

appears that on October 22, 1932, one Angelo Deroberts filed an action against Moehlman in the Court of Common Pleas of Huron County in which a money judgment in the sum of \$2,023.38 was prayed for. It does not appear that any answer has ever been filed to plaintiff's petition in this case and any judgment that the plaintiff may obtain in this action will be a lien upon the plaintiff's property above described from the date of such judgment. In this situation, it is important that a careful check upon the subsequent proceedings in this case be had before the purchase price of this property in whole or in part is turned over to Moehlman.

The warranty deed which has been tendered to the State by Gustave H. Moehlman has been properly executed by him and by his wife, Cecil M. Moehlman, who therein releases her right and expectancy of dower in this property. I further find from an examination of the provisions of this deed that the same are in form sufficient to convey this property to the State of Ohio by full fee simple title with a warranty that this property is free and clear from all encumbrances whatsoever except taxes and assessments due and payable December 30, 1934, and thereafter." As to which there is the further recital that the "grantee assumes and agrees to pay" such excepted taxes and assessments.

Upon examination of encumbrance record No. 1460, which has been submitted as a part of the files relating to the purchase of this property, I find that the same has been properly executed and that there is shown thereby a sufficient unencumbered balance in the proper appropriation account to pay the purchase price of the above described property, which is the sum of \$3,000.00.

I also find from a recital contained in said contract encumbrance record, as well as from the certificate of the Controlling Board, that the purchase of this property has been approved by the Controlling Board and that said Board has released from the appropriation account the amount necessary to pay the purchase price of this property.

Subject to the exceptions above noted, the title to this property is approved as of the date of the certificate of the abstract, and said abstract, together with the warranty deed, encumbrance record No. 1460 and the Controlling Board certificate above referred to, is herewith returned to you.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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3305.

BOARD OF EDUCATION—REMOVAL OF MEMBER FROM COUNTY SCHOOL DISTRICT CREATES VACANCY IN MEMBERSHIP OF COUNTY BOARD OF EDUCATION.

*SYLLABUS:*

*Where a member of a county board of education removes from the county school district, a vacancy is thereby created in the membership of the said county board of education, which vacancy should be filled in the manner provided by Section 4748, General Code, and if not so filled within the period of thirty days after the vacancy occurs it should be filled by the probate court of the county as provided by Section 7610-1, General Code.*

COLUMBUS, OHIO, October 15, 1934.

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

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

“One of the members of our county board of education resided in Conneaut township when she was elected in the fall of 1931, for a term of four years. Conneaut township was, and still is a part of the county school district. The term of this member expires in January, 1936, leaving her a little over a year to serve.

She has recently moved into Conneaut City, which is not a part of the county school district. Would her change of residence have any bearing upon her right to hold this office for the balance of the term to which she was elected?”

Section 4748, General Code, reads as follows:

“A vacancy in any board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy.”

Although the above statute was enacted prior to the creation of county boards of education, its provisions have been held to apply to county boards of education. Direct reference is made to this statute in Section 4731, General Code, which relates to vacancies in county boards of education. It is there provided that:

“Any vacancy on the board shall be filled in the same manner as is provided in Section 4748, General Code.”

The terms of Section 4748, General Code, were applied by the Supreme Court with respect to the creation of vacancies in the membership of county boards of education as well as the filling of such vacancies in the case of *State ex rel. Ring*, 126 O. S., 203. See also *State ex rel. vs. Whortenby*, 126 O. S., 209. In the *Ring* case it was held that removal from the county school district of a member of a county board of education created a vacancy in the membership of the board and that such vacancy should be filled according to law. In other words, the removal from the county school district of a member of a county board of education rendered the member ineligible to continue as a member of the said

board. It amounts to his removal from the board and creates a vacancy in the membership of the board.

As you state, Conneaut City is not a part of the Ashtabula County School District, and therefore the member of the board of education of the Ashtabula County School District who removed to Conneaut City is no longer eligible to membership on the said county board of education. A vacancy is created in the membership of said board by reason of the removal from the county school district of one of its members, and the said vacancy should be filled according to law as provided by Section 4748, General Code, and if not so filled within the proper time, it should be filled by the Probate Court as provided by Section 7610-1, General Code.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

3306.

APPROVAL—TRANSCRIPT OF PROCEEDINGS RELATING TO THE  
PROPOSED SALE TO ORRIS C. McCLELLAND OF NEWARK, OHIO,  
OF A PORTION OF THE ABANDONED OHIO CANAL PROPERTY,  
IN LICKING COUNTY, OHIO.

COLUMBUS, OHIO, October 15, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a transcript in duplicate of your proceedings relating to the proposed sale to one Orris C. McClelland of Newark, Ohio, of a portion of the abandoned Ohio Canal property, including the full width of the bed and embankments thereof, located in Madison Township, Licking County, Ohio, and described as follows:

Beginning at a line drawn through station 2059+45.4 of Bruce Doughton's survey of said canal property, and being the westerly line of a tract of said canal land sold to Kenneth W. and Edna M. Moore by the state of Ohio, under date of May 16, 1929, and running thence westerly with the lines of said canal property, eleven hundred ninety-one (1,191') feet, more or less, as measured along the transit line of the said Doughton survey, to the easterly line of what is commonly known as the "River Ford Road" and containing two and fifty-hundredths (2.50) acres, more or less, as shown by plat No. 127 of the said Doughton Survey, excepting therefrom any portion of said property that may be occupied by a public highway.

From the location of the parcel of abandoned Ohio Canal land here in question, as indicated by your description thereof in the transcript submitted to me, I infer that this parcel of land is included in that portion of the Ohio Canal which was abandoned for canal purposes by an act of the 79th General Assembly passed May 31, 1911 (102 O. L., 293), the provisions of which have been carried