

whether or not in such case application must be made to the superintendent of banks to establish a branch.

I do not find it necessary in this opinion to determine whether or not the places of business which a consolidated institution might maintain in the same city are branches within the meaning of section 710-73 G. C., or whether either is a branch. As this is a question which might become very important in commercial controversies arising over the power or out of the dealings of these institutions or the liability of one for the acts of another, I do not think it advisable to attempt to answer it here. So far as your administrative acts are concerned, I believe and suggest that if from the proceedings required of stockholders and directors by the provisions of section 710-86 G. C. it appears that the consolidated institution intends to maintain offices for general banking business in one or in contiguous localities as defined in Opinion 1642, nothing further need be required. It seems to me that your approval of such proceedings would be a sufficient compliance with the provisions of section 710-73 G. C. even if it should turn out that such institutions are branches. But without passing on the question as to whether they are or not, I suggest that you require a showing that separate places of business in non-contiguous territory as I have defined it are not contemplated and the number to be maintained. A plan which contemplates the maintenance of such offices in non-contiguous localities should, of course, be disapproved.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1726.

SCHOOLS—WHERE BOARD OF HEALTH OF GENERAL HEALTH DISTRICT ORDERS DESTRUCTION OF SCHOOL BOOKS TO PREVENT SPREAD OF CONTAGIOUS DISEASE—BOARD MAY RESTORE BOOKS OR COMPENSATE OWNERS.

Where a board of health of a general health district in the interest of the public welfare orders the destruction of school books for the purpose of preventing the spread of a contagious disease, it may properly restore said books or compensate the owners for the value thereof in the manner outlined in sections 4434 and 4435 of the General Code.

COLUMBUS, OHIO, December 22, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—In a communication of recent date from Mr. W. B. Bliss, assistant superintendent of public instruction, my opinion is requested upon the following statement of facts:

“An epidemic of scarlet fever prevails in a school district and the school is closed by order of the health commissioner. In the interest of suppressing and preventing the possible spread of the contagion some of the school books belonging to the pupils were destroyed. Who replaces the books destroyed?”

Your question necessitates consideration of sections 4434 and 4435 of the General Code, which were a part of the municipal health code and were not amended

or repealed by the Smith-Hughes act of 1919 or the Griswold act of 1920. Said sections provide as follows:

"Sec. 4434. Such board may destroy any infected clothing, bedding, or other articles which can not be made safe by disinfection, and shall furnish to the owner thereof a receipt, of which it shall keep a full and accurate copy, for articles so destroyed, which receipt shall show the number, character, condition and estimated value of the articles destroyed. When a building, hut, or other structure has become infected with smallpox or other dangerous communicable disease, and can not, in the opinion of the board of health, be made safe by disinfection, the board may have such building, hut, or other structure appraised and destroyed."

"Sec. 4435. The council of the municipality, upon the presentation of the original receipt or written statement of the appraisers for articles or houses so destroyed, shall pay to the owner thereof, or other person authorized by the owner to receive it, the estimated value of such destroyed articles, or such sum as the council deems just compensation therefor, and in the event the owner is not satisfied with the amount so allowed he may sue for the value thereof."

While these sections primarily refer to municipalities, section 3394, which is now repealed, provided:

"Township boards of health shall have the same duties, powers and jurisdiction, within the township and outside of any municipality as by law are imposed upon or granted to boards of health in municipalities, and any violation of any order or regulation of such township board made pursuant to such authority, or obstruction or interference with the execution thereof, or wilful or illegal omission to obey such order or regulation, shall be punished, and the prosecution thereof instituted and conducted in the same manner, and the fines and penalties and the disposition thereof, and the punishment shall be the same as is provided by law for the prosecution and punishment of the violation of any like order or regulation of boards of health in municipalities."

It will therefore be seen that as the law existed prior to the enactments of 1919 and 1920 provisions were made whereby compensation could be made by the city council for property destroyed by order of the board of health in a municipality, and the board of health of the township could make compensation for property destroyed by its order in a township. This latter conclusion seems clearly justified by the language of the statutes above quoted, and, also, the court in the case of Board of Health of Canaan Township vs. Coykendall, reported in 29 O. C. A., p. 76, it is believed recognized this rule. However, in view of the fact that section 3394 is now repealed and there is now no township board of health, it is essential to consider whether the boards of health as established under existing law have succeeded to the powers and duties relative to providing compensation for property destroyed as was originally provided.

