

procedure and make such recommendations as the facts seem to warrant, but not to the extent of making a specific finding when the question involved is one of damages, as in the situations you present.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1510.

BOARD OF EDUCATION—WHERE CITY PASSES FROM ONE CLASS TO DIFFERENT ONE ACCORDING TO FEDERAL CENSUS BY REASON OF INCREASED POPULATION—CITY BOARD OF EDUCATION MUST CONFORM TO LAW FOUND IN SECTIONS 4698, 4699, 4701 AND 4702 G. C.—HOW SECTIONS CONSTRUED—BOARD OF EDUCATION PERMITTED TO HIRE TEACHERS FOR VOCATIONAL SCHOOLS.

1. *In passing from one class or kind of city school district to a different one, when, after the official announcement of the census of the district, it becomes known that a change of status of the district has been produced by a change in population, city boards of education must conform to and apply the law found in sections 4698, 4699, 4701 and 4702 G. C.*

2. *Effect must be given every law if any reasonable and practical construction can be given its language.*

3. *Since the law allows the establishment and maintenance of vocational schools, a board of education is permitted to hire teachers for such schools.*

COLUMBUS, OHIO, August 23, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Receipt of your recent communication is hereby acknowledged, which is as follows:

“According to the last federal census, a city has over 150,000 persons. According to the census of 1910 this city had over 50,000 persons but less than 150,000. In passing from a city school district of less than 150,000 persons but more than 50,000 persons to a school district of over 150,000, what change takes place in the board of education of said city and what are the duties of the board of education as to procedure to bring about the proper changes?”

“Can a board of education employ a teacher to teach adults for Americanization purposes or otherwise, who are employed in the trades and industries?”

The law applicable to your inquiry, as amended, is found in sections 4628, 4699 and 4701, 108 O. L., Part 1, p. 192. Section 4702 G. C. also applies. The sections, or so much of them as are applicable, are as follows:

*Sec. 4698: * * * * **
 In city school districts containing according to the last federal census a population of 150,000 persons or more, the board of education shall consist of not less than five nor more than seven members elected at large by the qualified electors of such district; the office of subdistrict member in boards

of education in all such city school districts is hereby abolished and the terms of members elected from subdistricts shall terminate on the day preceding the first Monday in January, 1920."

Sec. 4699: "Within thirty days after this act shall take effect, the board of education of each and every city school district in which the number of members does not conform to the provisions of section 4698 shall by resolution determine within the limits prescribed by said sections the number of members of said board of education. Said resolution shall provide for the classification of the terms of members so that they will conform to the provisions of section 4702, General Code, taking into consideration the terms of office of the existing members whose terms do not expire or terminate on the day preceding the first Monday in January, 1920.

* * * * *

Sec. 4701: "Whenever the number of members of the board of education of a city school district is so fixed in the resolution provided for in section 4699, that the number of members of said board to be elected in the year 1921 in order to comply with the provisions of section 4702, exceeds the number of members whose terms expire on the day preceding the first Monday in January, 1922, such excess number of members of such school board shall be elected at the general school election in the year 1919 for such terms of two years necessary to comply with the provisions of sections 4698 and 4702.

Whenever the number of members of any such board of education is so fixed as provided in this act, that the number of members of said board to be elected in the year 1921, in order to comply with the provisions of section 4702, is less than the number of members whose terms expire or terminate on the day preceding the first Monday in January, 1922, the member or members to retire, so that there will be a compliance with sections 4698 and 4702, shall be determined by lot from among those whose terms would expire on the day preceding the first Monday in January, 1922, the terms of office of those on whom the lot falls shall expire on the day preceding the first Monday in January, 1920."

Sec. 4702: "The term of office of all members of boards of education in city school districts, except as provided in section 4701, shall be four years. All members in office at the time this act takes effect shall serve the unexpired portions of the terms for which they were respectively elected and until their successors are elected and qualified, unless their terms shall expire or shall have been terminated as provided by sections 4698 and 4701.

If the number of members of a board of education of any city school district to be elected at large as fixed pursuant to section 4699 be even, one-half thereof shall be elected in the year preceding, and the remaining half in the year following the calendar year divisible by four. If such number be odd, one-half of the remainder after diminishing the number by one shall be elected in the year preceding, and the remaining number shall be elected in the year following the calendar year divisible by four. All members to be elected from odd numbered subdistricts shall be elected at one and the same election, and all members from even numbered subdistricts shall be elected at the alternate election."

The law provides that the board of education shall consist of not less than five nor more than seven members when the population of the district is 150,000 or more and the determination of the number is left to the existing board of education to be fixed by a resolution. In section 4698 subdistricts in a district having a population of 150,000 or more are abolished and the terms of members elected from said subdistricts ceased, under the law, on January 1, 1920, leaving the members elected at large from the district before the change of status or class produced by the census as a nucleus for the newer board or the new board.

