

Summarizing, and by way of specific answer to your inquiry, I am of the opinion that the county commissioners, under the facts existing in this case, have the authority to cancel the contract awarded and entered into and to proceed to award the contract to the lowest bidder on the alternate type of pavement. The resolution which you have asked me to approve is in satisfactory form, but I suggest that it be recited therein that the public interest will be served by the cancellation of the contract in question.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2598.

TRUSTEE OF WILBERFORCE UNIVERSITY—MUST BE ELECTOR OF OHIO.

*SYLLABUS:*

*Members of the Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University must be electors of the State of Ohio.*

COLUMBUS, OHIO, September 21, 1928.

MESSRS, JOSEPH L. JOHNSON, *President*, and J. OTIS HAITHCOX, *Secretary*, Board of Trustees, The Combined Normal and Industrial Department of Wilberforce University, 1375 East Long Street, Columbus, Ohio.

GENTLEMEN:—Permit me to acknowledge the receipt of your request for my opinion reading as follows:

“At a meeting of the Board of Trustees of Wilberforce University, held June 20, 1928, Bishop W. H. Heard was elected to be a member of the Board of Trustees of the Combined Normal and Industrial Department of Wilberforce. Bishop Heard has charge of the Third Episcopal District of the A. M. E. Church which includes the State of Ohio. His residence, however, is in Philadelphia, Pa. The eligibility of Bishop Heard to serve as a member of the C. N. & I. Board has been questioned. The Board will appreciate it very much if your office will look into the matter and give us an opinion. It is important that this matter be given attention at a very early date as at present the Board is without full membership.”

As I understand your inquiry, Bishop Heard resides in Philadelphia, Pa., and is not an elector of the State of Ohio.

The question presented by your inquiry is whether or not a person who is not an elector of this state may be a member of the Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University.

The above mentioned department was created by an Act of the Legislature found in 84 O. L. 127 and carried into the General Code as Sections 7975 to 7986-1, both inclusive.

Section 7975 directs that such a department be established and maintained at Wilberforce University. Section 7976 provides for the creation of a Board of Trustees to be known as “The Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University,” and reads as follows:

"The government of such department shall be vested in a board of nine trustees to be known as 'the board of trustees of the combined normal and industrial department of Wilberforce University.' Five members of such board shall be appointed by the governor, by and with the consent of the senate, and three members thereof shall be chosen by the board of trustees of the university. The president of the university shall be ex-officio a member of the board. The governor shall appoint one member of such board each year, who shall serve five years, and whose term shall begin upon the first day of July in each year. Such appointment shall be made during the session of the senate next preceding the beginning of such term."

It will be noted that this section provides that the Board of Trustees of said department shall consist of nine members, that five of said members "shall be appointed by the governor," by and with the consent of the Senate; that three of said members shall be chosen by the Board of Trustees of Wilberforce University, and that the President of the University shall be *ex-officio* a member of the board. Of the board of nine members, therefore, five are appointed by the Governor and three by the Trustees of the University, the President of the University being *ex-officio* a member of said board.

The statutes provide for the filling of any vacancy which might occur on said board of trustees; it being also provided that the Governor shall be notified of the names of the members of the board who are selected by the Trustees of the University, and for the time of meeting of such board.

Section 7981, General Code, provides as follows:

"The board of trustees shall take, keep and maintain exclusive authority, direction, supervision and control over the operations and conduct of such combined normal and industrial department, so as to assure for it the best attainable results with the aid secured to it from the state. The board shall determine the branches of industry to be pursued, select a superintendent whose selection shall be approved by the state controlling board and who shall not be removed except for cause after due hearing before said controlling board.

Said superintendent shall be the fiscal officer of the department and shall attend all meetings of the board of trustees wherein matters affecting the revenues or expenditures of the department are involved. The expenditures of all moneys appropriated for carrying out the purposes and provisions of this subdivision (G. C. 7975 to 7986) of this chapter shall be made under such regulations as the board of trustees shall establish; but no contract, claim or voucher against any appropriation shall be valid until approved in writing by said fiscal officer. No money appropriated by the state shall be used for any purpose not in direct furtherance and promotion of the objects of the department."

It will be noted that this section, among other things, provides that the Board of Trustees shall direct and have control over the operations and conduct of the Combined Normal and Industrial Department of the University.

There is then a Department of the State created by statute and a Board of Trustees created by law. The said trustees are therefore state officers, for the purpose of carrying out the statutory provisions relative to the maintenance of said department.

In the opinion in the case of *Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University vs. Grace Green*, 113 O. S., 15, it was said by the Supreme Court of Ohio, that:

"Moreover the action against the Combined Normal and Industrial Department of Wilberforce University cannot be maintained, for it is an action against the state."

That was a case in which suit was instituted against said Board of Trustees and Wilberforce University for damages, which the plaintiff claimed to have sustained as the result of falling into a manhole on the property owned by the State and under the control of said Board of Trustees. A judgment had been rendered in the Common Pleas Court against said Board of Trustees and Wilberforce University, which judgment was affirmed by the Court of Appeals. This judgment, however, was reversed by the Supreme Court in the case herein cited, for the reason hereinabove quoted. Section 4 of Article XV of the Constitution of Ohio, provides that:

"No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector; provided that women who are citizens may be appointed as members of boards of, or to positions in, those departments and institutions established by the state or any political subdivision thereof involving the interests or care of women or children or both."

It will be noted that this section of the Constitution specifically provides that no person shall be appointed to any office in this State unless possessed of the qualifications "of an elector." It is true that it does not state that such person must be an elector of the State of Ohio, but there can be no doubt but that such was the intent of the people in adopting said section. There can be no doubt but that this section applies to appointments to be made upon the various state boards, and that such members are officers within the meaning of said constitutional provision for the reason that the latter part of the section refers specifically thereto, and authorizes the appointment of women who were not at the time said section was amended (November 4, 1913) electors of this State, as members of boards of departments and institutions "established by the state or any political subdivision thereof which involved the interests and care of women or children, or both." There is, therefore, a clear constitutional prohibition against the appointment to any such office in this State of any person who is not an elector of the State. Since Bishop Heard, who was selected by the Board of Trustees of Wilberforce University to become a member of the Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University, does not possess the qualifications of an elector, he may not qualify or act as a member of said Board of Trustees.

From what has been said, it is my opinion that since all of the members of the Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University must be electors of the State of Ohio, Bishop Heard is not legally eligible to serve as a member of such board.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2599.

PROHIBITION VIOLATORS—PROBATE COURT HAS JURISDICTION OF—  
AFFIDAVIT.

SYLLABUS:

*By the terms of Section 6212-18, General Code, it is unnecessary that any information be first filed by the prosecuting attorney in order to vest jurisdiction in a probate court to hear and determine prosecutions involving violations of the prohibition laws.*