

invest any of the surplus or reserve belonging to the state insurance fund "in bonds of the United States, the state of Ohio, or of any county, city, village or school district of the state of Ohio * * *." Bonds of a conservancy district do not fall within any of the classes of bonds mentioned in said section of the General Code and I therefore advise the commission to rescind its action authorizing the purchase of the bonds.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2054.

FEDERAL CENSUS—WHEN VILLAGES BECOME CITIES—PROSECUTING ATTORNEY LEGAL ADVISER OF BOARD OF EDUCATION OF MUNICIPALITY UNTIL CITY OFFICIALS ELECTED—TEACHERS' CERTIFICATES ISSUED BY COUNTY BOARDS OF SCHOOL EXAMINERS SUFFICIENT UNTIL CITY BOARD OF SCHOOL EXAMINERS START TO FUNCTION.

1. *The prosecuting attorney of the county in which the municipality is located is the legal adviser of the board of education of a municipality which has become a city by virtue of the proclamation of the secretary of state, while that municipality is still functioning under the village form of government and has not yet elected city officials.*

2. *Teachers' certificates issued by county boards of school examiners or the state board of school examiners, will be sufficient to carry teachers through the present year and until a city board of school examiners starts to function. Such city board of school examiners (7838 G. C.) can be appointed only by the board of education elected for the city school district in November, 1921.*

COLUMBUS, OHIO, May 9, 1921.

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

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following questions:

"1. Who is the legal adviser of the board of education in a municipality which has become a city by virtue of the proclamation of the secretary of state while that municipality is still functioning under the village form of government and has not yet elected city officials?"

"2. What authority issues certificates to teachers in such a municipality for the remainder of this year if certificates must be issued and for the year beginning September 1, 1921?"

Pertinent sections of the statutes are as follows:

Sec. 3497: "Municipal corporations, which, at the last federal census, had a population of five thousand or more, shall be cities. All other municipal corporations shall be villages. * * * Villages which, at any future federal census, have a population of five thousand or more, shall become cities."

Sec. 3498: "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."

Sec. 3499: "Officers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new corporation at the next regular election, and the ordinances thereof not inconsistent with the laws relating to the new corporation shall continue in force until changed or repealed."

Sec. 4246: "The executive power and authority of cities shall be vested in a mayor, president of council, auditor, treasurer, solicitor, director of public service, director of public safety, and such other officers and departments as are provided by this title."

Sec. 4248: "The executive power and authority of villages shall be vested in a mayor, clerk, treasurer, marshal, street commissioner, and such other officers and departments thereof as are created by law."

Sec. 4220: "When it deems it necessary, the village council may provide legal counsel for the village, or any department or official thereof, for a period not to exceed two years, and provide compensation therefor."

Sec. 4680: "Each city, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a city school district."

Sec. 4686: "When a village is advanced to a city, the village school district shall thereby become a city school district. When a city is reduced to a village, the city school district shall thereby become a village school district. The members of the board of education in village school districts that are advanced to city school districts, and in city school districts that are reduced to village school districts shall continue in office until succeeded by the members of the board of education of the new district, who shall be elected at the next succeeding annual election for school board members."

Sec. 4303: "The solicitor shall be elected for a term of two years, commencing on the first day of January next after his election, and shall serve until his successor is elected and qualified. He shall be an elector of the city."

Sec. 4761: "Except in city school districts, the prosecuting attorney of the county shall be the legal adviser of all boards of education of the county in which he is serving. He shall prosecute all actions against a member or officer of a board of education for malfeasance or misfeasance in office, and he shall be the legal counsel of such boards or the officers thereof in all civil actions brought by or against them and shall conduct such actions in his official capacity * * *. In city school districts, the city solicitor shall be the legal adviser and attorney for the board of education thereof, and shall perform the same services for such board as herein required of the prosecuting attorney for other boards of education of the county."

Investigation shows that the secretary of state, acting under the provisions of

section 3498 G. C., issued his proclamation under date of January 21, 1921, showing which villages in the state had become cities because of their having within their corporate limits a population of 5,000 or more. Section 3498 G. C. provides that thirty days after the issuance of such proclamation, that is, February 21, 1921, "each municipal corporation shall be a city or village in accordance with the provisions of this title."

It is at once apparent that questions of this kind, where a village passes to the class of a city as regards its municipal government, can rise but once in each ten years, that is, at the time when the results of the federal census are announced. Thus the same condition which now confronts these villages took place in other instances in 1911, following the federal census of 1910.

It is proper then to examine the opinions of the Attorney-General for the year following the previous federal census of 1910, and as a number of these questions may come up in your department for guidance during the current year, your attention is invited to the following syllabi on questions of this kind, covering opinions issued by the Attorney-General after the last previous federal census :

"Villages becoming cities by the recent census will adopt a city form of government January 1, 1912, the officers thereof being elected at the regular November election, 1911, and the village officers continue until succeeded by the proper officers of the city at the next regular election." (Opinions of the Attorney-General, 1911-1912, Vol. 1, p. 247.)

"When a village school district, by reason of the last federal census, advances to a city school district, the members of the board of education of the old village district, under sections 4686 and 4700, General Code, shall decide the number of members which shall compose the city board of education.

"The successors of the members of the board of education in such instances, shall be elected at the next annual election for school board members.

"A superintendent or teacher who had been elected for a legal term of years by said village board, may hold for said term under the city school district regime." (Opinions of the Attorney-General for 1911-1912, Vol. 1, p. 516.)

"When a village advances to a city by reason of the last federal census, the board of education of the village continues its duties until the induction into office of the city board of education, but with the powers only of a village board of education. Such village board therefore, has the power only to appoint a superintendent for a term of three years as provided for villages under section 7705, General Code.