A requirement of section 4699 is that the existing board in such district shall pass a resolution fixing the size of the new board to be of five, six, or seven members, as it elects, and provides for the classification of the terms of the members to conform to section 4702, taking into consideration the terms of the members whose tenure ceased on the day before the first Monday of January, 1920. This resolution must be passed, if the number of members decided upon for the new district board does not equal that of the existing board, within thirty days after the act which amended the sections hereinbefore quoted takes effect.

This act amending these sections became operative August 7, 1919, having been filed in the office of the secretary of state on May 9, 1919. Thirty days after August 7, 1919, was September 6, 1919. Manifestly, the last day on which the required resolution could be passed by the board was nearly four months prior to the commencement of the taking of the census of 1920. This phase of the law will be discussed later herein.

Here follows an illustration of the more difficult changes required:

In section 4702 it is provided that the length of term for members of city boards of education shall be four years. However, certain exceptions occur as to the length of term in the sections discussed. These changes in the length of term are made so that the number of members of the board, as fixed by the resolution designating the size of the board on a change of status due to change of population, may conform to said resolution after the classification of terms of the members of the existing board is taken into consideration. In each case the length of the term of the member affected by these exceptions is two years. Specific directions are given in section 4701 as to the number of members to be elected at elections held two years apart.

It is the intention of the law that part of the board of education shall be elected at one time and part at another, so that the terms of all members shall not terminate on the same date. Provision is therefore made at the time of a change of grade or class of the district, after an official census is taken, to have certain members serve for two years and others for four. At the end of the terms of those serving for two years their successors are elected for a term of four years, in compliance with section 4702. Thus the portion of the board retained has a knowledge of the affairs of the district and considerable experience in the conduct of its business.

If the number of members of a board to be elected at large is five, the method provided by the law requires that two be elected at one election and three at a succeeding election; if six, three at each election held two years apart.

Suppose that the change from a district of one class to that of another, as indicated in your question, finds the existing board of education consisting of three members elected at large—the resolution passed by it changes the number to seven for the new board required by the change of class of the district, due to the change in population. That is an increase of four members. The term of one or of two of the members of the existing board will cease in January, 1920. If it be one, then the other two cease in 1922; if two, then one, on that date. Let us say that the term of one ended in January, 1920, then to make a board of seven, five new members are to be added because two have hold over terms of two years. Section 4702 requires that two of the five be elected in 1919 and three in 1921, and that each set be elected

for a term of four years. This would result in a delay in the increase of the membership of the board to seven until the election in 1921. Five members would thus be elected in 1921, but only two members' terms cease in that year. So, section 4701 modifies the number to be elected in 1919 by requiring the difference or excess of five to be elected in 1921 over two whose terms expire in 1921, which is three additional members to be elected in 1919, one of whom is chosen for a term of two years and two for four years.

Hence, applying the law after considering the terms of members, in 1919 five members should be elected, one for two years and four for four years. If one is chosen in 1919 for two years and four for four years, in 1922, on the day preceding the first Monday in January, three members' terms will cease and four will cease in January, 1924. Thereafter the terms and the number of members to be elected will conform to the provisions of section 4702, as is required.

In the act amending the sections as quoted above, in each paragraph of section 4698 the word "last" occurs before the words "federal census," qualifying the meaning of the same so as to refer to the census of 1910. "Last" was not in the law before amendment and the dates found before amendment have been changed from 1914 to 1920 in sections 4698 and 4699; otherwise these sections are identical. In section 4701 very material changes of language as well as a change of dates appear after amendment.

An opinion of this department found in *Opinions of the Attorney General, 1913, Vol. 2, at Page 1597*, discusses these sections of the law, from which is quoted the following:

"The main difficulty in construing this law arises out of the second paragraph of section 4702, which is to the effect that if the number be even one-half shall be elected in the year preceding, and the remaining half in the year following the calendar year, divisible by four, which is the year 1916; and if the number be odd, one-half of the remainder after diminishing the number by one shall be elected in the year preceding, and the remaining number shall be elected in the year following the calendar year divisible by four.

It is absolutely impossible to reconcile this section with the others referred to when the number of members had been reduced from six to five."

Since amendment, the difficulty experienced in the opinion just quoted has been eradicated so that a workable result may be had in applying the method now prescribed by the law as has been done herein. This method will work out equally well in other cases than the one that has been used in the illustration that is given.

The obvious policy and intent of the law gathered from the whole act is to provide for anticipated change in the status of city districts after a federal census has been officially announced. And the whole act must be said to be directory, although it contained provisions that are mandatory for boards of education.

It is a vain thing to presume that all city boards of education can know in advance that a change of status in the school district will result when the census has announced the population for 1920, and it is not a proper construction of these statutes to hold them void for uncertainty and vagueness since obviously they are intended to direct official action after the result of a coming federal census shall be known.

