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1. ELECTION—BOARD OF EDUCATION, MEMBERS—KENTON CITY SCHOOL DISTRICT—STATUS, TWO CANDIDATES WHO RECEIVED HIGHEST NUMBER OF VOTES AT GENERAL ELECTION IN 1943 AND MEMBER ELECTED AT GENERAL ELECTION IN 1941.
2. TWO MEMBERS SHOULD BE ELECTED AT GENERAL ELECTION, 1945, ONE TO SUCCEED MEMBER ELECTED IN 1941, THE OTHER TO FILL THE OFFICE OCCUPIED BY CANDIDATE WHO RECEIVED THIRD HIGHEST VOTE AT 1943 ELECTION, EACH FOR FULL FOUR YEAR TERM.

SYLLABUS:

Election of members of board of education of Kenton city school district discussed.

Columbus, Ohio, July 19, 1945

Hon. Rex W. Hanna, Prosecuting Attorney
Kenton, Ohio

Dear Sir:

This will acknowledge receipt of your letter relating to the board of education of the Kenton city school district, which reads as follows:

“The Board of Elections of Hardin County has requested me to obtain your opinion in the following particular:

The original Board of Education of the City School District of Kenton, Ohio, consisted of five members. A number of years ago its membership was reduced to four. For many years the four members have been elected in the following manner: In the year prior to Presidential election year, three members have been elected, and certificates of election issued them; in the year following Presidential election year, one member has been elected, and a certificate of election issued.

The question is whether there is one member or two members to elect to the Board at the next election, and whether all of the three candidates of the last School Board election were duly elected. Also, if it is your opinion that two are to be elected,

which of the candidates declared elected at the last election was not in fact elected?

Since this matter must be determined in the very near future, I would appreciate your most early consideration."

In my discussion of the questions propounded in your letter, I shall take the year 1939 as a starting point, and also assume that the three board members who were declared elected at the general election in that year for terms of four years each beginning on the first Monday in January, 1940, were legally elected, and that the fourth member who was declared elected at the general election in 1941, for a four year term beginning on the first Monday in January, 1942, also was legally elected.

Before the expiration of any of these four year terms the legislature enacted House Bill No. 217, providing for the recodification and revision of the public school laws of the state. 120 O. L. 475, et seq. This enactment became effective September 16, 1943, and it was expressly provided in Section 3 thereof that incumbents of offices at the time the act took effect should hold their respective offices for the full term for which they were severally elected, as if the act had not been passed.

Present Section 4832-1, General Code, as enacted by House Bill No. 217, and also in effect at the time the general election was held in the year 1943, provides that in city school districts containing a population of less than fifty thousand persons, the board of education shall consist of not less than three members nor more than five members elected by the electors at large of the school district, and present Section 4832-7, also enacted and in effect at the same time as Section 4832-1, provides that:

"If the number of members of a board of education of any city school district to be elected at large as fixed by section 4832-1, General Code, be even, one-half thereof shall be elected in the year preceding and the remaining one-half in the year following the calendar year divisible by four."

It would appear therefore that any board members legally elected in 1939 for four year terms, and in office on September 16, 1943, were permitted under Section 3 of House Bill No. 217 to hold their respective offices for the full four year term for which they had been elected, that is, until the first Monday in January, 1944; that under the provisions of Section 4832-7, quoted above, two board members only, and not three,

were legally elected at the general election in 1943 for four years terms, beginning on the first Monday in January, 1944; that two board members, instead of one, are to be elected at the coming November election for four year terms beginning on the first Monday in January, 1946; and, if the present laws on the subject remain unchanged, that two board members will be elected at the general election in 1947 to succeed the two legally elected in 1943.

Having determined that two board members, and not three, were legally elected at the general election in 1943, it would follow, under the provisions of the election laws, particularly Section 4785-158, General Code, that the two candidates who received the highest number of votes at that election were the ones legally elected to office, and that the third highest, although he may have received a certificate of election from the board of elections, is not now and has not been a *de jure* member of the board of education.

You are therefore advised as follows:

1. The two candidates for the office of member of the board of education of the Kenton city school district who received the highest number of votes at the general election in 1943, and the member elected at the general election in 1941, are the *de jure* members of the board of education.

2. Two members of the Kenton city board of education should be elected at the general election in 1945, one to succeed the member elected in 1941, and the other to fill the office now occupied by the candidate who received the third highest vote at the 1943 election, each for a full term of four years.

Respectfully,

HUGH S. JENKINS

Attorney General