

1493.

APPROVAL, NOTES OF JEFFERSON VILLAGE SCHOOL DISTRICT,  
ASHTABULA COUNTY—\$150,000.00.

COLUMBUS, OHIO, February 5, 1930.

*Retirement Board State Teachers Retirement System, Columbus, Ohio.*

1494.

SPECIAL CONSTABLE—MAY NOT BE APPOINTED BY A JUSTICE OF  
THE PEACE WHEN REGULAR CONSTABLES ARE INACTIVE BY  
REASON OF PRIVATE BUSINESS.

*SYLLABUS:*

*Under the provisions of Section 3331, paragraph 4, a justice of the peace may appoint a special constable when the duly elected and qualified constables are unable to perform the duties of their office by reason of the pressure of official business, but cannot make such appointment when the regularly elected and qualified constables are unable to perform their duties because of the pressure of their private business.*

COLUMBUS, OHIO, February 5, 1930.

HON. LEE D. ANDREWS, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“I wish to submit to you the following facts and questions:

*FACTS.*

A justice of the peace in a certain township in this county desires to appoint a special constable to work on prohibition cases. The regular and duly elected constables in this township are interested in private pursuits and therefore are more or less inactive in official matters. He wishes to appoint such a special constable to work regularly out of his office and contends that he can do so under Section 3331, Part 4, which reads as follows:

‘A justice of the peace may appoint a constable or constables \* \* \*:

When, from the pressure of official business, the constables therein are not able to perform the duties required by the office.’

There are many liquor violations in this county and especially in this township and there is no question as to a need for such an officer.

Question: Can such an officer be appointed under this section of the General Code, or any other section?”

Special constables can only be appointed under the terms of Section 3331 of the General Code. This section, so far as pertinent to your inquiry, reads as follows:

“A justice of the peace may appoint a constable or constables for a

special purpose, either in civil or criminal cases, when such appointment becomes necessary for the following cases:

\* \* \* \* \*

4. When, from the pressure of official business, the constables therein are not able to perform the duties required by the office.

The justice making the appointment, shall make a memorandum thereof on his docket, and require the person appointed to take an oath, as in other cases."

It will be noted from a reading of this statute that a justice of the peace may appoint a special constable "when, from the pressure of official business" the duly elected and qualified constables are not able to perform the duties of their office. In your letter you state that the justice of the peace desires to make the appointment of a special constable because the regular constables are inactive because of private pursuits. While the appointment of a constable under Section 3331 of the General Code is within the discretion of a justice of the peace, nevertheless, he may only exercise this discretion when the reasons for the appointment, as set forth in the statute, are present. Such reasons do not appear to exist from the facts submitted by you, and to make an appointment by reason of the fact that the regularly elected and qualified constables are too busy with their private business, would not be a proper exercise of discretion by the justice of the peace.

You also state that the justice of the peace desires to appoint a constable to work regularly out of his office. While it is not clear in what manner the justice of the peace desires to appoint a constable, it must be remembered that a constable appointed under Section 3331 of the General Code can only be appointed for a special purpose.

In an opinion rendered by my predecessor, found in Opinions of the Attorney General, 1927, page 32, the then Attorney General held as follows:

"The powers and authority of a special constable appointed in a civil or criminal case by a justice of the peace for a special purpose by virtue of paragraph 4, Section 3331 of the General Code, are limited to the case and for the purpose for which such constable is appointed, and he is not, by such appointment clothed generally with the powers or authority of a regularly elected or appointed, qualified and acting constable."

In the course of the opinion the Attorney General said:

"A special constable can only be appointed under paragraph 4 of Section 3331 of the General Code in a civil or criminal case then pending. Created by special appointment and for a special purpose in a civil or criminal case, a memorandum whereof is on the docket of the justice, such appointee is a 'special constable' only while acting in pursuance thereof. He is not clothed with the powers of a constable, except for such 'special purpose.' A distinct and separate appointment is essential for each special purpose wherein his services are necessary, either in a civil or criminal case and the justice of the peace must make a memorandum of each such special purpose on his docket. Such special constables have no authority to serve warrants or to make arrests by virtue of their special appointment, except in the particular case in which they are appointed a 'special constable.' When the duties of his appointment have been performed his appointment as a 'special constable' automatically terminates."

In specific answer to your inquiry, I am of the opinion that under the provisions of Section 3331, paragraph 4, a justice of the peace may appoint a special constable when the duly elected and qualified constables are unable to perform the duties of their office by reason of the pressure of official business, but cannot make such appointment when the regularly elected and qualified constables are unable to perform their duties because of the pressure of their private business.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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1495.

BOARD OF EDUCATION—WHEN AUTHORIZED TO PURCHASE MUSICAL INSTRUMENTS.

*SYLLABUS:*

*Where a course of study in instrumental music is prescribed, a board of education has authority to provide the means of instruction in that course of study and may purchase necessary instruments for that purpose.*

COLUMBUS, OHIO, February 5, 1930.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your request for my opinion, which reads as follows:

“Instrumental music has become a subject in curricula of numerous elementary and high schools. In order to carry out the work in this subject certain musical instruments are needed. The opportunity is given, in some schools, to all pupils of any ability to be tried out on instruments.

Further instrumental music is an elective study in many schools. In order to organize the instrumental music students into bands and orchestras, certain instruments are needed in the band or orchestra which no students possess and which none will purchase. These are usually instruments not used for solo music, and which therefore appeal only when there is group work, but which are necessary for the proper balance of a band or orchestra. The families will purchase the instruments which are of individual use.

Our question is, have boards of education the authority to purchase instruments for the foundational instrumental work and the instruments for bands and orchestras which are essential to a successful band or orchestra and which parents cannot see wisdom in buying? In all cases, of course, the instruments bought by the school would continue to be the property of the school.”

By the terms of Sections 7645, et seq., of the General Code of Ohio, boards of education, in co-operation with the director of education, are granted control over the courses of study to be taught in the public schools. Certain branches of study are enumerated in the statute that must be included in the school curriculums, and Section 7748 of the General Code sets out certain courses of study that are required in elementary schools, and provides further: