

therefor, if a petition is so filed and a transfer made, it is made by authority of Section 4692, *supra*.

The statute is quite clear, it will be observed, that when a transfer is made by authority thereof an equitable division of the indebtedness of the transferred territory is to be made by the county board of education making the transfer. There is no authority anywhere, authorizing anyone other than a county board of education to make that division.

I assume the Stryker District and the West Unity District spoken of in your inquiry are both districts of the Williams County School District, and it therefore follows that if a transfer of territory is made from one to the other, by the board of education of the Williams County School District an equitable division of the indebtedness of the districts involved in the transfer should be made by the board of education of the Williams County School District, including bonded indebtedness as well as any other indebtedness.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2700.

SALARY—COUNTY SUPERINTENDENT OF SCHOOLS—CONTRACT ENTERED INTO FOR SPECIFIC SALARY WHICH SUM IS TO INCLUDE PERSONAL TRAVELING EXPENSES—BOARD OF EDUCATION THEREAFTER PRECLUDED FROM GRANTING FURTHER ALLOWANCE FOR TRAVELING EXPENSES.

SYLLABUS:

Where a county board of education enters into a contract with a county superintendent of schools whereby it agrees to pay a definite sum for his salary, which sum shall include his personal traveling expenses, such board is precluded from granting any further allowance to said superintendent for traveling expenses.

COLUMBUS, OHIO, December 20, 1930.

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

GENTLEMEN:—In your recent communication you request my opinion upon the following:

“Proceeding under the provisions of Section 4744-1, General Code, a county board of education employed a county superintendent of schools for a period of two years, the contract calling for an annual salary of \$3250.00, which amount shall include all personal traveling expenses.

Question: Does such a contract preclude the county board of education appropriating and paying to the county superintendent one hundred and fifty dollars each year for personal traveling expenses?”

Section 4744, General Code, requires the county board of education at a regular meeting held not later than July 20th, to appoint a county superintendent for a term not longer than three years, commencing on the first day of August.

Section 4744-1, General Code, which relates to the fixing of the salary of such superintendent provides in part as follows:

"The salary of the county superintendent shall be fixed by the county board of education to be not less than twelve hundred dollars per year, and shall be paid out of the county board of education fund on vouchers signed by the president of the county board. Half of such salary up to the amount of two thousand dollars shall be paid by the state and the balance by the county school district. In no case shall the amount paid by the state be more than one thousand dollars. The county board may also allow the county superintendent a sum not to exceed three hundred dollars per annum for traveling expenses and may employ an efficient stenographer or clerk for such superintendent. * * * "

It has been so often determined that the salary of the county superintendent may not be increased during his term that it is scarcely necessary to discuss the same herein. In *Clark vs. Cook*, 103 O. S., 465, the court stated in its opinion that:

"The express power to fix a salary does not grant by implication the power to unfix such salary. The exercise of the power for the full three-year term agreeable to the statute, exhausts the power conferred by the statute. The power to change after once having fixed the term and salary, to employ the language of the *Locher* case, *supra*, must be 'clear and distinctly granted.' The power not being so granted to the board of education cannot be exercised by the board of education, and its attempted exercise thereof is *ultra vires*. The action of the board in attempting to change the salary of the county superintendent, after once fixed, is illegal and void under the statute."

In my opinion, found in the Opinions of the Attorney General for 1929, Vol. II, page 1381, it was held as disclosed by the syllabus that:

"A board of education of a city school district may not lawfully increase the salary of the superintendent during the term for which he was appointed."

While said opinion dealt with a city school superintendent, the principle laid down in the *Cook* case, *supra*, was fully discussed. The only question your inquiry presents, of course, is whether or not the allowance for traveling expenses, under the provisions of Section 4744-1, *supra*, is in the same category as salary provided for in said section. As pointed out in my opinion in 1929, hereinbefore referred to, while the court in the *Cook* case discussed the constitutional provision, it decided the case irrespective of such provision, as is indicated in that part of the opinion hereinbefore quoted, upon the theory that the board having once acted was unable to act again upon the same subject matter. In the case you mention it appears that, acting in pursuance to the statutory provision, the board of education fixed the salary of the superintendent at \$3250.00 per annum, which said salary by the terms of said contract was to include his personal traveling expenses.

Upon the reasoning in the *Cook* case, the board having fixed the compensation and traveling expenses, it would appear to be without authority to alter the same during the term of the contract. In other words, having undertaken to exercise its power by making the contract, its power was exhausted and any future action in reference to the same subject matter would be a nullity.

Based upon the foregoing and in specific answer to your inquiry, it is my opinion that where a county board of education enters into a contract with a county superintendent of schools whereby it agrees to pay a definite sum for his salary, which sum shall include his personal traveling expenses, such board is precluded from granting any further allowance to said superintendent for traveling expenses.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2701.

CONTRACTS—CONSTRUCTION OF OHIO STATE OFFICE BUILDING—
SUCCESSFUL CONTRACTORS MAY NOT USE SUBSTITUTE AR-
TICLES OR MATERIALS WHEN.

SYLLABUS:

The successful contractors for the construction of the Ohio State Office Building may not use substitute articles and materials which were not mentioned in the specifications or submitted by them as substitutions in their Forms of Proposal.

COLUMBUS, OHIO, December 20, 1930.

HON. HARRY HAKE, *Chief Architect, The State Office Building Commission, Cincinnati, Ohio.*

MY DEAR MR. HAKE:—This acknowledges receipt of your recent communication which reads:

“I am writing you at the request of the State Office Building Commission for your formal decision pertaining to the use of substitute articles and materials which were not mentioned in the specifications or submitted as substitutes to the specifications by the successful contractor of the above building. Copies of your decision will be mailed to all members of the Commission and to all contractors on the building.”

Section 7 of the Act of the Legislature (111 O. L. 475, et seq.) concerning the State Office Building, reads in part:

“ * * * The construction of such building shall be governed by the provisions of Section 2314 to 2332 of the General Code, relative to the erection of state buildings except that the excavating and work of a like nature may be performed by prisoners from the penitentiary. * * * ”

From the above statutory provision, it is obvious that Sections 2314 to 2332, General Code, govern the construction of the State Office Building.

Section 2314, General Code, provides in part that when a building is to be erected for the use of the state at an expenditure exceeding three thousand dollars, there must be prepared “definite and complete specifications of the work to be performed, together with such directions as will enable a competent mechanic or other builder to carry them out and afford bidders all needful information.”

Pursuant to this mandate, your architectural firm was engaged by the State Office