

The encumbrance estimate is numbered 2915, is dated October 4, 1927, covers an appropriation of \$7,830.00 for the land under consideration, and has been approved by the State Architect, the Director of Highways and Public Works, signed by H. B. William, head of the division, and D. C. Brown, director of the department, and Wilbur E. Baker, Director of Finance.

The deed has been executed by Mable E. Karns and Bert W. Karns, her husband, on the 11th day of October, 1927, by which deed they convey to the State of Ohio, its successors and assigns forever, in consideration of \$7,830.00, the land under consideration, free and clear from all encumbrances. The deed was acknowledged by the grantors before a notary public on the 11th day of October, 1927. This deed, when delivered, will convey a fee simple title to the State of Ohio for the land under consideration.

I herewith return the communication of the Controlling Board, the encumbrance estimate, the deed and the abstract, together with a letter of Earl K. Solether, dated October 12, 1927, and a letter of Herbert B. Briggs, dated October 27, 1927.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1321.

BOARD OF EDUCATION—AUTHORITY TO FILE COMPLAINTS AGAINST
TEACHERS—AUTHORITY OF SCHOOL PATRON—DUTY OF BOARD,
WHEN COMPLAINTS ARE FILED—SECTION 7701, GENERAL CODE,
DISCUSSED.

SYLLABUS:

1. *There is no procedure provided by statute for the hearing of complaints made by school patrons against teachers or employes of a board of education, or for the filing of written charges against such teachers or employes by third parties, or for the hearing of such charges if filed.*

2. *A board of education is the only instrumentality authorized by statute to prefer charges against teachers or other employes of the board, and then only for the purpose of giving to such teachers and employes an opportunity for defense against proposed dismissal for inefficiency, neglect of duty, immorality or improper conduct.*

3. *When complaint is made with a board of education by patrons of the school concerning the conduct of teachers or other employes of the board, either in writing or otherwise, the board is not authorized to conduct a public hearing in order to determine the truth or falsity of the facts stated in the complaint, but should in the proper discharge of its duty make such private investigation with reference thereto as the nature of the complaint would warrant.*

4. *When written complaints against teachers or employes of a board of education are filed with such board by patrons of the district, and the board in making such private investigation of such complaints, as in its judgment is warranted, determines that the facts stated in the complaints are true and that they amount to inefficiency, neglect of duty, immorality or improper conduct on the part of the teacher or employe against whom the complaint is made, the board may adopt the written complaints as its own charges against the teacher or employe, and, after giving such teacher or employe the opportunity to be heard*

in his defense, the board may act upon the charges either by dropping them or by dismissing said teacher or employe.

COLUMBUS, OHIO, December 2, 1927.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of November 23, 1927, which reads as follows:

“Where written charges are filed with a Township Board of Education by patrons of a school asking for the dismissal of the teacher of said school on the grounds of inefficiency, said charges being filed in compliance with Section 7701 of the General Code may such Board disregard such charges and refuse to hear the evidence of the complaining parties? I am enclosing herewith copy of the charges filed with the Board.

I would appreciate your reply to the above inquiry at your earliest convenience.”

With your letter you enclose a copy of the charges which have been filed with the board of education, which are as follows:

“To the Honorable School Board Thereof:

And The ----- Township School Board:

The undersigned Patrons of District No. ----, ----- Township, ----- County, Ohio, and being ---- % of all of said patrons, respectfully represent to your honorable body or bodies, that one ----- a teacher in said District is wholly incompetent to discharge the duties as a teacher in said School, and respectfully request that she be replaced by a competent teacher.

This teacher is brutal in her treatment of children, whips them over head with a yard stick using same edgewise, lacerating the flesh, pulling the hair of children, calling them improper names, ridiculing parents to children, all because of her ungovernable temper, and upon the slightest provocation, refuses permission of children to leave the room to attend to nature's wants, deprives them of customary recesses for such purposes, intimidates them by constantly threatening to send them to the Children's Home, and delinquency charges before the Probate Court. Her method of control is extremely bad, and she courts the displeasure of parents by referring to them as indecent and unchristianized to the pupils. An investigation is demanded.”

Section 7701, General Code, reads as follows:

“Each board may dismiss any appointee or teacher for inefficiency, neglect of duty, immorality, or improper conduct. No teacher shall be dismissed by any board unless the charges are first reduced to writing and an opportunity be given for defense before the board, or a committee thereof, and a majority of the full membership of the board vote upon roll call in favor of such dismissal.”

It will be observed that the above section of the Code provides for the dismissal of teachers and other appointees of the Board of Education. It contemplates action taken by the board and provides that no dismissal shall be made except for causes which must be reduced to writing. It further provides that an opportunity must be given for defense before the board or a committee thereof.

It does not provide for the filing with the board, by third parties, of charges against employes of the board, nor is there any provision of law authorizing the filing of charges against teachers by any one other than the Board of Education who employed such teachers and who has the authority to dismiss them.

Interested citizens have a right to make complaints to public officials concerning the manner in which public duties are performed, and such officials should in the proper performance of their duty correct whatever evils in the public service are brought to their attention. With respect to matters purely within their discretion there is no way to compel them to correct these evils unless their failure so to do amounts to such a dereliction of duty on their part as to subject them to removal for failure properly to perform the duties of their office.

The mere fact that complaint may be made to a board of education respecting certain teachers does not obligate a board to prefer charges against the teacher in accordance with the complaint. The statutes make no provision for such procedure, nor would a board be justified in preferring charges unless said board was satisfied that there were good grounds for the complaint and that the things complained of, if true, amounted to inefficiency, neglect of duty, immorality, or improper conduct. If complaints by reliable citizens are made of the nature you refer to, the board would not in the proper performance of its duty be justified in entirely ignoring them. The board should make some investigation in order to determine what foundation, if any, there is for the complaint, and if the complaint is found to be substantially correct, the board should act upon the same just as any public official should seek to correct improper conditions under his control when such conditions are called to his attention. This does not mean, however, that formal charges should be made against the teacher and that an opportunity should be given to complaining citizens to publicly air their complaints, at least, not until the board by private investigation has satisfied itself that there were good grounds for the complaint, and that upon hearing, the charges would probably be sustained. Any other course would be unjust to the teacher and a gross injustice to the pupils and patrons of the school.

In reply to your inquiry, therefore, you are advised that there is no procedure provided by statute for the hearing of complaints made by citizens against teachers or employes of a board of education, or for the filing of written charges against such teachers or employes by third parties, or for the hearing of such charges if filed. The board of education itself is the only instrumentality authorized to prefer charges against teachers in its employ and then only for the purpose of giving to the teacher an opportunity to defend himself against proposed dismissal for inefficiency, neglect of duty, immorality, or improper conduct.

A board of education should not, however, in the proper performance of its duty, ignore complaints made by patrons of the district, but should make such investigation of them and take such action with respect thereto, as would be proper and for the best interests of the schools of the district.

If a board, in its discretion, determines that the facts stated in written complaints made by patrons of the school are true, and that they amount to inefficiency, neglect of duty, immorality or improper conduct on the part of the teacher, the board may adopt such complaints as its own charges against the teacher or employe, and, after giving such teacher or employe the opportunity to be heard in his defense, the board may act upon the charges either by dropping same or by dismissing said teacher or employe.

Respectfully,

EDWARD C. TURNER,

Attorney General.