"An appointment by such board of a superintendent for a longer term as provided for cities under section 7702, General Code, is therefore void." (Opinions of the Attorney-General for 1911-1912, Vol. 1, p. 563.)

"When a village advances to a city by reason of the federal census, the village officials remain in office until the city officers elected in the next election have been inducted into office.

"The village board of education may determine the number of members to be elected to the city board of education, but the power to appoint the city board of examiners resides only in the board elected under the city plan.

"The county certificates will be sufficient to carry teachers through the present year but for later periods a certificate must be obtained from the

regularly appointed city board of school examiners." (Opinions of the Attorney-General for 1911-1912, Vol. 1, page 562.)

An examination of the General Code as in existence at this time, shows that none of the sections mentioned in the above syllabi have been repealed except 4700 G. C., which is mentioned in Opinion 142, at page 516 of Vol. 1, Opinions of the Attorney-General for 1911-1912.

It is perfectly apparent that the mere proclamation of the secretary of state that a village is thereafter a city, cannot be wholly effective for practical purposes following the date of going into effect of the proclamations, for the reason that the government of a city is in many respects different from the government of a village and certain changes in the municipal machinery must be first effected. Section 3499 G. C. has apparently provided for most of these contingencies by making the officers of a village to be the officers of the newly created city "until succeeded by the proper officers of the new corporation at the next regular election." One of these officers in the city government is the city solicitor, who must be an elector of the city. In the village government, under the provisions of section 4248 G. C., there is no solicitor who has a status of an officer of the village. The legal counsel for the village, as provided in 4220 G. C., is an employe of the village council who "may provide legal counsel for the village, or any department or official thereof," without any reference to the village school district. The executive officers mentioned in section 4248 G. C., as regards villages, continue in authority until they are succeeded at the following November election by the city officers mentioned in section 4246 G. C. The legal counsel of the village, frequently called the village solicitor, very often does not reside in the village, and thus is not an elector of the corporation, while the city solicitor must have that qualification in his corporation. The village solicitor is employed by the village council to give legal advice upon matters pertaining wholly to the village and not to the village board of education, since the village school district, under the provisions of section 4681 G. C., is distinct from the village corporation itself. Since the village legal counsel is not an officer of a village advanced to a city (3499 G. C.), he is not one of those who continues in office until succeeded by the proper officer of the new corporation at the next regular election.

An analysis of the law shows that this particular contingency coming but once in each ten years following the federal census, is not fully cared for in the statutes. Should the village solicitor, employed by the village council, still be retained for village purposes until a city solicitor was elected, there is no authority of law for making him the legal adviser of the board of education which has jurisdiction over the village school district of which the village is a part, for section 4761 G. C. provides that the legal adviser of, the boards of education must be either one or the other of two officers, to-wit, either the prosecuting attorney of the county in which the district is located, or the city solicitor where the district is a city school district. Since the village in question cannot have a city solicitor in charge of its legal department, until after the following general election in November, 1921, the village board of education becoming a city board of education at a later time would still have as its legal adviser the prosecuting attorney of the county until there had been properly chosen in the city comprising a part of the city school district, a city solicitor who thereafter, when properly installed, would be the legal adviser of the board of education in the new city school district.

In your second question you desire to know what authority issues certificates to teachers in a municipality which has become a city by virtue of the proclamation of the secretary of state while that municipality is still functioning under the village form of government and has not yet elected city officials, both as regards the remainder of this year and also for the year beginning September 1, 1921.

This question is answered in opinion No. 458, issued on November 9, 1911, and appearing at page 562, Vol. 1, 1911-1912, wherein it is held that:

"The county certificates will be sufficient to carry teachers through the present year but for later periods a certificate must be obtained from the regularly appointed city board of school examiners."

This same opinion of the Attorney-General also says that:

"The power to appoint the city board of examiners resides only in the board elected under the city plan."

There have been no changes in the statutes that would cause this rule to be changed as previously announced, and the opinion of the Attorney-General in 1911 is herewith concurred in.

You are therefore advised, in answer to your specific questions, that it is the opinion of this department:

1. That the prosecuting attorney of the county in which the municipality is located is the legal adviser of the board of education of a municipality which has become a city by virtue of the proclamation of the secretary of state, while that municipality is still functioning under the village form of government and has not yet elected city officials.

2. Teachers' certificates issued by county boards of school examiners or the state board of school examiners, will be sufficient to carry teachers through the present year and until a city board of school examiners starts to function. Such city board of school examiners (7838 G. C.) can be appointed only by the board of education elected for the city school district in November, 1921.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2055.

ROADS AND HIGHWAYS—COUNTY COMMISSIONERS AUTHORIZED TO RENT BUILDINGS FOR STORAGE OF MACHINERY AND CONVEYANCES FOR USE IN ROAD WORK—BUILDING MAY ALSO BE USED FOR STORAGE OF AUTOMOBILES OWNED BY COUNTY AND USED BY COUNTY OFFICERS—WHEN COUNTY SURVEYOR MAY EMPLOY MECHANIC TO KEEP IN REPAIR ROAD MACHINERY, ETC.—HOW COMPENSATION AND DUTIES OF MECHANIC PROVIDED.

1. *County commissioners are authorized by section 7200 G. C. to rent a building for the housing and storage of machinery, tools, equipment and conveyances owned by the county for use in road maintenance work. Rental should be paid from the county general fund.*

2. *By virtue of sections 7198 and 7200 G. C., the county surveyor may, if first authorized by the county commissioners, employ a mechanic whose duty it will be to keep in repair the road machinery and road repair trucks of the county. The compensation of the mechanic for his services in such respect should be paid from the road maintenance fund of the county.*

3. *If a building be rented for the purpose of housing and storing the road machinery and road repair trucks of the county, such building may also be used for*