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EDUCATION, MEMBER, BOARD OF—INDUCTED INTO ARMED FORCES OF UNITED STATES—ABSENT NINETY DAYS—DISCRETION, REMAINING MEMBERS TO DECLARE REASONS FOR ABSENCE, INSUFFICIENT—VACANCY—MAY BE FILLED ACCORDING TO LAW.

SYLLABUS:

When a member of a board of education is inducted into the armed forces of the United States, and by reason thereof the member is absent from meetings of the board for a period of ninety days, the remaining members of the board may, in their discretion, declare by proper action duly taken, that the reasons for such absence from meetings are insufficient, and thereby cause a vacancy to exist in such board which may be filled as provided by law.

Columbus, Ohio, November 12, 1942.

Honorable Paul J. Reagen, Prosecuting Attorney,
Warren, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

“A member of a certain school board in this county has entered the Coast Guard of the United States Government, and has been absent from board meetings for a period exceeding ninety days. At the last regular meeting of the Board of Education, three members of the board voted to declare the office vacant, because of his failure to attend meetings for a period of ninety days as provided in Section 4748 of the General Code of Ohio.

Will you kindly advise me if in your opinion the board has taken the proper action, in removing this member who is now serving in the armed forces of the United States?”

The law with respect to vacancies in the membership of boards of education is contained in Section 4748, General Code, which provides 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."

It will be observed from the terms of the statute quoted above, that no exception is made so far as attendance at meetings of a board of education is concerned, for any reason. The question of the sufficiency of the reasons for non-attendance of any of the members who may be absent from meetings for a period of ninety days is left entirely to the remaining members of the board, who may by a two-third vote duly taken and recorded, declare the reasons for such absence from meetings to be insufficient, and that therefore, the member's place should be regarded as being vacant, and thereupon proceed to fill it. The law contains no provisions which in express terms excuse the absence of a board member from meetings by reason of his being in the armed forces of the United States.

While you do not so state, I assume the board of education in question is a rural or village board having a membership of five. I also assume that the action of which you speak was taken by the board at a regular meeting or at a special meeting of the board duly called for the purpose, and that the question of the sufficiency of the reasons for the absence of the member in question was properly presented by motion to the remaining members of the board when in session as a board and that the affirmative vote of three members which constituted two-thirds of the remaining members of the board was properly taken and entered upon the records of the board as provided by the statute. Upon that assumption, it must be concluded that the action of the board as stated by you, was authorized and that the result thereof was to create a vacancy in the board which might be filled in accordance with law.

Respectfully,

THOMAS J. HERBERT
Attorney General.