

There has been submitted a certificate of a directors' meeting authorizing the secretary of said company to enter into this lease.

Finding said lease in proper legal form, I hereby approve it and am returning it, together with all other papers submitted in connection therewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1913.

VILLAGE BOARD OF EDUCATION—MEMBERS NOT ENTITLED TO
COMPENSATION.

SYLLABUS:

Members of boards of education in village school districts may not lawfully be compensated for their services as such officials.

COLUMBUS, OHIO, May 17, 1930.

HON. LAWRENCE C. WARDEN, *Prosecuting Attorney, Napoleon, Ohio.*

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

"Marion Township Rural School District includes the Village of Hamler, Henry County, Ohio, an incorporated village with a tax valuation of more than five hundred thousand dollars. The Village of Hamler formerly constituted a separate village school district, but was later transferred back to the Marion Township Rural School District.

Citing Section 4681, General Code, examiners have held it illegal for members of the Board of Education of the Marion Township Rural School District to receive compensation for their services for the reason that the territory is a village school district and no provision is made for the payment of members of the boards of education other than rural boards.

Is there any provision by which the board members of so-called rural school districts may be compensated for their services?

I have been asked to secure your opinion on the above question by members of several boards over the county."

Upon the adoption of the School Code of 1914, 104 O. L. 133, Section 4679, General Code, as enacted therein, classified school districts as of four classes—county school districts, city school districts, village school districts and rural school districts. Said Section 4679, General Code, has since been amended, providing for an additional class of districts known as exempted village school districts.

Section 4681, General Code, then in force, was not changed at that time or since. It provides in substance that 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 \$500,000 shall constitute a village district. It follows that any school district with a tax duplicate of \$500,000 or more, which contains within its boundaries an incorporated village is a village school district, unless proceedings have been had under Section 4682-1, General Code, to dissolve such district as a village district and join it with a contiguous rural school district.

The fact that a school district may be commonly referred to as a rural district even in official records and proceedings does not make it a rural district if in fact under the law it is a village school district.

In a recent opinion rendered by me under date of March 27, 1930, being opinion No. 1684, addressed to the Auditor of State, it is held:

"The mere fact that a county board of education in creating a new school district by authority of Section 4736 of the General Code, refers to the new district thus created in the resolution creating the same as a rural school district, whereas it in fact is a village school district, is not sufficient to invalidate the action of the county board so taken."

In a former Opinion No. 1360 dated January 3, 1930, it is held:

"A school district containing within its boundaries an incorporated village, which, 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 \$500,000.00 is a village school district, unless proceedings have at some time theretofore been had dissolving such village district and joining the same to a contiguous rural district, by authority of Section 4682-1, of the General Code."

See also Opinions of the Attorney General for 1928, pages 129 and 2717.

From your inquiry it appears that a school district of the Henry County School District commonly called Marion Township Rural School District contains the incorporated village of Hamler and has a total tax valuation of more than \$500,000.00. Clearly this is a village school district unless it has been dissolved at some time and joined to a contiguous rural school district by authority of Section 4682-1, General Code, which, I take it, was not done, else you would have so stated. You state that the village of Hamler formerly constituted a separate village school district but was later transferred to the Marion Township Rural School District. I presume this was done by authority of Section 4692, General Code, and as the transfer was probably made transferring the entire former Hamler Village School District to Marion Township Rural School District and the village district thereby was extinguished and its board of education abolished and the Marion Township Rural School District continued in existence and its board of education thereafter administered the affairs of the district formed by the joinder of the two districts, it seemed proper to continue to call the district by its former name, the Marion Township Rural School District. The district as it existed after the transfer however contained an incorporated village and had a tax duplicate of \$500,000.00 or more. It therefore was a village school district no matter what it was commonly called. Calling it a rural district would not change its status as a village district which status is fixed by law. See Opinions Nos. 1360 and 1684, *supra*.

By the same act of the Legislature classifying school districts as city, village and county districts, 104 O. L., 133, provision was made by Section 4715, General Code, for compensating the members of rural district boards of education in districts containing more than sixteen square miles for attendance at regular board meetings. No provision was made for the compensation of members of city or village boards of education or for members of rural boards of education in districts containing less than sixteen square miles. Said Section 4715, General Code, has since been amended and now reads as follows:

"Each member of the board of education of rural school districts, except such districts as contain less than sixteen square miles, shall receive as compensation two dollars for each regular meeting actually attended by such member, and members of such boards in rural school districts containing less than sixteen square miles shall receive one dollar for each meeting, but for not more than ten meetings in any year. The compensation allowed members of the board shall be paid from the contingent fund."

