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COUNTY BOARD OF EDUCATION—MEMBERS OF NEWLY CREATED DISTRICT BOARD SHALL BE APPOINTED BY COUNTY BOARD AND SHALL HOLD OFFICE UNTIL SUCCESSORS LEGALLY ELECTED AND QUALIFIED—HOW SUCCESSORS ELECTED—BALLOTS NOT IN CONFORMITY TO SECTION 4736 G. C.—NO VALID ELECTION—WHO ENTITLED TO VOTE AT SUCH ELECTION—HOW SCHOOL FUNDS DISTRIBUTED TO NEW DISTRICT.

1. *Members of the board of education in a school district newly created by the county board of education shall be appointed by the county board of education and shall hold office until their successors are legally elected and qualified.*

2. *The successors to the appointed board of education in a newly created district shall be elected in the manner provided in section 4736 G. C., that is, two members shall be elected for two years and three members shall be elected for four years, and thereafter in accordance with the provisions of section 4712 G. C. Where the ballots used in a school election in a newly created district are not in conformity with the mandate contained in section 4736, there is no valid election for members of the board of election.*

3. *Under the provisions of section 4714 G. C., as amended, where school officers or school questions are being voted upon at the regular November election, ballots used in such school election should be furnished to the electors residing in a rural school district at their regular voting places and where any portion of the qualified electors in a rural school district have been denied, the privilege of casting their ballots in such school election at the regular voting places, such school election is invalid.*

4. *Where a person was elected at the 1917 school election, such person has no legal membership in the board of education of a newly created district created by the county board of education in 1919.*

5. *Where the county board of education has appointed a board of education in a newly created district, under the provisions of section 4736, the county auditor should make the distribution of school funds to such appointed board of education until their successors are legally elected and qualified.*

COLUMBUS, OHIO, April 16, 1920.

HON. PHIL. H. WIELAND, *Prosecuting Attorney, Mt. Gilcad, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for an opinion upon the following statement of facts:

“The Chesterville village district comprised the Chesterville corporation, and the territory attached from Chester and Franklin township school districts. Chester township school district included all the territory of Chester township not attached to the Chesterville village school district and a strip of territory from South Bloomfield township school district.

The county board of education of Morrow county on April 19, 1919, passed a resolution creating a new school district known as the Chester township school district from the two districts above named and appointed a board of education for the newly created district in accordance with section 4736 G. C.

On October 10, 1919, the common pleas court of Morrow county granted an injunction enjoining the county board from putting into opera-

tion their action and resolution to create the said new school district. The court of appeals reversed the decision of the lower court on December 10, 1919.

The names of nine electors were placed on the ballot to be voted on for members of the board of education. The ballots stated that *two* members were to be elected for four years and *three* for two years. Ballots were placed in Chester township and Chesterville village precincts. No ballots were furnished at the Franklin and S. Bloomfield precincts. Hence the electors residing in Franklin and S. Bloomfield townships were obliged to go to the Chesterville village and Chester township precincts respectively to vote for members of the board of education. The electors residing in Chester township, who had lived in the territory attached to the old Chesterville village school district were not permitted to vote for members of the board in Chester township precinct but were obliged to go to the Chesterville village precinct. The election in the Chester township precinct was conducted on the theory that the two original school districts were still in existence, and that the electors were electing a board of education for the original Chester township school district. The election in the Chesterville village precinct was conducted on the theory that a board of education was being elected for the newly created school district. The Chester township election board, it is said, made its election returns to the old Chester township board of education that was dissolved by the action of the county board in creating the new district. The board of election in the Chesterville village precinct made its returns to the board of education appointed by the county board of education.

On January 5th the board appointed by the county board met and organized for the ensuing year. The four men receiving the greatest number of votes at the November election, together with another man whom they claimed was elected for four years at the November election in 1917, met on January 5, 1920, but did not organize; on Saturday, January 10, 1920, these same five men met and perfected the organization of the board for the old Chester township school district and have refused to assume any responsibility or to indicate any intention of operating the schools in the newly created district, other than those in the territory comprising the old Chester township school district.

