

unpaid, the proceeds of such sale may be used for the construction or acquisition of a permanent improvement or improvements.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4157.

JOINT HIGH SCHOOL—COMMITTEE—MAY EMPLOY A CLERK—MEMBER OF COMMITTEE MAY BE SELECTED AND RECEIVE COMPENSATION.

SYLLABUS:

1. *When a joint high school committee has been appointed by authority of section 7670, General Code, to manage a joint high school that committee should provide itself with a clerk or secretary to keep its minutes and perform such other clerical duties as may be necessary in the transportation of its business.*

2. *Such clerk or secretary may lawfully be selected from the members of the committee, or the committee may, in its discretion, appoint or employ some other person to perform the duties of secretary or clerk to the committee.*

3. *The clerk of a board of education for the school district in which a joint high school is located is not, by virtue of his office, the clerk of a joint high school committee appointed to manage the said joint high school and is not required by law to act as such clerk, but may lawfully be employed by the committee to perform those services.*

4. *Where the services to be performed by a clerk or secretary of a joint high school committee are such as to justify the payment of compensation therefor, the clerk may be compensated for his services, whether the said clerk is a member of the committee or not.*

5. *Compensation provided for a clerk or secretary of a joint high school committee, should be paid from funds appropriated to said committee for its use in the maintenance of the joint high school, and charged as legitimate expense of the maintenance of the high school.*

COLUMBUS, OHIO, March 16, 1932.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt from you of the following communication:

"1. Does a union high school district created under Sections 7669 et seq. General Code, have a clerk?

2. If the answer to the first question is yes, does any member or officer of the boards of education composing the union high school district hold such office ex officio, or must one be selected?

The statutes are quiet on the above mentioned subjects.

Section 7671-1, General Code, indicates that a treasurer shall be selected by the joint high school committee from its membership. No doubt

there will be certain secretarial duties which it is necessary to have performed for the benefit of the joint high school committee. Although there is no express authority contained in the statutes, it is our impression that there is an implied authority in the joint high school committee to employ someone to keep their minutes and records and handle their correspondence in addition to other duties which may be required of him. It would probably be of advantage to the joint high school committee to appoint the clerk of the board of education of the school district in which the high school building is located as said clerk would be familiar with the work and duties, and would be willing to perform these duties for a comparatively small compensation.

For the reasons indicated, we are referring to you the questions set out in the first paragraph of this letter."

Section 7671-1 of the General Code, referred to by you reads as follows:

"In the case of every joint high school established and operating under the authority of sections 7669, 7670 and 7671, General Code, the county superintendent of schools shall certify on or before the first day of August of each year the teachers' payroll, the aggregate days of attendance, and the personal service item of transportation costs in connection with such high school to the county auditor, who shall distribute the apportionments on account of teachers' salaries, aggregate days of attendance, and transportation of pupils in such high school as provided for in section 7600, General Code, to the school district in which it is located.

The clerk of the board of education of said district upon receipt of such distribution shall draw a warrant for the amount of the same, countersigned by the president of the board of education, in favor of the treasurer of the joint high school committee. The amount so received by the treasurer of the high school committee shall be credited on his books to the districts on the basis of the proportional enrollment in the joint high school from each of the districts participating in support of the same."

It will be observed from a reading of the foregoing statute which relates to the distribution of the county educational equalization fund in accordance with Section 7600, General Code, to joint high schools, that when this apportionment is made by a county board of education, the county superintendent of schools shall certify the same to the county auditor who, in turn, distributes the proceeds of said fund in accordance with such certification, to the school district in which the high school is located.

Thereupon, the clerk of this district shall draw his warrant in favor of the *treasurer of the high school committee*, managing the joint high school for the benefit of which the distribution was made.

Said Section 7671-1, General Code, standing alone would seem to indicate that a treasurer of the high school committee must have been provided for, probably from its own membership, although no specific authority exists by statute for making such selection. By consideration of this section, however, in connection with the other statutes providing for the selection of a joint high

school committee for the management of a joint high school and the custody of the revenues for the use of that committee, it will be found that a treasurer or custodian of the funds for the maintenance of the joint high school and for the use of the joint high school committee in the maintenance of the said school has been otherwise provided for.

After providing in Section 7669, General Code, for the establishment of joint high schools by action of the boards of education of two or more adjoining school districts, and for the management of joint high schools, when established, by joint high school committees consisting of two members from each of the boards of education creating such joint high school districts (Section 7670, General Code) it is provided by Section 7671, General Code, as follows:

“The funds for the maintenance and support of such high school shall be provided by appropriations from the tuition or contingent funds, or both, of each district, in proportion to the total valuation of property in the respective districts, which must be placed in a separate fund in the treasury of the board of education of the district in which the school house is located, and paid out by action of the high school committee for the maintenance of the school.”

Section 4768, General Code, provides in substance, that a treasurer of a school district shall not pay out any school money except on an order signed by the president, vice-president or director of schools in school districts having a director of schools, and countersigned by the clerk of the board of education, and when such school moneys have been deposited in a regular school depository according to law, no money shall be withdrawn from any such depository except on an order signed by the treasurer and by the president, vice-president or director of schools in school districts having a director of schools and countersigned by the clerk of the board of education.