No provision has ever been made for the compensation of members of boards of education in village school districts. This may seem somewhat arbitrary although the Legislature no doubt acted advisedly in the matter, as village districts are usually comparatively small while in rural districts the board members in many cases are required to travel quite a distance to get to the meetings. The compensation provided seems to be more for traveling to the board meetings rather than compensation for services rendered as such board members. In some cases no doubt board members in village districts are compelled to travel farther to attend the board meetings than those in rural districts. A general rule, however, cannot be made to fit all cases.

Inasmuch as provision is made by statute to compensate members of boards of education in rural school districts and no provision is made to compensate those in village school districts we must conclude that the Legislature did not intend that members of boards of education in village school districts should be compensated, else it would have so provided or authorized the board to make provision for the compensation of its members.

In Ruling Case Law, Volume 22, page 216, wherein questions relating to the compensation of public officers are discussed, it is stated:

"In all cases, the right to compensation is such only as may be given by law. * * * Even the measure of compensation is arbitrary with the Legislature and is not necessarily determined by the value of the officer's services."

In *Debolt vs. Trustees*, 7 O. S., 237, it is held:

"An officer whose fees are regulated by statute can charge fees for those services only to which compensation is by law affixed."

This view of the subject has been consistently adhered to in numerous cases including *Richardson vs. State ex rel.*, 66 O. S. 108, in which it is stated on page 113:

"It is well settled that the compensation of public officers cannot be enlarged, by implication, beyond the terms of the statute."

In the case of *Thorniley vs. State*, 81 O. S., 117, Judge Shauck said as follows:

"From all the cases relating to the subject it appears that all duties imposed upon a public officer without provision for compensation are presumed to be performed in consideration of the general emoluments of his office."

In the case of *The Somerset Bank vs. Edmund*, 76 O. S., 396, it is stated:

"Public policy and sound morals alike forbid that a public officer should demand or receive for services performed by him in the discharge of official duty, any other or further remuneration or reward than that prescribed and allowed by law."

In the case of *State vs. Klienholder*, 92 O. S., 166, it is said:

"It is well settled that the compensation of a public officer must be fixed by statute."

I am, therefore, of the opinion that members of boards of education in village school districts may not lawfully be compensated for their services as such officials.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1914.

CONTROLLING BOARD—POWER TO AUTHORIZE TRANSFER OF MON-
EYS UNDER SECTION 4, HOUSE BILL 510, 88th GENERAL ASSEMBLY
CONSIDERED.

SYLLABUS:

The Controlling Board may legally authorize a transfer of unencumbered funds in items appropriated under the heading "Additions and Betterments, Department of Public Welfare" in Section 1 of House Bill No. 510, 88th General Assembly, to the item therein entitled "London Prison Farm Development", but may not authorize the transfer of any of said funds to an item not appearing under such heading.

COLUMBUS, OHIO, May 28, 1930.

HON. H. H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication as follows:

"H. B. 510 passed by the 88th General Assembly makes certain appropriations for additions and betterments to the Department of Public Welfare. These additions and betterments include the erection of certain buildings, addition to the physical plants and the purchase of lands. The total additions and betterments so appropriated are \$1,125,125.00. Of the foregoing amount there has been expended, encumbered or plans have been made for encumbering approximately \$800,000.00 leaving a balance of approximately \$300,000.00 for which no specific plan has as yet been made.

May the Controlling Board legally authorize the expenditure of any or all of this balance for purposes other than the specific item named in the appropriation bill under the powers conferred upon the Controlling Board by Section Four of the Act? Specifically, we are submitting this question with the thought in mind that some portion of this fund might be made available by a transfer by the Controlling Board for the purpose of expanding the facilities of our penal institutions, either the institution at London or the initiation of a new penal institution at Grafton State Farm."

The board known as the Controlling Board has been created in various appropriation acts in which the powers and duties of such board are expressly defined and limited. Said board is a creature of legislative enactment, and it is fundamental that such boards have only such powers as are expressly conferred by law and those necessarily implied to carry the express powers to fruition. This principle has been laid down so often by the courts and this office that I deem it unnecessary to cite authority. Moreover, the powers granted to administrative boards with regard to