the 89th General Assembly, as amended by the Second Special Session of the 89th General Assembly, at any time during the year 1932, which notes may mature not later than two years from date, and when such notes are about to mature the same may be retired by the issuance of bonds subsequent to the year 1932 in accordance with the provisions of Section 2293-26 of the Uniform Bond Act.