

4172.

APPROVAL, NOTES OF STRUTHERS CITY SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$27,700.00.

COLUMBUS, OHIO, March 23, 1932.

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

4173.

APPROVAL, CONTRACT BETWEEN TRUSTEES OF LANIER TOWNSHIP AND THE BUCKEYE PUBLIC SERVICE COMPANY, FOR ARTIFICIAL LIGHTING OF ROAD IN HAMLET OF INGOMAR.

COLUMBUS, OHIO, March 24, 1932.

HON. RALPH G. SEVER, *Prosecuting Attorney, Eaton, Ohio.*

DEAR SIR:—I have your letter in which you ask for an opinion as to the validity of the contract entered into on the 18th day of December, 1931, by and between the Board of Trustees of Lanier Township and The Buckeye Public Service Company, for the artificial lighting of a road in the Hamlet of Ingomar, which is not an incorporated village. You have enclosed in this letter an abstract of the proceedings of the township trustees leading up to the execution of this contract, together with the contract itself.

For the purpose of this opinion, I assume that, in accordance with Section 3440-1 of the General Code, the township trustees determined that the public safety or welfare requires that such road be lighted; that bids were advertised for a period of two weeks either by posting said advertisement in three conspicuous places in said township or by publication thereof once a week for two consecutive weeks in a newspaper of general circulation in the township; that the bid of The Buckeye Public Service Company was in accordance with the plans and specifications and that the trustees determined that this company was the lowest and best bidder. You state that only a part of Ingomar lies within Lanier Township and I assume, of course, that the portion of the road sought to be lighted is entirely within Lanier Township.

If these assumptions are correct, then I am of the opinion that the contract referred to constitutes a valid and binding obligation on the part of both the trustees and The Buckeye Public Service Company.

I notice the certificate of the clerk states "that the amount (\$180.00) required to meet this contract, agreement, obligation, payment or expenditure for the then fiscal year has been lawfully appropriated or authorized or directed for such purposes and is in the treasury or in process of collection to the credit of the Light fund free from any obligations or certification outstanding."

Section 5625-33, General Code, provides that the certificate shall state that "the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose," etc. Of course, as

the contract was made in December, 1931, and was not to take effect until January, 1932, there would be no amount required to meet the obligations of this contract for the year 1931, and I am of the opinion that the certificate of the clerk certifying that the amount which is actually required for the first year of the life of the contract has been appropriated and in fund or process of collection, is a sufficient compliance with this statute.

I am returning herewith the contract which you have submitted to me.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4174.

CONTRACT — SUPERINTENDENT OF SCHOOLS — INVALID WHERE TERM OF EMPLOYMENT DOES NOT COMMENCE TILL FOUR MONTHS AFTER DATE OF CONTRACT — SECTION 7691, CONSTRUED.

SYLLABUS:

When by contract, a rural board of education employs a "superintendent of schools" and when by reason of the provisions of such contract the term of employment, as distinguished from the school term, is not to begin until more than four months after the date thereof, such contract is void, being in violation of the provisions of Section 7691, General Code, and beyond the powers of such board of education. Such superintendent can therefore obtain no rights thereunder.

COLUMBUS, OHIO, March 24, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

This will acknowledge receipt of your inquiry with respect to the following question:

"One of the township school districts two years ago employed a Superintendent of Schools for a period of three years. The contract was made and entered into in April, which was more than four months prior to the time of the commencement of the term for which he was hired. Almost two years of the term have expired. A new board of education is now in office, and is desirous of canceling and rescinding this contract. The board feels that the salary is higher than it should be during these times, and wants to be relieved of the contract. The board inquires as to whether or not under the provisions of Section 7691, the contract was illegally made, because it was made more than four months prior to the commencement of the term, the contract being made in April, and the term commencing the following September."

In the solution of your inquiry it must be borne in mind that the powers of a board of education are limited to a greater extent than are those of a