

be upheld by the courts; and for that reason I believe they might lawfully insure against the possible failure of the judge of the Court of Insolvency to account for county funds not covered by his bond.

To insure against his failure to account for other moneys than those belonging to the county or to insure against a possible loss to the judge himself by reason of bank failures, robberies or burglaries would be a diversion of public funds to a private use and would therefore be an unlawful expenditure of public funds.

If the judge should give a surety bond the premium on the bond should be paid by the county. Section 9573-1, General Code. The bond, however, which the judge might require his clerk to give is not given to secure the county for the faithful performance of the duties of the clerk but to secure the judge himself, who is primarily responsible to the county, and the premium on such a bond could not lawfully be paid by the county.

If the county were to insure the county funds in the custody of the court after paying the premium on his bond for that purpose, it would be paying twice for the same thing.

I am therefore of the opinion, that it would be unlawful for the county commissioners to pay from county funds the premium on an insurance policy to insure a judge of the Court of Insolvency or his clerk against possible losses by reason of robbery or burglary.

Respectfully,

GILBERT BETTMAN,
Attorney General.

280.

VILLAGE SCHOOL DISTRICT—NOT CONTAINING WITHIN BOUNDARIES A VILLAGE OF 3,000 PEOPLE—COMPLIANCE WITH SECTION 4688-1, GENERAL CODE, NECESSARY TO BECOME EXEMPTED VILLAGE SCHOOL DISTRICT.

SYLLABUS:

A village school district, which does not contain within its boundaries a village with a population of 3,000 or more, according to the last census, must comply with the terms of Section 4688-1, General Code, in order to become an exempted village school district.

COLUMBUS, OHIO, April 9, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

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

“The Ada Rural School District situated in Liberty Township, Hardin County, Ohio, contains a village, namely, the village of Ada, with a tax duplicate of over \$500,000; therefore by virtue of Section 4681 is a village school district, and the name Ada Rural School District is a misnomer.

Sections 4688 and 4688-1 set forth methods by which a village school district having a population of over 3,000 may be exempted from the supervision of the county board of education.

Section 4688, General Code, provides that when the population of a village school district is 3,000 or more as shown by the last census it may by majority

vote of the board therein be exempted from the supervision of the county board of education providing the county board of education has been notified of such action before May 1st of any year.

Section 4681-1 provides the method of procedure in ascertaining the population of the village school district.

The inquiry which we wish to make is whether the board of education in the above case can proceed under 4688 using the last census of Liberty Township and Ada Village, which now constitutes one school district, as the basis of determining whether they are a village school district with a population of 3,000 or more; or will they have to proceed under Section 4688-1 and order a census to be taken of the population of said district?"

Sections 4688 and 4688-1, General Code, read in part as follows:

Sec. 4688. "The board of education of any village school district containing a village which according to the last census had a population of three thousand or more, may by a majority vote of the full membership thereof decide to be exempted from the supervision of the county board of education.
* * * "

Sec. 4688-1. "The board of education of a village school district shall, upon the petition of one hundred or more electors of such district, or upon its own motion, duly passed by a majority vote of the entire board, order a census to be taken of the population of such district. * * * If the census shows a population of three thousand or more in the village school district, and such census is approved by the Superintendent of Public Instruction, such district shall be exempted from the supervision of the county board of education after due notice is given as is provided in Section 4688."

So far as I know, your question has never been passed upon officially by this office or by the courts, and the only guide we now have to the intention of the Legislature in enacting the above statutes is to be found in the language embodied therein, interpreted in the light of the circumstances under which the statutes were enacted. Both statutes above noted were enacted as a part of the same Act of the Legislature, in 1914, (104 O. L. 134). So far as is pertinent to your inquiry, the language then used in the statutes was substantially the same as is now found therein. Although both statutes have been amended at different times since 1914, the several amendments were such as to cause the history of the statute to lend no assistance in its interpretation, so far as the question before us is concerned.

The Act of 1914, of which Sections 4688 and 4688-1, supra, were a part, created county school districts and provided for county district supervision of village and rural school districts by county school district officers. By the terms of the Act, school districts were classified as stated in Section 4679, General Code, as city school districts, village school districts, rural school districts and county school districts. In 1921, Section 4679, General Code, was amended whereby school districts were reclassified, and exempted village school districts were included in such classification as a separate and distinct class of school districts. 109 O. L. 552. Practically the same result was accomplished however, in the Act of 1914, by providing in Sections 4688 and 4688-1, General Code, that village districts might under certain circumstances be exempted from county supervision. Those village districts containing an incorporated village, which village had a population of 3,000 or more, according to the last census, might be so exempted by a majority vote of the full membership of its board of education, and thereafter notifying the county board of education of the action so taken.

It apparently was thought by the Legislature that many village school districts which did not contain an entire village, or contained more than an entire village, ought to be permitted to be exempted from county supervision the same as those which contained an entire village for which a last census existed, but inasmuch as both the Federal census and any other official census that might have been taken would show the population for civil subdivisions only, and not for school districts, as such, there was no way to determine from any last census what the population was of a district that contained more or less than an entire village, as many village school districts at that time did. Section 4681, General Code, then in force, defined a village school district as follows:

“Each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district.”

As population was the basis which the Legislature desired to adopt as a standard for permitting village school districts to become exempted from county supervision, it was necessary to provide some means for determining the population of the district, when it contained more or less than an entire village for which a census existed, and therefore Section 4688-1, General Code, was enacted.

It seems not to have occurred to the Legislature that a situation such as you have in the Ada Village School District might arise, at least no mention of it is made in the statute; that is, that a village school district might exist containing two entire civil subdivisions, an entire village and an entire township outside the village, the population of which might readily be determined by a last census. As a matter of fact a last census does exist for these two subdivisions, so that the population of the district might now be accurately determined, according to the last census, without resorting to the taking of the census in the manner provided for by Section 4688-1, *supra*, and having that census submitted to and approved by the Superintendent of Public Instruction.

The reason for taking the census under such circumstances is not apparent and evidently the Legislature overlooked such a possibility. The statutes, however, provide a means for taking village schools out of their regular class and placing them in another class and therefore in my opinion should be strictly construed.

I am informed that the village of Ada, according to the last census, did not have a population of 3,000 or more, and therefore the district does not come within the terms of Section 4688, *supra*, which it will be observed permits a board of education in a village school district

“containing a village which according to the last census had a population of three thousand or more.”

to determine by a majority vote of its full membership to be exempted from the supervision of the county board of education.

Inasmuch as the Ada Village School District is not such a district as is mentioned in Section 4688, General Code, it necessarily follows that if it desires to become exempted from county supervision the procedure outlined in Section 4688-1, General Code, must be followed.

Respectfully,
GILBERT BETTMAN,
Attorney General.