

Sections 5381 and 5382, General Code, and on the basis of seventy per cent of the valuation thereof, as provided for by Section 5388, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5811.

EXEMPTED VILLAGE SCHOOL DISTRICT—DISCONTINUATION OF SCHOOLS IN SUCH DISTRICT AND SALE OF BUILDINGS—GOVERNED BY SECTION 7684, G. C.

SYLLABUS:

1. *The provisions of Sections 7730 and 7730-1, General Code, with respect to the suspension and reopening of schools in village and rural school districts and the sale of school buildings and real estate in the territory of a suspended school have no application in exempted village school districts.*

2. *A board of education of an exempted village school district may, under its broad power to manage and control the schools under its jurisdiction and to assign pupils to schools within its district as provided in Section 7684, General Code, suspend or discontinue any school in the district which, in its judgment is not needed for school purposes, and may thereafter dispose of the building which had formerly housed the suspended or discontinued school as well as the real estate upon which said building is located, by sale or otherwise, without limitation as to the time when such property may be disposed of.*

COLUMBUS, OHIO, July 7, 1936.

HON. W. RALPH PENCE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion concerning the following state of facts:

“On June 8, 1931, Glendale School was suspended as being impractical, and the attendance being less than required for a one-room school. On May 11, 1932, Zink School was suspended as being impractical to operate. On August 5, 1935, the schools known as Hoagland and Russell were suspended pursuant to O. G. C., Section 7595-1c, stating the average daily attendance was less than one hundred eighty (180) pupils.

The aforesaid four schools are within Hillsboro Exempted Village School District and have not operated since the aforesaid dates of suspension by the Board of Education.

In the Village of Hillsboro, within the same school district, the Washington School Building has been the high school and Webster Building the grade school.

However, a new school building has been erected in Hillsboro within the school district and is now in operation, which houses children from the seventh to the twelfth grades inclusive.

The Webster Building and the old high school building, known as Washington, are each now used to house the children up to the seventh grade.

The children of the aforesaid suspended schools now attend the new building, Washington and Webster Buildings accordingly, with their respective grades.

Does this state of facts come within O. G. C., Section 7730-1, as being a *new building to house the children of the territory affected* so that the suspended schools may be disposed of as provided in O. G. C., Section 7730-1?"

The only express authority given by statute for the suspension of a school is that extended to the boards of education of village and rural school districts by the provisions of Section 7730, General Code. This statute provides that those boards of education may suspend any school in their respective districts because of disadvantageous location or for any other cause. Action in so doing shall be "by resolution" of the board. The terms of Section 7595-1c, General Code do not serve to suspend a school in any class of district or direct that a school with an average daily attendance of less than 180 pupils must be suspended. It simply provides a method of apportionment of the public school fund to districts containing one or more schools with an average daily attendance of less than 180 pupils different than to districts where that situation does not exist. The fact that a school has an average daily attendance of less than 180 pupils may be a "cause" for which a school may be suspended in rural and village school districts pursuant to the provisions of Section 7730, General Code.

Your inquiry involves the question of whether or not the provisions of Section 7730, General Code, have any application in an exempted village school district. Section 7730, as last enacted, in 1921, reads in part as follows:

"The board of education of any rural or village school district may suspend by resolution temporarily or permanently any

school in such district because of disadvantageous location or any other cause, and teachers' contracts shall thereby be terminated after such suspension. Whenever the average daily attendance of any school in the school district for the preceding school year has been below ten the county board of education may, before the first day of August, direct the suspension and thereupon the board of education of the village or rural school district shall suspend such school. * * *

That portion of the statute which is not quoted provides for the posting of notices in case any school is suspended as provided by the statute and further provides for the reopening of the school under some circumstances upon petition of the patrons of the school.

From the provisions of Section 7730, General Code, it seems apparent that the intent of the statute is that its application be limited to districts which are under the supervision of the county board of education inasmuch as it provides that the board of education of a local district to which the statute applies may in its discretion suspend a school and in certain cases the county board of education may direct the suspension and the local board shall comply therewith. A county board of education of course, has no jurisdiction over exempted village school districts.

