

"The duty of the Court of Appeals is to follow the last word of the Supreme Court."

On the other hand, the Court of Appeals of the second Appellate District, in deciding the Columbus controversy, after referring to the holding of the Supreme Court in the East Cleveland case, said :

"We are of the opinion that where the judgment of the Supreme Court rests upon the concurrence of less than a majority, that such judgment is binding only in the particular case as an adjudication, but is not binding in other cases under the rule of stare decisis."

The Court of Appeals in the Columbus case then proceeded to hold the statute unconstitutional, thus giving to the Supreme Court the opportunity of affirming the judgment of the Court of Appeals, which necessarily meant that the statute was regarded as being unconstitutional.

Whatever may be the status of the controversy as to the duty of a Court of Appeals in such situations it cannot be denied that since all but one of the judges of the Supreme Court have now concurred in holding the statutory provision in question to be unconstitutional in the Willard case, that decision is now binding on all courts and administrative officers throughout the state under the rule of stare decisis, and that holding should be followed and acted upon accordingly.

I am therefore of the opinion that boards of education are legally liable for the payment of water rentals charged against them by municipalities which own and operate waterworks, for water furnished from said municipal waterworks and consumed by said boards of education for school purposes.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$27,000.00.

COLUMBUS, OHIO, February 6, 1936.

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