Section 1261-16 G. C. provides:

"For the purposes of local health administration the state shall be divided into health districts. Each city shall constitute a health district and for the purposes of this act shall be known as and hereinafter referred to as a city health district. The townships and villages in each

county shall be combined into a health district and for the purposes of this act shall be known as and hereinafter referred to as a general health district. As hereinafter provided for, there may be a union of two general health districts or a union of a general health district and a city health district located within such district."

While there are two classes of health districts provided for in the first instance; namely, city health districts and general health districts, provision is also made for combined districts. From a personal conversation with Mr. Bliss and also with a representative of the state department of health, it has been learned that the question under consideration arises in a general health district. Therefore, for the purpose of this opinion, it will be unnecessary to consider whether or not the law applicable to a general health district, with reference to your inquiry, is the same in the other class of districts.

Section 1261-19 G. C. provides:

"Within thirty days after the appointment of the members of the district board of health in a general health district, they shall organize by selecting one of the members as president and another member as president pro tempore. The district board of health shall appoint a district health commissioner upon such terms, and for such period of time, not exceeding two years, as may be prescribed by the district board. Said appointee shall be a licensed physician and shall be secretary of the board and shall devote such time to the duties of his office as may be fixed by contract with the district board of health. Notice of such appointment shall be filed with the state commissioner of health. The district health commissioner shall be the executive officer of the district board of health and shall carry out all orders of the district board of health and of the state department of health. He shall be charged with the enforcement of all sanitary laws and regulations in the district, and shall have within the general health district all the powers now conferred by law upon health officers of municipalities. It shall be the duty of the district health commissioner to keep the public informed in regard to all matters affecting the health of the district."

Section 1261-30 G. C. provides:

"The district board of health hereby created shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality, and all such powers, duties, procedure and penalties for violation of the sanitary regulations of a board of health shall be construed to have been transferred to the district board of health by this act. The district board of health shall exercise such further powers and perform such other duties as are herein conferred or imposed."

While it is somewhat difficult to ascertain the intent of the legislature relative to compensation to be paid for property destroyed, from the language used in the existing statutes, it is believed, from the fact that sections 4434 and 4435 above quoted were not amended or repealed and must be regarded as a part of the present health laws and construed in connection therewith, it is logical to conclude that it was the intention of the legislature that the procedure outlined in sections 4434 and 4435 should be followed in the matter of compensation for property destroyed by order of the board of health of a general health district.

It is obvious that such a construction will perhaps render it necessary to substitute the term "board of health" in section 4435 for the term "council of the municipality." However, in view of the language used in the statutes heretofore set forth and the apparent intent of the legislature as heretofore disclosed, it is believed that this may properly be done.

It will be observed that section 1261-41 provides a means whereby the district board of health fund may be replenished, in case of a threatened epidemic or prevalence of a dangerous communicable disease, to defray the necessary expense in preventing the spreading of the contagion, when its fund is insufficient for the purpose, and apportion the amount among the townships and municipalities composing the district. It is believed that this provision tends to strengthen the conclusions made herein.

Therefore, in specific answer to your inquiry, you are advised that if the school books which you mention were destroyed by order of the board of health of a general health district, in its efforts to prevent the spread of a contagious disease, said board of health may restore said books or compensate the owners therefor in the manner outlined in sections 4434 and 4435.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1727.

WHERE NORMAL SCHOOL ASSUMES MANAGEMENT OF CITY SCHOOL UNDER SECTION 7654-7 G. C.—HOW EXPENSE DISTRIBUTED.

Under section 7654-7 G. C. the board of trustees of a state normal school is required to make an arrangement with the board of education for any of whose schools it assumes to manage. Such arrangement or agreement should provide for a reasonable and proper distribution of the expense of maintaining such schools between such boards.

COLUMBUS, OHIO, December 22, 1920.

HON. J. E. MCGILVREY, *President, Kent State Normal School, Kent, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the directions of this department as to how to proceed with the matter in your letter, which is as follows:

"State Examiner John A. Bliss, in a recent report to our board of trustees called their attention to the fact that the board of education of the city of Kent has been receiving the per capita from the state for the pupils taught in the training school of the Kent State Normal School. The Kent city board of education is relieved of all expense for the education of this group of pupils. The board of trustees of the Kent State Normal School have assumed that expense and all moneys paid heretofore from the state common school fund for the pupils in the special training school district of the Kent State Normal School, under section 7600 of the General Code, should be diverted to said board of trustees to meet that expense.

I am referring the question to the Attorney General for directions as to how to proceed."