Under the conditions herein recited was there a valid election for members of the board of education for the newly created school district at the November, 1919, election?

Could the person who was elected at the 1917 election legally perform the functions of a member of the board of the newly created district?

If the November, 1919, election was not valid will the board of education appointed by the county board hold over until such time as a proper and valid election is held selecting their successors?

To what board shall the auditor make the March, 1920, distribution of school funds?"

In the above statement of facts you indicate that the common pleas court of Morrow county, on October 10, 1919, granted an injunction enjoining the county board from putting into operation their action and resolution to create the said new school district of Chester township; and following this action on the part of the common pleas court of Morrow county the court of appeals reversed the decision of the common pleas court on December 10, 1919. Thereupon the question was taken into the supreme court, where a motion to order the record of the court

of appeals to be certified in the above case was overruled. Therefore it is understood that at this time the controversy growing out of the creation by the Morrow county board of education of the Chester township rural school district is not in the courts but the status existing in such school territory is that put upon it by the decision of the court of appeals under date of December 10, 1919. It is apparent that much of the controversy and the cause of your questions grow out of the fact that the district was created by the county board of education on April 19, 1919, and then on October 10, 1919, the common pleas court pronounced the acts of the county board of education, in creating the new district, to be a nullity, and of no force (22 N. P. (n. s.) 209-217). Between the time of the decision of the common pleas court on October 10, 1919, and the reversal of the common pleas court by the court of appeals on December 10, 1919, there occurred the November school elections throughout the state, and in the school election held in the territory comprising the Chester township rural school district there was an attempt made to select by ballot the successors of the board of education for such territory as created by the Morrow county board of education. You indicate that the election in Chester township precinct was conducted on the theory that the two original school districts, viz., Chesterville village school district and Chester township school district, were still in existence in accordance with the decision of the common pleas court; and that the electors residing in the Chesterville village precinct acted upon the basis that they were electing a board of education for the newly created township rural school district, that is, the whole of the territory created into a new district by the county board of education to be called the Chester township rural school district.

The effect of the decision of the court of appeals on December 10, 1919, was to nullify the decision of the court of common pleas rendered in October and to hold that the action of the county board of education in April, 1919, in creating the Chester township school district, was entirely regular. During the period of time from April, 1919, when the district was first created by the county board of education under the provisions of section 4736 G. C., to the date of the November school election, such section 4736 G. C. had been amended by the general assembly in 108 O. L., page 704, to read as follows:

"The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall make an equitable division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it. Members of the board of education of the newly created district shall be appointed by the county board of education and shall hold their office until the first election for members of a board of education held in such district after such appointment, at which such first election two members shall be elected for two years and three members shall be elected for four years, and thereafter their successors shall be elected in the same manner and for the term as is provided by section 4712 of the General Code. The board so appointed by the county board of education shall organize on the second Monday after their appointment."

The above section provides that at the first election for members of a board of education in a newly created district the members shall be elected, to-wit, two

members for two years and three members for four years. In your statement of facts you indicate that the ballots presented to the voters in the territory in question stated that two members were to be elected for four years and three members for two years, which is a clear violation of the mandate appearing in section 4736, and therefore the ballots used in such election were contrary to the form of ballots specified in the statute.

It appears that the Chester township rural school district, as created by the county board of education, is composed of the territory formerly constituting the Chesterville village school district, to which territory there had been attached a portion of Franklin township; and the newly created district also included all of Chester township outside of the Chesterville village school district to which township school district there had been attached a tract of territory belonging to South Bloomfield township. From this it would appear that the voters residing in Franklin township and the voters residing in South Bloomfield township would have different polling places or voting precincts at which to cast their ballots than would be the case of those voters who resided within the confines of Chester township. In your statement of facts you say that the ballots were placed in Chester township and Chesterville village precincts but no ballots were furnished at the Franklin township or South Bloomfield township precincts and therefore the electors residing in such townships outside of Chester township did not have the privilege of casting their ballots in this school election in accordance with the provisions of section 4714, as amended, and which was in effect at the time of the November election in 1919, and which read in part as follows:

"Electors residing in a rural school district may vote for school officers and on school questions at their regular voting places at all general elections, but if a special election is called by the board of education of a rural district, the board may designate a convenient place in such district for the holding of such election: * * *"

The election which occurred in this territory for members of the board of education was not a special election, but was the general election for school officers held throughout the state in November, 1919. The above section means that those voters who lived in South Bloomfield precinct should have been furnished ballots at their regular voting places in South Bloomfield township, and those voters residing in Franklin township should have been furnished ballots at their regular voting places in Franklin township. Your statement of facts indicates that there were no ballots in either of the precincts where these voters in question resided and at which polling places they should have voted. It is apparent, therefore, that voters who went to the polling place where they voted at general elections in South Bloomfield and Franklin townships were not furnished with a ballot for members of the board of education such as was used in other portions of their school district, that is, within the confines of Chester township and Chesterville village district. The effect of this would be in practical life that the voters in South Bloomfield township or Franklin township, going to the polls at the November election in 1919, to vote for their township officers in such odd numbered years, would then have to go to another polling place in order to cast their vote for member of the board of education in the school district to which they were attached. Such is not the intent of the law, section 4714 clearly providing that the voter shall vote for school officers and school questions at their regular voting places at the general elections, and this must mean the November election in 1919, because school officers are not elected at any general election other than in the odd numbered years similar to 1919.

"Members of the board of education of a newly created rural school district are to be appointed by the county board of education under G. C. 4736 * * * and the successors of such members * * * are to be elected under G. C. 4712." State vs. Haupt, 98 O. S., 451.

Section 4712 reads as follows:

"In rural school districts, the board of education shall consist of five members elected at large at the same time township officers are elected and in the manner provided by law for a term of four years."

In the case at hand the county board of education appointed five persons as members of the new rural school district; following this, at the November election, an attempt was made to elect their successors in accordance with the provisions of section 4712 G. C.; at this election, according to the statement of facts furnished, ballots were used contrary to the provisions of section 4736, and in such election a portion of the voters in the newly created school district failed to have the opportunity of voting for their school officers, as provided in section 4714 G. C. You now desire to know, as your first question, whether under the conditions given in your statement of facts, there was a valid election for members of the board of education for the newly created school district at the November, 1919, election? The answer to this is, as indicated above, that there was no valid election in such newly created school district at the November, 1919, election, for the reasons just stated.

Your second question indicates that you desire to know whether a person who was elected at the November, 1917, election, could legally perform the functions of a member of a board of education of the newly created district. The answer to this is that the newly created district was not in existence in 1917, having been created in April, 1919, by the county board of education, which action was later sustained by the court of appeals December 10, 1919, followed by the refusal of the supreme court to review the action of the court of appeals. The board of education in the newly created district has a status, beginning with April, 1919, and the person elected in 1917 could not perform the functions of the member of the board of education in the newly created district unless he had been appointed by the county board of education as one of the five members in the newly created district.

Your third question is whether the members of the board of education, appointed by the county board, hold over until such time as a proper and valid election is held, selecting their successors on the basis that the November, 1919, election was not valid. The answer to this is in the affirmative, it being provided in the school laws that members of boards of education hold over until their successors are legally elected and qualified, which, in this instance, has not taken place up to this time.

In your fourth question you desire to know to what board of education the county auditor shall make the March, 1920, distribution of school funds. The answer to this is that the county auditor should make the March, 1920, distribution of school funds to the board of education named by the county board of education in April, 1919, in the newly created district and whose successors have not been legally elected, but who are holding office as the legal members of the board of education in the newly created district until their successors are legally elected and qualified.

Respectfully,

JOHN G. PRICE,

Attorney-General.