

to a judge of the common pleas court for the appointment of a commission is to be contributed, not by political subdivisions of the state, but by private individuals, corporations or associations.

The answer to your fourth question is in the negative, by reason of the provision of section 7181 G. C., which is to the effect, among other things, that the salary of the county surveyor "shall be paid monthly out of the general county fund upon the warrant of the county auditor, and shall be instead of all fees, costs, per diem and other allowances and all other perquisites of whatever kind or description which the county surveyor may collect or receive."

Respectfully,

JOHN G. PRICE,

Attorney-General.

1226.

SCHOOLS—WHEN PART TIME SUPERINTENDENT EMPLOYED UNDER SECTION 4740 G. C. IS TO BE CONSIDERED AS A TEACHER WITHIN MEANING OF HOUSE BILL 615 PROVIDING FOR DISTRIBUTION OF CERTAIN TAXES.

A part time "superintendent" employed under section 4740 G. C. is to be considered as a "teacher" with respect to such part of his salary as is referable, on a strict time basis, to the amount of teaching service required of him by the employing board or boards of education.

COLUMBUS, OHIO, May 8, 1920.

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

DEAR SIR:—You have submitted for the opinion of this department the question as to whether or not a part time superintendent employed by a separate district under section 4740 of the General Code is, for any purpose and to any extent, a "teacher" within the meaning of the appropriate provisions of the sections amended in House Bill 615, providing for the distribution of certain taxes to a school district on the basis of the salaries of teachers employed.

By a previous opinion of this department you have been advised that the word "teacher" as it occurs in such sections as section 7600, 7603, etc., as amended in House Bill 615, is used in the same sense in which it has always been used in these sections of the General Code; and that that sense, generally speaking, excludes superintendents from the scope of the meaning of the term. The position referred to in section 4740 partaking more or less of the character both of teacher and of superintendent would seem to require separate consideration, which you now request.

Said section 4740 in its present form provides as follows:

(107 O. L. 621)

"Any village or wholly centralized rural school district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent shall upon application to the county board of education before June 1st of any year be continued as a separate district under the direct supervision of the county superintendent until the board of education of such district by resolution shall petition to become a part of a supervision district of the county school district. Such superintendents shall perform all the duties prescribed by law for a district superintendent, but shall teach such part of each day as the board of education of the district or districts may direct."

In previous opinions of this department the "superintendent" referred to in this section has been treated as a teacher to the extent of the time which he is required to devote to teaching for the purpose of administering the state aid law; so that a proportionate part of his salary was to be taken into consideration under the former law on the subject of state aid to weak school districts in determining the average salary of high school teachers, for example.

This section has a most interesting history, which is of course familiar to your department. In its original form as a part of the so-called school code of 1914 it provided that the superintendent employed thereunder should be considered as a district superintendent for the purpose of the payment by the state of a part of his salary to the extent of the time which he devoted to supervision.

The section was subsequently changed so as to provide, as now, for the direct supervision of the county superintendent and for the withdrawal of this state aid in the payment of the salary of the district superintendent. In 1917, however, the provision which forbade the payment by the state of any part of the salary of the part time superintendent or supervisor employed under section 4740 was stricken from that section. A puzzling question is thus presented as to whether the elimination of this language served to place the functionary provided in the section back in the class of district superintendents for the purpose of the receipt of direct contribution from the state on account of his salary, or any part of it. This question does not seem to be covered by any of the opinions of this department.

It is obvious that if he is to be treated as a district superintendent at all the contribution of the state must be the same as that for any other district superintendent as provided for by section 4743 G. C. No express authority remains in the statute, as in original section 4740 of 1914, to pro-rate the state's contribution. For the purposes of this opinion it will be assumed without further discussion that no part of the salary of a section 4740 "superintendent" is payable by the state under section 4743. This consideration is not conclusive; for no part of the salary of the superintendent of a city or exempted village school district is paid by the state; yet such superintendents are not "teachers" within the meaning of section 7600 and other similar sections of the General Code.

Returning now to section 4740 it is clear that in name at least the officer or employe in question is a "superintendent"; he is substantially like the superintendent of an exempted village school district, excepting that his work is subject to the direct supervision of the county superintendent and excepting also that he must teach a part of each day as directed by the board of education of the district or districts. These exceptions, it is believed, serve to distinguish the so-called "superintendent" employed under section 4740 from the class of "superintendents" who are to be distinguished from "teachers" for the purposes of the sections amended in House Bill 615. He is not an independent supervisor but is under the county superintendent. While he is to perform all the duties prescribed by law for a district superintendent, it is by no means clear that he has the powers of a district superintendent as prescribed by sections 7706 to 7706-2 of the General Code. These powers, as distinguished from duties, are as follows:

- (1) Control over the promotion of pupils.
- (2) To be the chief executive officer of the board of education, with a right to take part in its deliberations.

It is to be admitted that the question as to just how far the powers of a section 4740 "superintendent" differ from those of an ordinary district superintendent is very difficult to answer. He must actually serve as a teacher for a definite part of each day.

In the absence of any direct provision, it is believed that the related statutes should be given an application consistent with their spirit and purpose. Such an application would require that the part time "superintendent" employed under section 4740 be treated as a "teacher" to the extent of the teaching service which he renders, and that a proportionate part of his compensation, arrived at strictly on a time basis, should be reported as the salary of a teacher and considered as such for the purposes of section 7600 and related sections.

This conclusion is justified on the same ground as the conclusions of the former attorney-general who arrived at a similar result for the purpose of the administration of the state aid law. It leaves, however, another troublesome question still unsolved. Section 7600 provides that there shall be a distribution of the state levy on the basis of "twenty-five per centum of the salary of each teacher receiving a salary of not less than eight hundred dollars" and distribution of the state levy retained in the county on the basis of twelve and one-half per centum of the salaries "of such teachers as are mentioned in this section." The question which now arises is as to whether or not in determining the amount of the salary of the superintendent employed under section 4740 for the purpose of applying the eight hundred dollar minimum requirement of the law, the whole salary paid to such "superintendent" shall be considered or merely such part of his salary as represents teaching service. It is believed that the latter is the only conclusion consistent with the principle which has been laid down herein; and that in determining whether or not a part time "superintendent" employed under section 4740 receives a salary of more than eight hundred dollars, only such part of his salary as, on a strict time basis, is referable to his teaching service can be considered.

Moreover, on the reasoning just outlined the portion of the salary of such part time superintendent referable to his teaching service should be the amount on which the percentage, on the basis of which the primary distribution of the state levy is made, should be computed.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1227.

VOCATIONAL SCHOOLS—CITY BOARD OF EDUCATION MAY ESTABLISH AND MAINTAIN SUCH A SCHOOL—ADULTS MAY BE ADMITTED—MAY ERECT AND EQUIP SUITABLE BUILDINGS FOR SUCH PURPOSE.

A city board of education may establish and maintain vocational schools to which adults may be admitted and may erect and equip suitable buildings or set apart and use buildings under the control of the board of education for such purposes in the same manner and within the same limitations as it establishes and maintains buildings for other school purposes. However, said schools should not be established for the exclusive use of adult pupils, but rather for all who are eligible to attend.

COLUMBUS, OHIO, May 8, 1920.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your communication of recent date, which reads as follows: