

source of sufficient funds to pay the principal and interest when due. Any action attempting to reduce these assessments would impair the obligation of the contract and legal duty of the property owners to pay for said improvement.

Answering your question specifically, it is my opinion that the legislative body of a municipality may not lawfully reduce the assessments made against abutting property for a street improvement after bonds have been sold for such improvement in anticipation of the collection of such assessment and supply the deficit created in the sinking fund caused by such a reduction of assessments, by transferring thereto the funds received under the provisions of Sections 6309-2 and 5537 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1135.

VILLAGE SCHOOL DISTRICT, DISCUSSED—MEMBERS OF BOARD OF EDUCATION OF SUCH DISTRICTS NOT ENTITLED TO PAY FOR SERVICES.

SYLLABUS:

1. *A village which when incorporated, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than five hundred thousand dollars, does not constitute a village school district.*

2. *Since there is no statute providing pay or compensation for members of a village school district board of education, such members, whether de jure or de facto, are not entitled to any pay for their services.*

COLUMBUS, OHIO, October 11, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication of recent date which reads:

“You are respectfully requested to furnish this department your written opinion upon the following:

The Village of San Toy in Perry County was incorporated by vote taken on September 14, 1913. The plat and transcript were recorded October 4, 1913, and it would appear that the village was an incorporated village from the latter date. At the time of its incorporation or rather on the tax duplicate of 1914 when it first appears as a separate taxing district the tax valuation was \$129,900.00. Upon the failure of the village to elect members of the board of education, the county commissioners under date of May 18, 1914, appointed five persons to act as such board for the so-called Village of San Toy School District. Afterwards the board of education petitioned the Probate Court to make a division of the funds between Bearfield and Monroe Township Districts and San Toy Village school district. The territory within the incorporated village of San Toy has since that time been considered to be a school district and a board of education has been elected from time to time according to law.

Question: Is the district so-called a village school district or a rural school district and is each member of the board of education of such district entitled to the compensation provided for in Section 4715 of the General Code?

Your attention in this connection is called to the provisions of Section 4681, G. C., and to the fact that this section was amended in 103 Ohio Laws, page 545, wherein the tax valuation was increased from \$100,000.00 to \$500,000.00. It seems that the \$500,000.00 provision was in effect at the time this village of San Toy was incorporated. We are enclosing herewith a letter from the County Auditor and copies of the action of the County Commissioners and the Probate Court."

Your inquiry involves a consideration of Sections 4681 and 4682, General Code, as amended, 103 Ohio Laws, 545. Prior to the amendment of the sections aforesaid, the minimum total tax valuation of the property of a village school district was one hundred thousand dollars.

As amended in 103 Ohio Laws, 545, the foregoing sections provide as follows:

Sec. 4681. "Each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars shall constitute a village school district."

Sec. 4682. "A village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than five hundred thousand dollars, shall not constitute a village school district, but the proposition to organize the territory thus formed into a village school district may be submitted by the board of education, and shall be submitted by the board of education upon the presentation to it of a written petition for such purpose signed by 25 per cent of the electors of the territory thus formed at any general or special election called for that purpose, and be so determined by a majority vote of such electors."

Reviewing the history of Section 4681, General Code, it is noted that the first word of our legislature in relation to the matters contained in said section is found in 70 O. L. 195, and is an act which provides for the reorganization and maintenance of the common schools. Chapter one of said act classifies school districts and Section four of said chapter reads as follows:

"Each incorporated village, including the territory attached to it for school purposes and excluding the territory within its corporate limits detached for school purposes is hereby constituted a school district to be styled a village district."

The act of which said section was a part, was passed on May 1, 1873, and the above section was amended on April 27, 1877, to read as follows:

"Each incorporated village, including the territory attached to it for school purposes and excluding the territory within its corporate limits detached for school purposes shall be constituted a school district to be styled a village district. * * *"

It will be noted at the outset that when Section four was first enacted, as above quoted, it provided that all villages should constitute village school districts, but in the amendment last above mentioned certain limitations were placed upon the organization of villages into school districts. Section four of the original act before mentioned was carried into the Revised Statutes as Section 3888, and was amended April 2, 1904, to read as follows:

"Each incorporated village now existing or hereafter created, 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 village school district."

It is also noted, however, that the above amendment is in almost the identical form in which said above mentioned Section four was enacted, adding, however, "now existing" and "or hereafter created" for it will be remembered that from the time said section was amended in 1887 up to the amendment of 1904, there were in all probability many villages which had not organized into village school districts.

On April 2, 1906, said Section 3888, R. S., was again amended to read as follows:

"Each incorporated village now existing or hereafter created, together with the territory attached to it for school purposes and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than one hundred thousand dollars shall constitute a village school district, provided that each incorporated village now existing or hereafter created, together with the territory attached to it for school purposes and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than one hundred thousand dollars shall not constitute a village school district; provided at any general election the proposition to dissolve or organize such village school district be submitted by the board of education to the electors of such village and be so determined by a majority vote of such electors."