Moreover, the statute expressly limits the right of suspension authorized by it to "the board of education of any rural or village school district." It is true that exempted village school districts are in a sense village districts inasmuch as they must be village districts to become exempted village districts, and prior to 1921, when Section 4679, General Code, was amended to include exempted village districts as a separate classification of districts, exempted village districts existed in fact by reason of provisions of law permitting village districts to become exempted from county supervision upon attaining the required population and taking the necessary steps to be so exempted. They were not then regarded as a separate class of districts from village districts. Section 4679, General Code, as it was in force at that time classified school districts as city school districts, village school districts, rural school districts and county school districts. Said Section 4679, General Code, was amended in 1921, to read as follows:

"The school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts, rural school districts and county school districts."

It will be observed from the terms of the foregoing statutes that

exempted village school districts were by the amendment of 1921, made a separate class of school districts. The act of the legislature, including amended Section 4679, General Code, was passed May 14, 1921. This same legislature, in an act passed April 29, 1921, amended Section 7730, General Code, but did not provide therein that exempted village school districts should have the power extended by the statute to rural and village districts to suspend schools which might be reopened by petition of the school patrons. The legislature did, however, in the same act, in which Section 7730, General Code, was amended, amend Section 7731, General Code, relating to transportation of pupils, and included therein reference to exempted village districts which theretofore had not been included in the statute. Section 7731, General Code, as then amended, reads in part:

“In all city, exempted village, rural and village school districts where resident elementary school pupils live more than two miles from the school to which they are assigned the board of education shall provide transportation. * * *”

It seems evident that had the legislature meant to extend authority to exempted village districts to suspend schools and give to the residents the power to reopen the schools by Section 7730, General Code, as amended in 1921 it would have so provided.

No doubt the board of education of an exempted village school district may suspend certain schools, in its discretion, by authority of its broad power to manage and control the schools of its district, and to assign pupils to such schools as may be thought proper, but when such schools are suspended the right to have them reopened upon petition does not exist, the situation in this respect being the same as in city school districts. The right to have a school reopened upon petition, as contained in Section 7730, General Code, is an exception to the broad general powers extended to boards of education by other statutes, to manage and control the schools within their respective districts, and the provisions of the statute with respect thereto should for that reason be strictly construed. In my opinion, this statute cannot be held to apply to boards of education and the schools in exempted village school districts.

Inasmuch as the provisions of Section 7730-1, General Code, with respect to the sale of the real estate and school buildings located in the territory of a suspended school were enacted “in order to protect the rights of the petitioners mentioned in Section 7730, General Code” as expressly stated in the statute itself, those provisions are not applicable in districts other than those districts in which the provisions of Section

7730, General Code, apply. The district referred to in your inquiry is an exempted village school district and in my opinion the board of education of the district could suspend any school in this district which in its judgment is not needed, and is not limited by the provisions of Section 7730-1, General Code, with respect to the sale or disposal of the property which had formerly been used in connection with the maintenance of the school prior to such suspension.

Summarizing, I am of the opinion:

1. The provisions of Sections 7730 and 7730-1, General Code, with respect to the suspension and reopening of schools in village and rural school districts, and the sale of school buildings and real estate in the territory of a suspended school have no application in exempted village school districts.

2. A board of education of an exempted village school district may, under its broad power to manage and control the schools under its jurisdiction and to assign pupils to schools within its district is provided in Section 7684, General Code, suspend or discontinue any school in the district which in its judgment is not needed for school purposes, and thereafter may dispose of the building which had formerly housed the suspended or discontinued school as well as the real estate upon which said building is located, by sale or otherwise, without limitation as to the time when such property may be disposed of.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5812.

APPROVAL—BONDS OF HOPEDALE VILLAGE SCHOOL DISTRICT, HARRISON COUNTY, OHIO, \$24,000.00.

COLUMBUS, OHIO, July 7, 1936.

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