

on a jury. His absence in either case is not of his own choosing and is not such as would justify the board of education in canceling his contract on account of such absence.

I am therefore of the opinion, in specific answer to your question that, a teacher in the public schools, under contract for a definite time, is entitled to the payment of his regular salary for the time he is absent from duty on account of his being required to serve on a jury.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4208.

APPROVAL, NOTES OF ORANGE VILLAGE SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, March 30, 1932.

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

4209.

TREASURER OF STATE—PUBLIC FUNDS—UNAUTHORIZED TO EXPEND SUCH FOR FORGERY INSURANCE—OPINION NO. 4054, 1932, DISCUSSED AND AFFIRMED.

SYLLABUS:

Opinion No. 4054, concerning authority of Treasurer of State to insure against loss by forgery of state warrants, reconsidered and affirmed.

COLUMBUS, OHIO, March 30, 1932.

HON. HOWARD L. BEVIS, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion, with which you enclose copy of opinion No. 4054, and call my attention to certain items set forth in the Appropriation Act, enacted by the 89th General Assembly, as follows:

“The appropriation act for the current biennium, page 14, carries an appropriation to the Secretary of State, under H-7, Insurance, of \$8,500.00 for 1931 and \$8,800.00 for 1932. The same act, on page 20, carries an appropriation to the Treasurer of State, under H-7, Insurance, of \$8,395.00 for 1931 and \$2,165.28 for 1932. This act also on page 84, appropriates to the Department of Industrial Relations, under H-7, Insurance, \$2,108.00 for 1931, and \$973.00 for 1932.”

You further call my attention to the language appearing in the second paragraph on page four, of said opinion, which language is as follows:

"An examination of the appropriation act enacted by the last legislature discloses no specific appropriation for forgery bonds nor do I find any specific provision in the General Code authorizing any state official to contract for insurance against loss of public funds by reason of forgery. I do, however, find that the legislature has made specific provision authorizing the Treasurer of State to receive certain bonds from depositories as security for public funds deposited."

In the preparation of the aforementioned opinion, I examined the Appropriation Act and took into consideration the fact that there is an appropriation for insurance but upon a further consideration of this act I find no specific item of appropriation for forgery insurance.

It must be borne in mind that there are in use numerous types of insurance, namely, fidelity insurance, fire insurance, burglary insurance, tornado insurance and the various types of life insurance. The legislature has specifically authorized state officers to pay the premiums on fidelity bonds. By way of specific illustration, the Treasurer of State is required to give a bond for the faithful performance of his duties, and he is also required to give additional bond as custodian of various funds which the law requires to be placed in his hands, and the legislature has specifically authorized such payment to be made from the state treasury.

As pointed out in the earlier opinion, the legislature has not granted authority to pay for forgery insurance from state funds nor has it authorized any state officer to enter into a contract for such insurance. It must therefore be presumed that when the legislature made the general appropriation for insurance it intended that those funds were to be expended for the purpose of procuring such forms of insurance as it had authorized to be procured.

In an opinion found in Opinions of the Attorney General for 1929, it was held that municipalities had no authority to provide for insurance against forgery or raised municipal warrants. On page 170 of said opinion it is held:

"Clearly no loss could occur on account of a forged or 'raised' municipal warrant unless it had been passed and honored by the municipal treasurer, because it is an order on the treasurer to pay money, and no money could be paid out on such a warrant unless it were paid by the treasurer, and no liability would attach to a forged warrant until it had finally been presented to the treasurer, for the reason that it is not a negotiable instrument in the sense that it is not subject to all defenses when in the hands of second and succeeding holders. I can think of no instance in which a forged instrument would become involved in the transaction of a municipal corporation occasioning a financial loss on account thereof unless it had passed through the hands of the treasurer of the corporation and been honored or accepted by him. Unless money is advanced or credit given on account of a forged instrument, whether it be a municipal warrant or negotiable paper, no loss is incurred and no official of a municipal corporation is authorized by the general laws relating to municipal corporations to pay out the money of the corporation or extend the credit of the corporation so as to involve financial responsibilities on the corporation except the treasurer. If he honors a forged instrument, it amounts to a failure to faithfully perform his duties as treasurer, and is a breach of the conditions of his bond for which the surety on his bond is liable. This is definitely held by the Court of

Appeals in the case of *New Amsterdam Casualty Company vs. City of Norwalk et al.*, 19 O. A. 476."