After the last mentioned amendment a village whose tax valuation exceeded one hundred thousand dollars became ipso facto a village school district and a village whose tax valuation was less than one hundred thousand dollars did not constitute a village school district. But if a district already existing or if a district with less than one hundred thousand dollars tax valuation desired to organize, the question of such dissolution or organization could be submitted by the board of education to the electors of such village and be determined by a majority vote of such electors.

Said Section 3888, Revised Statutes, was carried into the General Code as Section 4682, and was amended February 28, 1911, to read as follows:

"A village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than one hundred thousand dollars, shall not constitute a village school district, but the proposition to dissolve or organize such village school district shall be submitted by the board of education to the electors of such village at any general or a special election called for that purpose, and be so determined by a majority vote of such electors."

The material change in said section, as last amended, is that the question to dissolve or organize such district may be submitted at a special election called for that purpose, as well as at a general election as provided in Section 3888, Revised Statutes.

On May 9, 1913, said Section 4682, General Code, was again amended to read as follows:

"A village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than five hundred thousand dollars, shall not constitute a village school district, but the proposition to organize the territory thus formed into a village school district may be submitted by the board of education, and shall be submitted by the board of education upon the presentation to it of a written petition for such purpose signed by 25 per cent of the electors of the territory thus formed, to a vote of the electors of the territory thus formed at any general or a special election called for that purpose, and be so determined by a majority vote of such electors."

When the new school code was enacted in 1914, Section 4682 above quoted was carried into said Code unchanged.

You state that the Village of San Toy was incorporated by a vote taken on September 14, 1913. It is therefore assumed that said village was incorporated under the procedure provided in Section 3526, General Code, which provides that:

"When the inhabitants of any territory or portion thereof, desire that such territory shall be incorporated into a village, they shall make application, by petition, to the trustees of the township in which the territory is located, or, if the territory is located in more than one township, to the trustees of the township in which the majority of such inhabitants reside. Such petition shall be signed by at least thirty electors of the territory, a majority of whom shall be freeholders, and shall be accompanied by an accurate map of the territory, and shall contain in addition to the matter hereinbefore required to be set forth in petitions to incorporate territory laid off into village lots, the request of the petitioners that an election be held to obtain the sense of the electors upon such incorporation. Such petition may be presented at a regular or special meeting of the township trustees."

Section 3527 of the General Code provides the procedure upon receipt of the petition and Section 3528, General Code, provides for the manner of the election and form of the ballot. Section 3529, General Code, reads as follows:

"If a majority so cast have thereon the words, 'For incorporation,' the township trustees shall cause to be entered on their journal, a minute of all their proceedings, the number of votes cast at the election, the number of votes cast for incorporation, and the number cast against incorporation, and they shall then declare that such territory shall from that time be deemed an incorporated village, and shall make an order declaring that such village has been incorporated by the name adopted."

Section 3530, General Code, provides for a transcript and record with the county recorder and Section 3531, General Code, then provides as follows:

"The corporation shall then be a village under the name adopted in the petition, with all powers and authorities given to villages by this title, but no injunction shall be brought, as herein provided in case of filing the transcript with the county commissioners, unless the action be instituted within ten days from the filing of the papers by the trustees with the county recorder,

but the right of petition to the court of common pleas for error shall exist as provided in the following sections of this chapter."

It is therefore evident that said village of San Toy was incorporated and that said incorporation as a village became effective when the trustees made a certified transcript of the journal entry of all their proceedings signed by a majority of their board, and delivered it with the original petition and plat to the county recorder and after the county recorder made a record of the petition, transcript and plat or map in the public book of record and filed in his office the original papers delivered to him by the said trustees and certified thereon that the transcribed petition and map were properly recorded and when the county recorder had made such record and certified said transcript and forwarded the same to the secretary of state. The vote for incorporation was taken on September 14, 1913, the plat and transcript were recorded on October 4, 1913, and it is assumed that said county recorder immediately made and forwarded a certified copy of the transcript of the proceedings.

It is therefore evident that Section 4682 of the General Code having been enacted May 9, 1913, was effective and operative at the time of the effective date of the incorporation of said village and that in order for said village to become a village school district, at that time it must have had within the territory defined in said section a tax valuation of not less than five hundred thousand dollars. Your communication states that the tax valuation of the property in said district was only one hundred twenty-nine thousand, nine hundred dollars.

The board of county commissioners under date of May 18, 1914, assuming that said territory comprised a village school district appointed five persons to act as a board for the so-called Village of San Toy school district. Subsequently the Probate Court ordered a division of the funds between the two townships and said village school district, and a board of education has been elected from time to time according to law, since.

You do not state the tax valuation of said so-called village school district at the present time. Neither is there any statement in your communication to show that any procedure subsequent to the original incorporation of said village was taken to organize said territory into a village school district.

In an Opinion of this Department rendered March 27, 1917, and found in the Opinions for that year, at page 357, it is stated that:

"It is clearly the legislative intent, therefore, that a village school district having a total tax valuation of less than \$500,000.00 can no longer exist in Ohio unless its organization into such a village school district is submitted to and carried by the electors of such district. This conclusion is in accord with Opinion No. 1847 rendered by my predecessor, Hon. Edward C. Turner, to Hon. S. W. Ennis, Prosecuting Attorney of Paulding County, August 12, 1916."

