

139.

BOARD OF PUBLIC AFFAIRS—AUTOMATICALLY ABOLISHED IF VIL-  
LAGE COUNCIL SELLS ALL OF PUBLIC UTILITIES—DISPOSITION  
OF FUNDS—LEGAL ADVICE FOR COUNCIL.

**SYLLABUS:**

1. *When the council of a village, by appropriate legislation sells and disposes of all the public utilities owned or operated by the village and thus terminates all the duties and powers of the board of public affairs for the village they thereby abolish the office of the board of public affairs and the board thereupon ceases to function.*

2. *When the village council sells a public utility owned by the village the proceeds of such sale become a part of the general funds of the village and are subject to the control of the village council.*

3. *Any litigation growing out of the sale of a public utility by a village council should be conducted by such legal counsel as may be provided by the village council under Sections 4220 and 3809, General Code.*

COLUMBUS, OHIO, March 3, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio:*

GENTLEMEN:—I am in receipt of your communication of recent date in which you request my opinion with reference to two questions growing out of a situation substantially as follows:

By appropriate legislation, a village council sold the personal property and all equipment constituting its electric light plant, and leased the real estate used for the purposes of the plant to such purchasers, in consideration of a cash payment of \$1,000, and an agreement on the part of the purchasers to furnish street lighting for the village for a period of ten years, to the value of \$2400 per year. By virtue of the terms of the contract, the village preserved a lien on the lease and personal property so sold to insure performance of the contract.

This electric light plant was the only public utility owned or operated by the village, and the questions which have arisen, and to which you request an answer are as follows:

1. Under these circumstances, and in view of these facts as outlined, does the Board of Public Affairs of the village continue to function?

2. May the Board of Public Affairs, subject to appropriations of council, expend the electric light fund of the village, consisting of moneys heretofore earned by the Board and moneys arising from the sale of the electric light plant, for the purpose of protecting the village's interests in the plant, such as paying court costs, attorney fees, and so forth, in any litigation that may arise in connection with this contract.

Authority is given to the municipal council of villages to establish a Board of Public Affairs by virtue of Section 4357 of the General Code, which reads as follows:

“In each village in which water works, an electric light plant, artificial or natural gas plant, or other similar public utility is situated, or when council orders water works, an electric light plant, natural or artificial gas plant or other similar public utility, to be constructed, or to be leased, or purchased from any individual, company or corporation, council shall establish at such time a board of trustees of public affairs for the village, which shall consist of three members, residents of the village, who shall be each elected for a term of two years.”

The general powers and duties of such board are set out in Section 4361 of the General Code, which reads in part as follows:

“The Board of Trustees of Public Affairs shall manage, conduct and control the waterworks, electric light plants, artificial or natural gas plants or other similar public utilities, furnish supplies of water, electricity or gas, collect all water, electrical and gas rents and appoint necessary officers, employees and agents. \* \* \* The Board of Trustees of Public Affairs shall have the same powers and perform the same duties as are possessed by, and are incumbent upon the Director of Public Service, as provided in Sections 3950, 3955, 3960, 3961, 3964, 3965, 3974, 3981, 4328, 4329, 4330, 4331, 4332, 4333 and 4334 of the General Code. \* \* \* ”

Such boards of public affairs are not constitutional officers but are purely creatures of village councils, and such councils are authorized to establish these boards only when the village owns one or more of the utilities enumerated in the statute, or when council shall determine to establish such a utility, or a schedule of rates or charges of rents, for use of the sewerage system.

No such board could be created by council if the village did not have such utility or if council did not determine to build or acquire one. But when the village does have such a utility, when it is incorporated, or when council determines to acquire one, the council is directed to create the board, and by the provisions of the statute it is its duty to do this *at the same time* they determine to establish such utility. The two actions of the council are to be at the same time.

The management and operation of such utility when owned or acquired, is the function of this board of public affairs, who have with reference thereto the same powers and duties as directors of public service have in cities with reference to similar utilities.

When the utility has been abandoned or when it is sold, there are no more duties with reference thereto to be performed by the board. The funds derived from the sale of the utility come into the treasury of the municipality, and are under the control of the village council, as are other funds, and any litigation with reference to the contract of sale should be handled by such legal counsel as may be provided by the village council under Sections 4220 and 3809 of the General Code.

The office of the board of public affairs is under the control of the council which created it, and when conditions are such in a village that a board of public affairs is no longer necessary, there is ample authority for council to abolish the office.

Current Law, Volume 22, page 579, says:

“The power of the legislature to control public offices was established at an early day and except when restrained by the constitution, the legislature of the state may abolish any office even during the term for which the existing incumbent may have been elected.

There is no obligation on the legislature or the people to keep up a useless office or pay an officer who is not needed. Whoever accepts a public office does so with this principle of constitutional law in view. The tenure of the office does not rest in contract and it is not protected by the constitutional provisions which prohibit the impairment of contracts. Accordingly, it is a well established principle that an office of legislative creation may be abolished by the power which created it.”

There is there cited a long line of authorities in support of the principle there set out.

In the case to which you have called my attention, the council by selling the utility abolished all the duties to be performed by the board of public affairs, and this in my opinion, abolished the office as effectually as though they had by direct legislation abolished the office itself.

In Mechem on Public Offices, Section 405, it is said:

**"Where an office is created, or an officer is appointed for the purpose of performing a single act, or the accomplishment of a given result the office terminates and the officer's authority ceases with the accomplishment of the purpose which called it into being."**

It is therefore my opinion that, inasmuch as boards of public affairs are created for a definite purpose, when the authority creating the board takes such action as they did in this case as to make the accomplishment of the purpose for which the board was created complete they, by that act, abolish the office just as effectually as though they had in certain and definite language abolished the same, and that inasmuch as the office is so abolished the board ceases to function.

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

140.

**ACTION TO ENFORCE THE LIEN OF ASSESSMENTS CHARGED AGAINST LANDS—COUNTY TREASURER MAY JOIN LANDS AND OWNERS IN ONE ACTION.**

**SYLLABUS:**

*In actions to enforce the lien of assessments charged against lands or lots or parcels thereof (Section 2667, General Code), the county treasurer may, under the provisions of General Code, Section 2671, join in one action, all or any number of lots or lands, and a petition making the owners of such lots or lands defendant in the same action would not be demurrable for misjoinder of causes of action or parties defendant.*

COLUMBUS, OHIO, March 3, 1927.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date, which reads as follows:

"Inter-county Highway No. 159 runs from the city of Athens south to the Athens-Meigs county line. Portions of this highway have been improved at different times. It is now all improved from Athens to the Meigs county line. A certain part of the cost of this improvement has heretofore been assessed against the abutting property owners. No abutting property owner has paid his assessments payable in December 1925 and December 1926. There are one hundred and forty-nine (149) such abutting property owners.

Query 1. Does Section 2671 of the General Code of Ohio authorize the county treasurer of Athens county to bring a suit against these abutting property owners for the collection of these delinquent assessments wherein all of such abutting property owners are made parties defendant?