

to make the license anything other than an annual right to do business as expressed in the preceding section.

I am therefore of the opinion that the bond required by Section 6373-35 of the General Code, to be furnished before the issuance of any real estate broker's license, must be executed for the period of one year and a new one for each renewal of a license. The effect of this is that the maximum liability of the surety company would be \$1,000 for each term of one year, but that liability for breaches of the bond in various years would be cumulative.

Respectfully,
EDWARD C. TURNER,
Attorney General.

775.

COUNTY BOARD OF EDUCATION—WHEN A MEMBER BECOMES A
NON-RESIDENT OF COUNTY SCHOOL DISTRICT—EXEMPTED
VILLAGE SCHOOL DISTRICT—CERTIFICATE TO COUNTY AUDITOR.

SYLLABUS:

1. *When a village school district within a county school district becomes an exempted village school district, a member of the county board of education who resides within such village school district becomes a non-resident of the county school district and a vacancy is thereby created on the county board of education.*

2. *When, on August first of each year, a county board of education makes its certificate to the county auditor, as enjoined by the provisions of Section 4744-2, a village school district, which it has been determined will become an exempted village school district at some time during the school year after the said August first, should not be included as a part of the county school district for that portion of the school year following the time when it will become an exempted village school district, and the certification should not include the number of teachers and the proportionate share of the compensation of the county school superintendent and assistant superintendents and contingent expenses of the county board of education which would have been chargeable to it for that part of the school year following the time when it will become an exempted village school district if it had remained a part of the county school district.*

COLUMBUS, OHIO, July 25, 1927.

HON. G. O. MCGONAGALE, *Prosecuting Attorney, McConnelsville, Ohio.*

DEAR SIR:—I have before me your request for my opinion which reads as follows:

“The president of the Morgan County Board of Education whose term has not yet expired, resides in this, The McConnelsville and Malta district which said district on the first of September next will become an exempted Village District. The question now arises as to whether or not this member of the County Board ceases to become a member of said Board by reason of his residence in said exempted district or may he continue to serve the term for which he was elected?”

The County Superintendent is required to file with the County Auditor on or before the first of August each year a certificate showing the amount of moneys required to be withheld from the several districts of the County

District for the purpose of paying the salaries created under the County Board Law. Inasmuch as the McConnellsville Malta District will become an exempted school district on the first of September, must the certificate omit said District entirely or must it be included because on the first of August when the certificate should be filed it is still a part of the County District?"

Your inquiry calls for an answer to two questions which will be considered in their order.

Article XV, Section 4 of the Constitution of Ohio reads as follows:

"No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector; * * *"

Section 4684, General Code, defines county school districts as follows:

"Each county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the supervision of the county board of education by the provisions of Sections 4688 and 4688-1, and territory detached for school purposes, and including the territory attached to it for school purposes, shall constitute a county school district."

Section 4728, General Code, provides as follows:

"Each county school district shall be under the supervision and control of a county board of education composed of five members, who shall be electors residing in the territory composing the county school district and who may or may not be members of local boards of education. The members of such county board in office when this act goes into effect shall continue in office until their successors are elected and qualified."

Section 4748, General Code, reads:

"A vacancy in any board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy."

It is apparent from the provisions of Section 4684, supra, that the territory embraced within an exempted village school district is not a part of a county school district. It is also apparent from the provisions of Section 4728, supra, that the members of the county board of education must be electors residing in the territory comprising the county school district, and Section 4728, supra, makes it clear that a vacancy is created in any board of education by the non-residence of one or more members of the board. It clearly follows therefore that when any part of the county school district becomes an exempted village school district that the territory included within such exempted village school district is taken out of the county school district and a

member of the county board who resides within that territory becomes a non-resident of the county district and is no longer an elector residing within the county district.

In the case of *Thompson vs. State ex rel. Clemens*, 92 O. S. 284, a holding is made that at first blush seems to be contrary to the foregoing conclusion. An examination of that case, however, discloses that the conclusions therein reached were based on the construction of Section 4735, General Code, in its application to the particular circumstances before the court.

