

2309.

APPROVAL, BONDS OF VILLAGE OF SHAKER HEIGHTS, CUYAHOGA
COUNTY, OHIO—\$73,000.00.

COLUMBUS, OHIO, September 9, 1930.

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

2310.

CENSUS—MEANING OF “LAST CENSUS”—WHEN 1930 CENSUS DEEMED
EFFECTIVE.

SYLLABUS:

1. *By the term “last census”, as used in Section 4688, General Code, is meant the last federal census.*
2. *The 1930 census, in so far as it may show the population of municipalities in Ohio, is not effectual for that purpose until a proclamation is issued by the Secretary of State, in accordance with Section 3498, General Code, setting forth the population of the municipalities in Ohio, in accordance with said census.*

COLUMBUS, OHIO, September 9, 1930.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

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

“According to the provisions of Section 4688 of the General Code, a village school district, having a population of 3,000 or more ‘according to the last census’, may be exempted from the supervision of county board of education.

The Newton Falls Consolidated School District received a certificate from the local assistant supervisor of census, Mr. Harry E. Davis, on April 29th, 1930, stating that the population of the village, according to the 1930 census, was more than 3,000. The board of education immediately passed the required legislation, and certified, prior to May 1st of the year 1930, the district desired to be exempted from the supervision of the county board of education. The census of the village was taken prior to April 29th, and had been completed and certified to by the local manager on the day above mentioned.

May the 1930 census be used as the ‘last census,’ in order to comply with the provisions of Section 4688?”

Before a village school district may become an exempted village school district it must either contain within its boundaries an incorporated village with a population of 3,000 or more, according to the last census, or have a population in the entire district of 3,000 or more, as shown by a special census taken by authority of Section 4688-1, General Code.

The provision authorizing a school district containing a village with a population of of 3,000 or more, according to the last census, to become an exempted village

school district is set forth in Section 4688, General Code, the pertinent part of which reads as follows:

"The board of education of any village school district containing a village which according to the last census had a population of three thousand or more, may by a majority vote of the full membership thereof decide to be exempted from the supervision of the county board of education. * * "

The term "last census," as used in the statute, no doubt means last federal census, as there is no provision made by statute for the taking of an official census in municipalities other than the federal census. The term "last census" could not have reference to any other census than the federal census.

At this time the last federal census, so far as municipalities in this state are concerned, at least, is the census of 1920, as we do not yet have the official returns of the 1930 census. There is nothing official about what a local supervisor or enumerator may say. The only official federal census is that shown by the completed records of the census at Washington, and disseminated through the director of census to the public.

By statute, the official federal census for municipalities in Ohio is fixed in accordance with the proclamation of the Secretary of State with reference to the subject. Section 3498, General Code, provides as follows:

"When the result of any future federal census is officially made known to the secretary of state, he forthwith shall issue a proclamation, stating the names of all municipal corporations having a population of five thousand or more, and the names of all municipal corporations having a population of less than five thousand, together with the population of all such corporations. A copy of the proclamation shall forthwith be sent to the mayor of each municipal corporation, which copy shall be forthwith transmitted to council, read therein and made a part of the records thereof. From and after thirty days after the issuance of such proclamation each municipal corporation shall be a city or village, in accordance with the provisions of this title."

Section 55 of Chapter 2, Title 13, of the United States Code, provides in part:

"The Director of the Census is authorized, at his discretion, upon the written request of the governor of any state or territory or of a court of record, to furnish such governor or court of record with certified copies of so much of the population or agricultural returns as may be requested, upon the payment of the actual cost of making such copies and \$1 additional for certification; * * * "

It will be observed from the terms of Section 3498, supra, that whenever the result of a federal census is officially made known to the Secretary of State he forthwith shall issue a proclamation stating the names of all municipal corporations having a population of 5,000 or more and also those having a population of less than 5,000 together with the population of all such corporations. The Secretary of State has not yet issued his proclamation showing the population of the municipalities in Ohio, as determined by the federal census of 1930. In fact, he has not been officially advised of what that population is, and I am informed will probably not be officially advised of the result of the 1930 federal census for several weeks.

Until the Secretary of State issues his proclamation setting forth the population

of the municipalities of the State, in accordance with the 1930 federal census, the "last census" applicable to such municipalities is the census of 1920.

The Board of Education of Newton Falls Consolidated School District was in error in assuming that the information given them by the local assistant supervisor of census as to the population of the village of Newton Falls constituted the last census for the village, as the term is used in Section 4688, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2311.

APPROVAL, ABSTRACT OF TITLE TO LAND OF BESSIE R. McCAGUE
IN CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, September 10, 1930.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval an abstract of title, warranty deed and encumbrance estimate No. 568, relating to the proposed purchase of a certain parcel of real property located in the city of Columbus, Franklin County, Ohio, which is owned of record by one Bessie R. McCague and which is more particularly described as being lot number twenty (20) of R. P. Woodruff's subdivision of the south half of the south half of lot number two hundred and seventy-eight (278) of R. P. Woodruff's Agricultural College Addition to the city of Columbus, Ohio, as the said lot is numbered and delineated upon the recorded plat thereof, of record in Plat Book 3, page 421, Recorder's Office, Franklin County, Ohio.

On examination of the abstract of title submitted, the last continuation of which is certified by the abstracter under date of August 18, 1930, I find that said Bessie R. McCague has a good indefeasible fee simple title to the above described property, subject to the inchoate dower interest of her husband, William T. McCague, and free and clear of all encumbrances except the undetermined taxes on said property for the year 1930 which are a lien.

Upon examination of the warranty deed, above referred to, I find that the same has been properly signed and otherwise properly executed and acknowledged by said Bessie R. McCague and William T. McCague and that the form of said deed is such that the above described property is conveyed to the State of Ohio by fee simple title, free and clear of the dower right and interest of said William T. McCague and free and clear of all encumbrances whatsoever except taxes due and payable on and after the December, 1930, payment of taxes.

Upon examination of encumbrance estimate No. 568, I find that the same has been properly executed and approved and that there is shown thereby that there are sufficient balances in the proper appropriation account to pay the purchase price of said property, which is the sum of twenty-two hundred dollars. I likewise note from said encumbrance estimate that the money necessary to pay the purchase price of this property has been released by the controlling board.

I am herewith forwarding to you with my approval said abstract of title, warranty deed and encumbrance estimate No. 568.

Respectfully,

GILBERT BETTMAN,
Attorney General.