There is no occasion for a joint high school committee to have a treasurer other than the treasurer of the board of education of the school district in which the high school building is located for the reason that he must necessarily handle and pay out all the moneys used by the high school committee. The reference in Section 7761, General Code, to the “treasurer of the high school committee” is, in my opinion, to the person who has custody of, and disburses the funds credited to the high school committee for its use in maintaining the high school. This virtually makes the treasurer of the board of education of the district in which the joint high school building is located, the treasurer ex officio of the joint high school committee and he must necessarily keep the joint high school funds separate from the other school funds in his custody.

I had occasion to consider these statutes with respect to a somewhat similar question in a recent opinion, No. 3862, where it is held as stated in the syllabus:

“Funds appropriated for the maintenance of a joint high school, as established by authority of section 7669, et seq., General Code of Ohio, are to be placed in a separate fund in the treasury of the school district in which the high school building is located and cannot be withdrawn from the said treasury except on the order of the president, vice president, or director of schools in school districts having a director of schools, and countersigned by the clerk of the board of education of said district.”

It will be observed from a consideration of Sections 4763, 4782 and 4783 of the General Code, that in all school districts except city school districts, where a legal depository is provided in accordance with Sections 7604 to 7608, inclusive, the clerk of the district is virtually its treasurer. It follows from this that where a joint high school building is located in any such district, the clerk of the board of education of the district is virtually treasurer not only of his district, but of the joint high school committee maintaining the joint high school as well. If no legal depository is provided in such district the county treasurer is by statute constituted the treasurer of the district and he would, by force of the statutes here being considered, be treasurer of the high school committee maintaining a joint high school located in such district.

The fact that the clerk of a board of education of a district in which a joint high school building is located is virtually, by reason of his position, the treasurer of the high school committee, does not signify that he is the clerk of the committee. There is nothing in the statutes requiring him to act as such clerk and nothing to indicate that such was the intention. Such a committee should have a secretary or clerk, although the statutes are silent on the subject. In order that its business may be transacted in an orderly manner and a proper record kept thereof, the committee should provide itself with a clerk or secretary; as stated above, the statutes are silent on the subject. I am of the opinion, however, that such a position may be created and a person selected to perform the services. I know of no reason why a member of the committee may not be selected, or, if it is desired, the clerk of the board of education in the district where the school building is located may be selected to perform these services. If the services justify it, such clerk or secretary may lawfully, in my opinion, be compensated for the services and that compensation would be a legitimate expenditure as a part of the cost of maintaining the high school.

In this connection there is suggested the question of whether or not, if a member of the committee is selected as clerk or secretary he may be paid for his services as such. Section 4757, General Code, provides that no member of a board of education shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer. The members of a joint high school committee are also members of one or the other of the boards of education which created the high school and it might be said that the employing by the committee of one of those persons and the paying to him of compensation constituted an indirect interest in a contract of the board of which he is a member or indirectly an employment for compensation by said board. Such an employment would not be made by the board of which he is a member or by a committee selected from the membership of the board and would not strictly come within the terms of the statute. Anyway, the statute permits employment as clerk even by the board of which he is a member, and I am of the opinion that the inhibition contained in this statute against employment by the board is not such as to preclude his being employed by the committee as clerk, and his being paid compensation for his services as such.

Specifically answering your questions, I am of the opinion:

1. A joint high school committee created for the purpose of managing a joint high school, in accordance with Section 7670 of the General Code, may employ a clerk.
2. No member or officer of the boards of education composing the joint high

school district holds the office or position of clerk of the joint high school committee ex officio, but a clerk may be selected from the membership of the committee or the clerk of one of the boards of education of the districts comprising the joint high school district may be selected as such clerk and compensation may be paid to him for his services on the committee when those services are sufficient to justify payment therefor.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4158.

SIGNATURES—PERSON SIGNING NOMINATING PETITION BY DIFFERENT NAME THAN ONE UNDER WHICH HE REGISTERED—SUCH VALID WHERE NO QUESTION ABOUT HIS IDENTITY.

SYLLABUS:

Where a person has registered as "John A. Smith" and signs a nominating petition and a declaration as "Albert Smith," if there is no question about his identity and he is commonly known as "Albert Smith," his signature on the nominating petition can be counted and the declaration of candidacy is valid, provided said papers are in all other respects regular.

COLUMBUS, OHIO, March 17, 1932.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"I desire your opinion on the following question:

1. John A. Smith resides in Precinct I, 4th Ward, Lima, Allen County, Ohio, and so registers. He signs a candidate's nominating petition, signing as Albert Smith, Precinct I, 4th Ward, Allen County, Ohio. Is his signature valid and can it be counted on a candidate's nominating petition?

2. John A. Smith resides in Precinct I, 4th Ward, Lima, Allen County, Ohio, and is so registered. He files a declaration of candidacy, signing his name Albert Smith in Precinct I, 4th Ward, Allen County, Ohio. Is his declaration of candidacy valid by reason of signing his name Albert Smith instead of John A. Smith?"

Section 4785-34, General Code, reads in part as follows:

"No person residing in any registration precinct shall be entitled to vote at any election, or to sign any declaration of candidacy, nominating, initiative, referendum or recall petition, unless he is duly registered as an elector in the manner provided herein."