

officers of the county in question, and the law herein cited, it is therefore the opinion of the attorney-general that:

1. Under the provisions of section 5653, General Code, it is the mandatory duty of the county commissioners to transfer the surplus in the dog and kennel fund in excess of \$1,000 to the county board of education fund in those counties in which there is no society for the prevention of cruelty to children and animals.

2. Where the board of county commissioners have transferred to the county board of education fund, funds from the dog and kennel fund, such funds transferred vest in the county board of education fund and the board of county commissioners has no authority over such county board of education fund.

3. The county board of education fund can be expended only by the county board of education and for those purposes mentioned in the statutes, but the county board of education must take into consideration and use any funds secured from the county dog and kennel fund or from any other source and which is not already appropriated, before the amount due from the rural and village school districts is prorated to any of such districts.

4. A county board of education is a creature of statute and the exercise of the powers granted to it is limited to those expressly given and those contained by reasonable intentment in the act creating it, and the county board of education is without authority of law to transfer any portion of the county board of education fund to any other fund.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1118.

OFFICES COMPATIBLE—MEMBER OF GENERAL ASSEMBLY—MEMBER OF COUNTY BOARD OF EDUCATION.

*Under the provisions of the constitution of Ohio, a member of the general assembly can at the same time serve as a member of the county board of education.*

COLUMBUS, OHIO, April 1, 1920.

HON. F. B. PEARSON, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter in which you desire to know whether a member of the general assembly at the same time can serve as a member of the county board of education.

Your attention is invited to a former opinion issued by this department on June 17, 1914, addressed to Hon. John H. Lowry, member of the House of Representatives, Napoleon, Ohio, and reported as Opinion No. 989 in 1914 Annual Report of the Attorney-General, Vol. I, p. 817. The holding of such opinion was that there is no provision in the constitution prohibiting a member of the general assembly from serving upon the county board of education. After quoting fully from sections 4728, 4728-1, 4729, 4730 and 4734 G. C., the attorney-general said: (pp. 818-19).

"The foregoing sections provide the manner in which the county board of education is to be elected and the length of the term of each member; it also provides for the payment of their expenses. No salary is provided for in any of these sections.

The question may arise as to whether or not the members of the county board of education are chosen by election, or by appointment. In

the case of *State of Ohio vs. Squire*, 39 O. S., 197, the terms 'appointment' and 'election' are defined as follows:

'The word appointment as used in the statutes generally means the designation of a person to hold an office of trust, by an individual, or a limited number of individuals to whom an appointment or selection has been delegated.

The word election is properly applied to the choice of an officer by the votes of those upon whom the law has conferred the right of electing such officer.'

The statutes have conferred the right of electing the members of the county board of education upon the presidents of the various village and rural boards of education and the county school districts, and provides that a vote of the majority of the members present shall be necessary to elect each member of the county board.

There is no question but what the selection of the county board of education is by election and not by appointment. Consequently the inhibition contained in section 19 of Article II, constitution of Ohio, which provides:

'No senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this state, which shall be created or the emoluments of which shall have been increased, during the term for which he shall have been elected,'

does not prevent a member of the general assembly from being elected to the county board of education, since the members of this board are elected and not appointed.

Article II, section 4 of the constitution of Ohio, which provides:

'No person holding office under the authority of the United States, or any lucrative office under the authority of this state, shall be eligible to, or have a seat in, the general assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia,'

will not prevent members of the general assembly from being elected to the county board of education, because the office of member of the county board of education is not a lucrative office, nor do I find any other provision in the constitution that would prevent a member of the general assembly being elected to this office."

It is possible that you have in mind the amendment to section 4734 G. C., effective September 22, 1919, which amendment stated a specific sum that should be allowed to the members of the county board of education as their expenses for attendance upon any meetings of the county board of education.

When the opinion herein quoted from was issued by the attorney-general, section 4734 G. C. read as follows:

"Each member of the county board of education shall be paid his actual and necessary expenses incurred during his attendance upon any meeting of the board. Such expenses, and the expenses of the county superintendent, itemized and verified shall be paid from the county board of education fund upon vouchers signed by the president of the board."

Under the above reading of section 4734, the attorney-general pronounced the office of member of the county board of education as not a lucrative office. Section 4734, which was construed in the original opinion herein given, now reads as follows: (108 O. L. 707)

"Each member of the county board of education shall be paid three dollars a day and mileage at the rate of ten cents a mile one way, to cover his actual and necessary *expenses incurred* during his attendance upon any meeting of the board. *Such expenses*, and the expenses of the county superintendent, itemized and verified shall be paid from the county board of education fund upon vouchers signed by the president of the board."

It would appear therefore that there has been no material change in the language of section 4734 G. C., except that the necessary expenses incurred had a limitation put upon them after September 22, 1919; that is, three dollars per day, and nowhere in such section is there any indication that such three dollars is to be considered as compensation.

Since the section provides for the expenses of the member of the county board of education, and not for his compensation, it must be held that the office of member of the county board of education is not a lucrative office and therefore is not one of those offices which fall within those named in Article II, section 4 of the constitution of Ohio, which latter offices, where they are lucrative ones, are prohibited from being held by a member of the general assembly.

It is therefore the opinion of the attorney-general that there are no provisions in the constitution of Ohio prohibiting a member of the general assembly from serving as member of the county board of education.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1119.

TAXES AND TAXATION—SECTION 5387 G. C. DOES NOT REQUIRE LISTING FOR TAXATION—CORPORATIONS REQUIRED TO MAKE REPORT COVERING SUCH PART OF TAX YEAR AS REMAINS BETWEEN TIME OF COMMENCING BUSINESS AND NEXT SUCCEEDING DAY PRECEDING SECOND MONDAY OF APRIL—CORPORATIONS REQUIRED TO MAKE TAX RETURNS AS OF FIRST DAY OF JANUARY.

*Section 5387 G. C. does not require a listing for taxation.*

*Said section as applied to corporations still requires a report to be made covering such part of the tax year as remains between the time of commencing business and the next succeeding day preceding the second Monday of April, whether the business is commenced after January 1 and before the day preceding the second Monday of April or after the second Monday of April, although corporations are required to make their tax returns as of the first day of January.*

COLUMBUS, OHIO, April 1, 1920.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Receipt is acknowledged of your letter of recent date requesting the opinion of this department as follows:

"If an incorporated company commences business as a merchant or manufacturer after the first day of January and before the day preceding the second Monday in April is such company required to list its property appertaining to such business for taxation as provided by section 5387 of the General Code?"