The use of the word "last" before "federal census" may be said to be an inadvertence, because this makes the law refer to the census of 1910, and it must be presumed that all boards of education affected by that census had complied with the law prior to its amendment. There has been many a federal census taken, but the one present and announced only is operative to determine a change of status in a

school district. Much authority may be cited to support this construction of the law. In *Moore vs. Given*, 39 O. S., 661, the court says :

“That the law does not require vain, absurd or impossible things of men is one of its favorite maxims; and it is the plain duty of the courts, in the interpretation of a statute, unless restrained by the rigid and inflexible letter of it, to lean most strongly to that view which will avoid absurd consequences, injustice and even great inconvenience; for none of these can be presumed to have been within the legislative intent.”

It is fair to say that if a board of education did not act in 1919 as the law directs because the official census was not announced, and it finds, after such announcement is made, that a change of status in a school district is produced by a change of population, it may proceed to act so as to comply with the law prior to the election to be held in 1921. Indeed, all that is necessary to make the amended law free from uncertainty is to read into it a change of date so as to apply to the census of 1920, which is the obvious intent thereof.

In *Beverstock vs. Board of Education*, 75 O. S. 144, at page 149, the opinion contains this language :

“A statute cannot be held void for uncertainty, if any reasonable and practical construction can be given to its language. Mere difficulty in ascertaining its meaning, or the fact that it is susceptible of different interpretations, will not render it nugatory. * * * It is the bounden duty of courts to endeavor by every rule of construction to ascertain the meaning of, and give full force and effect to, every enactment of the General Assembly not obnoxious to constitutional prohibition.”

When the results of any future census become known to the secretary of state, he shall forthwith issue a proclamation giving the census of each municipal corporation of the state. Thirty days after the issuance of such proclamation the changes caused by a change in population become effective in the various municipal corporations of the state. This provision of law of necessity refers to the latest census. Indeed, if in the place of “last,” before herein referred to, “latest” is supplied the language of the law will refer to the census of 1920. The law referred to in this paragraph is found in section 3498 G. C.

City school districts generally are more extensive in area than the city, but whether coextensive with the city or larger in area, it may be said that they become legally cognizant of the population of the district so as to effect a change in class or status under the provisions of said section 3498 G. C., and the class or status thus determined will continue until an official announcement of another federal census is made. Section 3498 G. C. was before the Supreme Court in the case of *Murray vs. State*, 91 O. S., 220, wherein it is held valid and in accord with the constitution.

The sections of the law quoted herein apropos your inquiry, before amendment were held to be a valid exercise of legislative power agreeable to the constitution of Ohio in *State vs. Evans*, 90 O. S. 243. In this case classification based on population is upheld. So also are certain acts of the board of education in proceeding to make the size of the board conform to the law.

In view of the facts, the law, and the opinions cited, if the contention herein conforms to the same, as is believed, and the sections of the law under discussion being operative, boards of education must remain in *status quo* until officially informed of a change of classification and until such later date when the number needed to conform to the number fixed by the resolution of the board may be legally elected and qualified.

Your second question may be answered by reference to a recent opinion of this department, rendered to the Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio, under date of May 8, 1920, No. 1227, the syllabus of which is as follows:

"A city board of education may establish and maintain vocational schools to which adults may be admitted and may erect and equip suitable buildings or set apart and use buildings under the control of the board of education for such purposes in the same manner and within the same limitations as it establishes and maintains buildings for other school purposes. However said schools should not be established for the exclusive use of adult pupils, but rather for all who are eligible to attend."

As a corollary to the reasoning of the opinion above cited, it will not be disputed that a board of education may employ a teacher in such a school. Americanization work is a term of extensive and general meaning. Any work that a foreign born youth or citizen does under a teacher that renders him better able to understand American customs, history, civil government, and even the force or meaning of the language used to convey the teacher's thoughts or those of the page of the text, may be included in such a term. It is difficult to see how any vocational school teacher can teach an adult who is of foreign birth, speaking but meager English, without doing a work that is Americanizing to him. To supplement the usually meager knowledge he must have had to secure his citizenship, or to give him the necessary learning that he eventually will need to become a citizen as well as a better workman, is an incidental part of the work of vocational schools. To this degree a vocational school teacher surely does "Americanization work or otherwise," and to such extent your question concerning such work may be affirmatively answered.

A copy of the opinion referred to above is enclosed for your information.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1511.

SCHOOLS—WHERE CENTRALIZED SCHOOL DISTRICT MAINTAINS HIGH SCHOOL—BUILDING MAY BE ERECTED FOR BOTH ELEMENTARY AND HIGH SCHOOLS—MAY CONTAIN AUDITORIUM—WHEN BOARD CAN EMPLOY ARCHITECT AND STIPULATE CONDITIONS AS TO PAY.

In a centralized school district maintaining a high school, the centralized school building may be erected to house both elementary and high schools, and may contain an auditorium and other rooms for such special school activities as are allowed by law at the discretion of the board of education. If the board decides to employ an architect it may do so before erecting such building, on the condition that the architect shall receive no pay for services rendered should the vote for a bond issue fail, provided, of course, that such services are for an amount reason-