

“Offices are said to be incompatible when from multiplicity of business in them they cannot be executed with care and ability, or when, their being subordinate and interfering with each other it induces a presumption that they cannot be exercised with impartiality and honesty.”

The instant case falls definitely within that rule.

It is therefore my opinion that where a real property inventory corporation receives public funds under Section 5626-3, General Code, it must be considered a quasi-public corporation and as such, one of its directors cannot at the same time serve as president of the board of county commissioners when the county is making a contribution to the corporation for real estate inventory services permitted in Section 5626-3, General Code, for an incompatibility of offices results where one person attempts to serve at the same time both the offices in question.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3434.

COUNTY BOARD OF EDUCATION—MAP, DIAGRAM OR SURVEY—LOCATION COUNTY SCHOOL DISTRICTS—YEARS 1938-1939—INTERPRETATION SECTIONS 7600-1 TO 7600-8, INCLUSIVE, G. C.

SYLLABUS:

The provisions of Sections 7600-2, 7600-3, 7600-4 and 7600-5, General Code, are operative after January 1, 1939.

The provisions of Sections 7600-1 and 7600-7, General Code, are operative after January 1, 1939, with the exception that the provisions of Section 7600-1, General Code only so far as they relate to making it mandatory that a county board of education adopt a plan of organization for the county school district for each of the years 1935 to 1938, inclusive, and the provisions of Section 7600-7, General Code, supra, only so far as they relate to making it mandatory that the director of education approve the plan of organization for each of the years 1935 to 1938, inclusive, are ineffective and inoperative, after the year 1938.

After the year 1938, a county board of education may adopt a plan of school district organization by changing or modifying its last plan of

organization, as provided for in Section 7600-8, General Code, if it strictly follows the procedure set forth in Sections 7600-1, 7600-2, 7600-3, 7600-4, 7600-5, and 7600-7, General Code.

COLUMBUS, OHIO, December 20, 1938.

HON. E. N. DIETRICH, *Director of Education, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“At the present time we are confronted with certain legal questions which emanate from the construction to be placed upon Sections 7600-1 to 7600-9, inclusive, General Code.

We should appreciate your reply to the following specific questions:

1. Are Sections 7600-1 and 7600-7, G. C. void after January 1, 1939?

2. If Sections 7600-1 and 7600-7 are ineffective after 1938, what procedure must a county board of education follow in legally modifying its plan of school district organization as provided in Section 7600-8, G. C.?”

Section 7600-1, General Code, imposes a mandatory duty upon each county board of education in the State, on the first day of September, 1935, and on or before the first days of April in the years 1936, 1937 and 1938, to prepare a diagram or map of the county, showing:—the location of all school districts in the county, the location and character of barriers, the location of streams, natural barriers, each school building and route over which pupils are transported, a statement of the size and condition of school buildings and number and ages of pupils attending; also to show on such map or diagram territory in adjoining counties, or in any adjoining city or exempted village school district, which in the opinion of the county board of education should be attached or detached from any such county, city or exempted village school district for the purpose of economy. The provisions of this section also make it mandatory, upon request of the county board of education for the board of education of any rural or village school district located wholly or partially within the county, to furnish any and all information the county board of education may require in the preparation of such diagram or map.

Upon completion of such diagram or survey as required by the provisions of Section 7600-1, supra, Section 7600-2, General Code, further makes it mandatory upon each county board of education to

prepare a new diagram or map of the school districts in the county school district, prescribing the transfers of territory, elimination of school districts or the creation of new school districts *which will provide a more economical and efficient system of county schools*, and that:— this plan of school district organization shall be adopted on or before June 1st, annually.

Section 7600-3, General Code, requires that before adopting the annual plan of organization each year, the county board of education shall call a meeting of all members of the various boards of education in the county district, as well as interested persons, for the purpose of laying the proposed plan before them for advice and suggestions. It also provides for notice by publication of such bearing.

Section 7600-4, General Code, requires another public hearing in event it becomes necessary to modify or change the adopted plan after the holding of a hearing as provided for in Section 7600-3, *supra*.

Section 7600-5, General Code, provides that in case the affected boards of education fail to agree on the transfers of territory, the director of education is to decide upon such transfers of territory.

Section 7600-6, General Code, provides that in case any county or other board of education fails to act, the director of education shall make a survey and adopt a plan of county school district organization, and vests him with all powers and duties relative to the adoption of such plan that are imposed upon county boards of education by virtue of the provisions of Sections 7600-1 to 7600-4, inclusive, of the General Code.

Section 7600-7, General Code, provides for approval of the adopted plan of organization by the director of education, in the following language:

“On or before the 15th day of October, 1935, and on or before the first day of July, 1936, 1937 and 1938, the county board of education shall transmit such adopted plan of organization to the director, who shall approve the same, with such modifications and additions thereto as he deems desirable, and shall certify his approval to the county board of education: Provided, however, that the director shall grant one or more hearings to the county board of education, to any affected board of education and to any interested persons affected, with reference to any such modification or additions. *Upon approval of the director, such plan of organization within any county shall take effect upon a date to be fixed by the director, and thereafter no school district or parts thereof shall be transferred or the boundary lines thereof changed unless such transfer or change of boundary lines is in accordance with*

such adopted plan of organization. Nothing in this act shall be construed as a delegation of authority to the county board of education or the director to create a debt in any school district for any purposes.” (Italicizing the writer’s.)