While this language, upon casual reading, seems to place a heavy duty or liability on a treasurer in the event that a forged warrant escapes his careful scrutiny, it does not necessarily increase such liability if the actual practice is taken into consideration. The greater majority of the warrants are first "cashed" or "paid" by banks, who place an indorsement thereon. By such indorsement it guarantees that it has good title to the warrant which title could not have been procured through a forged indorsement. (Section 8171, General Code). By virtue of Sections 8170, 8229 and 8230, General Code, either a forgery or a material alteration such as a raising of the amount destroys the genuineness of the instrument. These sections read as follows:

Sec. 8170. "Every person negotiating an instrument by delivery or by a qualified indorsement warrants:

1. That the instrument is genuine and in all respects what it purports to be.
2. That he has a good title to it.
3. That all prior parties had capacity to contract.
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warrant extends in favor of no holder other than the immediate transferee.

The provisions of paragraph numbered three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes."

Sec. 8229. "When a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor."

Sec. 8230. "Any alteration is material alteration, which changes:

1. The date;
2. The sum payable, either for principal or interest;
3. The time or place of payment;
4. The number or the relations of the parties;
5. The medium or currency in which payment is to be made; or which adds a place of payment when no place is specified; or any other change or addition which alters the effect of the instrument in any respect."

The usual bank indorsement guarantees all prior indorsements. It is therefore apparent that in the event the state treasurer without negligence should cash a "forged" or "raised" warrant and suffer loss through a warrant "cashed" through a bank the ultimate liability would fall on the bank and not on the state treasurer, unless he be estopped by failure to notify the bank for an unreasonable time of the forgery or alteration. If the state treasurer pays out his funds on this warrant only when the presentor is properly identified, there is no great risk of loss.

The reasoning of the aforementioned opinion as well as that of opinions of former Attorneys General impels the conclusion as stated in Opinion 4054 that

while the state treasurer as an individual, may insure himself against loss by reason of forged or raised state warrants, if he so desires, and pay the premium therefor out of his private funds, there is no statutory authority for the expenditure of public funds for such purpose.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

4210.

APPROVAL, NOTES OF SPRINGFIELD RURAL SCHOOL DISTRICT,
 MAHONING COUNTY, OHIO—\$5,470.00.

COLUMBUS, OHIO, March 30, 1932.

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

4211.

BOARD OF EDUCATION—UNAUTHORIZED TO BORROW MONEY IN
 ANTICIPATION OF DIVIDENDS FROM LIQUIDATED BANK—FIF-
 TEEN MILL LIMITATION—CONTRACTS WITH TEACHERS AND
 BUS DRIVERS DISCUSSED—DUTY OF BOARD TO KEEP SCHOOLS
 OPEN.

SYLLABUS:

1. *A board of education is without power to borrow money in anticipation of dividends to be paid by a bank in process of liquidation.*

2. *Under no circumstances may taxes be levied within a taxing district at a rate outside the limitations fixed thereon by Article XII, Section 2 of the Constitution of Ohio, unless authorization is had therefor by a vote of the people, in accordance with law.*

3. *When a teacher is employed for a definite term to teach a particular school, and the school is not lawfully suspended during that term and the teacher holds himself in readiness and offers to perform his part of the contract, the board of education which employed him is liable on said contract of employment according to its terms, and the teacher may at the expiration of the term recover on the contract according to its tenor in an action at law.*

4. *When a teacher is employed for a definite term to teach a particular school and the school is lawfully suspended, either temporarily or permanently during the term of such employment, the teacher's contract is accordingly suspended or terminated, as the case may be. Board of Education vs. Waits, 119 O. S., 310.*

5. *Where drivers are employed by a board of education for a definite term to drive the transportation equipment owned by said board, and the drivers hold themselves in readiness, and offer to perform their contracts according to their terms, the board of education employing the said drivers is liable on said contracts even though during a part of the term of said contracts the schools are suspended and there are no pupils to transport.*