It appears in the Thompson case that the question arose at the time of the going into effect of the School Code passed on February 5, 1914 (104 v. 133). Prior to the passage of this act there existed what were styled township and special school districts and a member of one of the boards of education of one of these township districts sought to hold his position until the end of the time for which he was elected though the county board of education had transferred a portion of the district, for which he was serving as a member of the board of education and in which territory he resided, to a newly created rural district comprising a portion of the adjoining district. The law provided (Section 4735, General Code):

"The present existing township and special school districts shall constitute rural school districts until changed by the county board of education, and all officers and members of boards of education of such existing districts shall continue to hold and exercise their respective offices and powers until their terms expire and until their successors are elected and qualified."

The court after quoting Section 4735, *supra*, made this observation:

"It was undoubtedly the purpose of the general assembly by the adoption of this section in order to continue the existing school machinery to provide that all members of the boards of education then in office should continue until the expiration of their terms and until the election and qualification of their successors. It means exactly what it says."

In my opinion the principle laid down in the Thompson case has no application to the situation about which you inquire.

Coming now to your second question, in which you state that the county superintendent is required to file with the county auditor on the first day of August of each year certain information with reference to the financial requirements of the county districts for the ensuing year, you no doubt have reference to Section 4744-2 of the General Code, which reads as follows:

"On or before the first day of August of each year the county board of education shall certify to the county auditor the number of teachers to be employed for the ensuing year in the various rural and village school districts within the county school district, and also the number of assistant county superintendents employed and their compensation and the compensation of the county superintendent for the time appointed; and such board of education shall also certify to the county auditor the amounts to be apportioned to each district for the payment of its share of the salaries of the county superintendent and assistant county superintendents and of the local expense of the normal school in each county, and the contingent expenses of the county board of education."

This section of the statutes was enacted in 1921. At that time it was provided by Section 7689, General Code, that the school year should begin on the first day of September of each year and close on the 31st day of August of the succeeding year.

Later, in 1925, Section 7689 was amended so as to provide that beginning on July 1, 1925, the school year should begin on the first day of July of each calendar year and close on the 30th day of June of the succeeding calendar year.

No change was made in the provisions of Section 4744-2 at the time of the amendment in 1925 of Section 7689 and while the word "ensuing" as used in Section 4744-2 means "following", it is apparent that the meaning of the law is, that the certification to be made by the county board of education as provided by Section 4744-2 shall be as and for the year which began on the first day of the previous July.

Inasmuch as the McConnellsville-Malta School District will not become an exempted village school district until September first, that is, after one-sixth of the school year shall have passed and obligations for the payment of superintendents and assistant superintendent's salaries and contingent expenses of the county board of education shall have been incurred for these two months, it is my opinion that the McConnellsville and Malta District would be chargeable with their proportionate share of such expenses incurred prior to their becoming an exempted village school district. No expenses, however, will likely be incurred prior to September first for teachers and any expenses incurred after September first for teachers in the McConnellsville-Malta District and contingent expenses of the county board of education and the proportion of superintendent's and assistant superintendent's salaries for the remaining portion of the school year after September first, that would have been chargeable to the McConnellsville-Malta District had it not become an exempted village school district, would of course not be chargeable to it after it becomes an exempted village school district and should not therefore be included in the certification which the county board of education will make on August first.

Answering your questions specifically, I am of the opinion:

1. That the president of the Morgan County Board of Education now residing in the McConnellsville-Malta Village School District will become a non-resident of the Morgan County School District, when the McConnellsville-Malta District becomes an exempted village school district on September first, and that, therefore, at that time he automatically ceases to be a member of the Morgan County Board of Education and a vacancy is created on the said board.

2. When the Morgan County Board of Education makes its certification on August first in accordance with the provisions of Section 4744-2, General Code, the McConnellsville-Malta School District should be considered as a part of the Morgan County School District for one-sixth of the school year beginning July 1, 1927, and there should not be included in such certification the number of teachers to be employed nor any portion of the superintendent's and assistant superintendent's salaries or contingent expenses of the county board of education for that part of the school year following September 1, 1927.

Respectfully,
EDWARD C. TURNER,
Attorney General.

776.

PROCEEDING—WHEN PROCEEDING IS PENDING WITHIN MEANING OF SECTION 26, GENERAL CODE—EXISTING HIGHWAY LAWS AND EDWARDS-NORTON ACT, DISCUSSED.

SYLLABUS:

1. *A proceeding is "pending" within the meaning of Section 26 of the General Code when a board of county commissioners makes application for state aid under the provisions*