Sections 7600-1 to 7600-7, inclusive, General Code, express a clear and evident intent on the part of the legislature to mandatorily require a reorganization of each county school district in the state, brought about by each county board of education during the years 1935, 1936, 1937 and 1938 adopting a plan of organization for the school districts within the county district, which annually adopted plans will tend toward effecting such a result.

However, there is nothing in these statutes which can be construed or interpreted to mean after the adoption of the plan of organization for the year 1938, that no changes or alterations may be made which will alter the status of the county school district that had been effected previous to January 1, 1939, by the adoption of plans of organization for the county school district during the period of years from 1935 to 1938, inclusive.

It is only reasonable to assume that although it is mandatory that a reorganization of all the county school districts throughout the state be effected in the period of four years—1935 to 1938, inclusive, the legislature realized that after the final plan of organization for the year 1938 had become effective, there may arise instances where a part or all of the plan of organization proved to be unworkable or inefficient, or through changed conditions or circumstances a plan adopted for a school district in the county school district in 1938 may prove unworkable in 1939 or 1940.

This contention is consistently borne out by the provisions of Section 7600-8, General Code, which reads as follows:

“A county plan of organization may be modified and changed, at any time after adoption, by a county board of education, or by the director, in the same manner as provided for the adoption of such plan.”

It is obvious that by the provisions of Section 7600-8, *supra*, a county board of education is authorized to modify or change after the year 1938, any plan of organization it may have adopted so long as it is done in accordance with the provisions of Sections 7600-1, 7600-2, 7600-3, 7600-4, 7600-5 and 7600-7, *supra*.

The authority granted to the county board of education under the provisions of Section 7600-8, *supra*, is entirely discretionary, so far as the county board of education is concerned.

It therefore must be said that, by virtue of the provisions of Sections 7600-1 to 7600-7, inclusive, supra, it was mandatory for a county board of education to annually adopt a plan of organization for its entire county school district throughout the period of years 1935 to 1938, inclusive; that by virtue of the provisions of Section 7600-8, supra, after the year 1938, a county board of education may modify or change the existing organization of its county school district by adopting a new plan of organization whenever in its discretion it deems advisable, so long as the procedure for the adoption of the plan is in accordance with the provisions of Sections 7600-1, 7600-2, 7600-3, 7600-4, 7600-5 and 7600-7, supra.

This contention is no wise inconsistent with the provisions contained in Section 7600-7, supra, that provides for approval by the Director of Education of the adopted plan of organization for each of the years 1935 to 1938, inclusive, and that after a plan of organization has been adopted that "no school district or parts thereof, shall be transferred or boundary line changed unless such transfer or change of boundary lines is in accordance with such adopted plan of organization." If after the year 1938 a county board of education changed its 1938 plan of organization in accordance with procedure prescribed in Sections 7600-1 to 7600-5, inclusive, supra, after the adoption of such a plan of organization it would be necessary to secure the approval by the director of education of such adopted plan of organization, and thereafter any transfer or change of boundary line of a school district can be made in accordance with the last adopted plan of organization of the county board of education.

As stated in 37 Ohio Jurisprudence, p. 388, "a statute can be repealed only by express provision of a subsequent law or by necessary implication. Hence, a repeal is either express or implied. Moreover, a statute may expire on a specified date by virtue of its own term of limitation."

The conclusion, therefore, must be reached that the provisions in Section 7600-1, supra, only so far as they relate to making it mandatory that a county board of education adopt a plan of organization for the county school district for each of the years 1935 to 1938, inclusive, and the provisions in Section 7600-7, supra, only so far as they relate to making it mandatory that the director of education approve the plan of organization for each of the years 1935 to 1938, inclusive, are inoperative after the year 1938, by virtue of the limitations expressed in the statutes themselves.

The provisions of Section 7600-8, supra, are applicable only when a county board of education determines to act thereunder. It therefore must be said that after the year 1938, the provisions of Section

7600-6, supra, will not be operative since no mandatory duty to act will be imposed on a county board of education, and therefore no occasion will arise whereby it will be mandatory for the director of education to make a survey and adopt a plan of organization because of failure of the county board of education to act. The provisions of Section 7600-6, supra, expire after the year 1938, by virtue of the provisions of the section itself.

Therefore, in specific answer to your questions it is my opinion that Sections 7600-1, 7600-2, 7600-3, 7600-4, 7600-5 and 7600-7, General Code, are not void after January 1, 1939; that after the year 1938, a county board of education may adopt a plan of school district organization by changing or modifying its last plan of organization, as provided for in Section 7600-8, General Code, if it strictly follows the procedure set forth in Sections 7600-1, 7600-2, 7600-3, 7600-4, 7600-5 and 7600-7, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3435.

MILK SANITATION CODE—PUBLIC HEALTH SERVICE—
STANDARD MILK ORDINANCE AND CODE—UNITED
STATES TREASURY DEPARTMENT—UNITED STATES
DEPARTMENT OF AGRICULTURE — ORDERS, REGU-
LATIONS BY BOARD OF HEALTH—PUBLICATION IN
ENTIRETY, NOT BY TITLE ONLY—EMERGENCY MEAS-
URES—IMMEDIATELY EFFECTIVE, NOT REQUIRED
TO BE PUBLISHED—POWERS—CITY BOARD OF
HEALTH—GENERAL HEALTH DISTRICT.

SYLLABUS:

1. *Orders or regulations adopted by a board of health of a city or of a general health district intended for the general public are required to be published in their entirety and not by title only.*
2. *Such orders and regulations when adopted as emergency measures become immediately effective and are not required to be published.*
3. *The board of health of a city or general health district may adopt orders and regulations by reference to the United States Public*