

but there is no reason why it must be done at the same time the resolution is passed creating the district. In my opinion, the failure to do so at that time will not defeat the action taken.

Based on the foregoing discussion, I am of the opinion, in specific answer to your questions:

(1) The county board of education of Jefferson County School District possessed the power on April 15, 1930, to create a new school district by authority of Section 4736, General Code, and include in such district a portion of Warren Consolidated School District, which at that time claimed to be exempted from the jurisdiction of the county board, but which in fact was not so exempted.

(2) The filing of the remonstrance by a majority of the qualified electors of the Deyormanville and Lincoln School Districts had no effect whatever on the action of the county board of education of Jefferson County School District taken at their meeting of April 15, 1930, or at their meeting of May 17, 1930. I am reliably informed that the resident electors in the territory affected by the action of the board on April 15, 1930, were considerably more than one hundred and thirty.

(3) The county board of education of Jefferson County School District, on April 15, 1930, clearly meant to create a new school district, by authority of Section 4736, General Code.

(4) The failure of the county board of education of Jefferson County School District to make an equitable division of the school funds and debts among the districts affected by the creation of the new school district which was created by said county board on April 15, 1930, did not defeat the action of the county board so taken. There devolved on the said county board of education the duty to make this equitable distribution of the funds and indebtedness between the districts affected, but such distribution may lawfully be made at a later date.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2036.

APPROVAL, BONDS OF RIPLEY VILLAGE SCHOOL DISTRICT, BROWN COUNTY, OHIO—\$30,000.00.

COLUMBUS, OHIO, June 26, 1930.

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

2037.

PARK COMMISSIONERS—CONTRACTS OVER \$500.00 MUST FIRST BE APPROVED BY CITY BOARD OF CONTROL.

SYLLABUS:

No contract may be entered into by a board of park commissioners created by authority of Section 4053, General Code, in excess of \$500.00, except the awarding thereof be upon the approval of the Board of Control.

COLUMBUS, OHIO, June 26, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion in answer to the following question:

“Must contracts to be entered into by a Board of Park Commissioners, be approved and the action directed by a city Board of Control?”

Boards of park commissioners in non-charter cities are created by authority of Section 4053, General Code. Laws relating to said boards of park commissioners, and fixing their powers and duties, are Sections 4053 et seq.

Section 4063, General Code, reads as follows:

“In the letting of contracts, the board of park commissioners shall be governed by the same laws as govern the letting of contracts by the director of public service.”

Section 4403, General Code, reads as follows:

“No contract in the department of public service or the department of public safety in excess of five hundred dollars shall be awarded except on the approval of the board of control, which shall direct the director of the appropriate department to enter into the contract. The members of the board shall prepare estimates of the revenue and expenditures of their respective departments to be submitted to the council by the mayor, as provided by law.”

In view of the fact that Section 4063, supra, provides that boards of park commissioners shall be governed by the same laws as govern the letting of contracts by the director of public service, and the provisions of Section 4403, General Code, constitute a law governing the letting of contracts by the director of public service and provide that all such contracts in excess of \$500.00 shall not be awarded except on the approval of the Board of Control, it follows, in my opinion, that a board of park commissioners is not empowered to make a contract in excess of \$500.00 except it be awarded on the approval of the Board of Control.

It was held by a former attorney general that boards of park commissioners in the letting of contracts, were governed by the provisions of Section 4328, General Code, which provides in substance that when a director of public service makes an expenditure within his department, other than the compensation of persons employed therein exceeding \$500.00, such expenditure shall first be authorized and directed by ordinance of council and when so authorized and directed the director of public service shall make a written contract with the lowest and best bidder after advertisement for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the city. *Opinions of the Attorney General for 1915, page 425.*

The question of whether or not contracts made by a board of park commissioners, when the same exceed \$500.00, must be awarded upon the approval of the Board of Control was not before the Attorney General in 1915, at the time of his holding above referred to. It would seem that compliance with the provisions of Section 4403, General Code, is just as imperative as would be compliance with the provisions of Section 4328, General Code, in the making of contracts by boards of park commissioners.

I am therefore of the opinion, in specific answer to your question that no contract may be entered into by a board of park commissioners, created by authority of

Section 4053, General Code, in excess of \$500.00, except the awarding thereof be upon the approval of the Board of Control.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2038.

CRIMINAL LAW—DEFENDANT NOT LIABLE FOR COSTS WHEN ACQUITTED OF VIOLATION OF SECTION 12604-3, GENERAL CODE—CIRCUMSTANCES UNDER WHICH COMPLAINING WITNESS LIABLE FOR COSTS CONSIDERED.

SYLLABUS:

No authority exists for the payment of costs in case of an acquittal in a criminal prosecution for violation of Sections 12604 to 12604-3, inclusive, of the General Code. However, a complaining witness other than an officer authorized to make arrests when in the discharge of his official duties or other person or officer authorized to assist the prosecuting attorney in the prosecution of offences may be liable for costs in case of an acquittal, if the magistrate requires such complaining witness to give security for costs.

COLUMBUS, OHIO, June 26, 1930.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“I received the following from the superintendent of schools at Ada, Ohio:

‘Owing to the costs growing out of the matter of arresting motorists who violate statute by passing school busses when they are brought to a stop, will you please send us the opinion of the Attorney General as to the responsibility at this point?’

I have advised Mr. C. that it being a violation of the provisions of Section 12604-5, the offense is a misdemeanor and will be governed by the provisions of Section 13499 as to the depositing of costs.”

On April 6, 1929, the 88th General Assembly passed House Bill No. 149, which act regulates the operation of vehicles approaching school busses receiving or discharging passengers. This act is contained in Sections 12604 to 12604-3, inclusive, General Code. This penalty provided for a violation of the provisions of this act is as follows:

“Whoever, being the driver of a vehicle or school bus, fails to carry out the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than one hundred dollars or be imprisoned in the county jail not to exceed thirty days, or both.”

You will note that a violation of the provisions of this act constitutes a misdemeanor.

Under the provisions of Section 13451-18, General Code, a magistrate is authorized in cases of conviction to include the costs of prosecution in a judgment rendered