You also inquire whether each member of the board of education of such district is entitled to the compensation provided for in Section 4715 of the General Code. Section 4715, General Code, reads as follows:

"Each member of the board of education of rural school districts, except such districts as contain less than sixteen square miles, shall receive as compensation two dollars for each regular meeting actually attended by such member, and members of such boards in rural school districts containing less than sixteen square miles shall receive one dollar for each meeting, but for not more than ten meetings in any year. The compensation allowed members of the board shall be paid from the contingent fund."

Section 4687, General Code, at the time of the incorporation of the village of San Toy, provided as follows:

“Upon the creation of the village it shall thereby become a village school district as herein provided and if the territory of such village previous to its creation was included within the boundaries of a special school district, and such special school district included more territory than is included within the village, such territory shall thereby be attached to such village school district for school purposes.”

I am advised that the territory which was incorporated into the Village of San Toy had not previously been included within the boundaries of a special school district, but was made up of parts of what was then known as Bearfield Township school district and Monroe Township school district and therefore no territory became attached to the village for school purposes. You state that the territory within the corporate limits of the Village of San Toy had a tax valuation at the time of the incorporation of the village of one hundred twenty-nine thousand, nine hundred dollars (\$129,900 00).

Inasmuch as it did not have any territory attached to it for school purposes and did not have a tax valuation of five hundred thousand dollars as was required by the statute, it is clear that it did not become a village school district at the time of its incorporation, but that the portion of territory taken from Bearfield Township school district remained a part of Bearfield Township school district and the portion taken from Monroe Township school district remained a part of Monroe Township school district.

So far as appears from the facts submitted, San Toy Village has not, since its incorporation, had attached to it any territory for school purposes, nor does it appear that it has at any time since incorporation attained a tax valuation of five hundred thousand dollars. Neither has it so far as appears, taken any action, by way of submitting to the voters, the proposition to organize the territory within its boundaries into a village school district. It is therefore apparent that the present status of the territory within the village so far as school district relationship is concerned is the same as when the village was incorporated, to-wit, portions of two rural school districts (the school Code adopted in 1914 provided that thereafter all township school districts and special school districts should be known as rural school districts. Section 4735, General Code).

The mere fact that all parties concerned had considered it a village school district could not by usage constitute it a village school district in the face of the statute, Section 4681, General Code, which says:

“Each village together with the territory attached to it for school purposes and excluding the territory within its corporate limits detached for school purposes and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district.”

Nor could it at that time have become a special school district because the statute in force at that time, Section 4728, General Code, provided:

“A special school district may be formed of any contiguous territory not included within the limits of a city or village which has a total tax valuation of not less than one hundred thousand dollars.”

Neither could it have become a township school district at the time of the incorporation of the village for the reason that township school districts were consti-

tuted as provided by the statute then in force, Section 4683, General Code, which reads as follows:

“Each civil township together with the territory attached to it for school purposes and excluding the territory within its established limits detached for school purposes shall constitute a township school district.”

Inasmuch as the status of the territory within the corporate limits of the village of San Toy at the time of its incorporation was not such that it then became a separate school district either city, village, township or special, which were the only classes of districts then recognized, and no action has since been taken to make it a separate district, its present legal status is not that of a separate district.

The fact that all the residents of the village and other public officials have considered it a separate district and have so acted with reference to the maintenance of schools and the distribution of tax levies, constituted its legal status since the incorporation of the village as that of a de facto corporation and the persons acting as its board of education de facto officers. As such de facto officers they are not now and have not been entitled to any pay for their services.

In my opinion the territory embraced within the corporate limits of the village of San Toy for school administration purposes belongs to the two adjoining rural school districts, Bearfield rural district and Monroe rural district as it had formerly belonged to Bearfield and Monroe Township districts, and the boards of education of these two districts should resume jurisdiction over their respective portions of the territory within the corporate limits of the village. The de facto board of education assuming to act for the so-called San Toy village school district should cease to function.

If the residents of San Toy village desire to become a separate school district proceedings may be had by submitting the question of the organization of the territory into a village school district as provided by Section 4682 of the General Code, or the county board of education of the Perry County school district may create a separate school district composed of the territory within the corporate limits of the village of San Toy as authorized by Section 4736, General Code.

It is further my opinion that, since there is no provision of law authorizing the payment of any compensation to the members of a village school district board of education members in question are not entitled to any compensation irrespective of whether they are de jure or de facto officers.

Your attention, however, is directed to Section 4747-1, General Code, which provides for compensation for all school board members attending the annual joint meeting, which section reads:

“Once each year all the members of the boards of education of the various village and rural school districts within any county school district shall hold a meeting for the purpose of discussing matters relating to the schools of such county school district. The county superintendent shall arrange for the time and place of holding such a meeting and shall act as chairman thereof. Each member of a rural and village board of education may receive the amount of two dollars for attending said meeting upon filing a certificate for attendance thereof with the board of which he is a member, this to be in addition to the allowance made rural board of education members under authority of Section 4715”

Respectfully,
EDWARD C. TURNER,
Attorney General.