

3545.

APPROVAL, AGREEMENT AND RELEASE OF LIEN, RELEASING TO THE STATE OF OHIO BY THE BUCKEYE PIPE LINE COMPANY, LAND OF W. L. AND MINA NORRIS, IN MUSKINGUM COUNTY, OHIO.

COLUMBUS, OHIO, September 9, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted form of proposed agreement and release of lien, in duplicate, dated August 24, 1931, whereby The Buckeye Pipe Line Company releases to the State of Ohio its interest in certain real estate owned in fee by W. L. and Mina Norris, said real estate to be used in the improvement of S. H. No. 247, Section "F", Muskingum County.

After examination, it is my opinion that said proposed agreement and release of lien is in proper legal form, and when executed by you will constitute a binding contract.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

3546.

CITY BOARD OF EDUCATION—UNAUTHORIZED TO APPOINT SUPERINTENDENT OF SCHOOLS—EXCEPTIONS NOTED.

*SYLLABUS:*

*A city board of education is not authorized to appoint a superintendent of schools, unless a vacancy exists in the office, either by reason of the expiration of the term of a former appointee or by reason of his death, resignation or removal.*

COLUMBUS, OHIO, September 9, 1931.

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

GENTLEMEN:—I am in receipt from you of the following communication:

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

In a certain city school district in this state Superintendent 'A' was employed as superintendent for two years beginning September 1st, 1925, and ending August 31st, 1927. This superintendent received a full years' compensation in nine months of each year. In May, 1927, the Board of Education employed Superintendent "B" for the term beginning September 1st, 1927, and ending August 31st, 1929. In September, 1927, the Board of Education reconsidered this action by which Superintendent "B" was employed in May for the term beginning September 1st, and he was employed for two years, beginning July 1st, 1927, and ending June 30th, 1929, and he was paid compensation for the months of July and August, 1927, which months were within the term of employment of

Superintendent "A" and for which Superintendent "A" received compensation. The employment of Superintendent "B" in May, 1927, seemed to be in every way regular.

Question 1: Was the reconsideration made by the Board of Education in September, 1927, of its action in May, 1927, and the employment of Superintendent "B" from July 1st, 1927, a legal action?

Question 2: Was Superintendent "B" legally entitled to receive compensation for the months of July and August, 1927?

Question 3: Was it legal for the Board of Education to pay Superintendent "A" for the full year in nine months?"

In accordance with strict parliamentary usage, reconsideration of questions may not be made after rights have vested under an earlier motion or resolution which it is sought to reconsider. In the case mentioned in your inquiry, the superintendent (Superintendent B) was employed by action of the board of education, in May 1927. As you state, the employment seemed to be in every respect, regular. The employment of the superintendent was at that time complete and a contract of employment thereafter existed between the superintendent and the board. Superintendent "B" entered upon that employment in pursuance of the contract, on September 1, 1927, and it was then too late to reconsider the matter, as the board attempted to do in September, 1927, if strict parliamentary practice were to be followed.

Boards of education and similar governmental agencies, however, are not usually held to the strict rules of parliamentary procedure in the transaction of their business. If the intent is clear and the rights of no one are prejudiced, the action of such governmental agencies will usually be upheld even though the rules of parliamentary practice are not strictly followed.

The action of the board, as taken in September, 1927, could well be construed as an attempt to dissolve the contract formerly entered into with Superintendent "B" and make a new contract, if both consented thereto, as they most likely did in this case.

Whether or not the dissolution of a contract and the making of a new one under circumstances such as these, is lawful, need not be decided at this time. There arises another question which, in my opinion, is dispositive of the matter. That question relates to the right of the board, in 1927, to employ a superintendent for the months of July and August, 1927, those months having been included in the term for which the former superintendent (Superintendent A) had been employed.

The employment of a superintendent of schools in city school districts, is controlled by section 7702, General Code, which reads in part as follows:

"The board of education in each city school district at a regular meeting, between May 1st and August 31st, shall appoint a suitable person to act as superintendent of the public schools of the district, for a term not longer than five school years, beginning within four months of such appointment and ending on the 31st day of August.

Provided, that in the event of a vacancy occurring in the office of the superintendent prior to May 1st, the board of education may appoint a superintendent for the unexpired portion of that school year. \* \* \* \*

It has been held that the provision of the above statute, to the effect that the term of the superintendent of schools must end on August 31st, is directory and not mandatory. *Layton v. Clements et al.*, 27 O. C. A., 369.

It follows from the doctrine of the above case that superintendents may be employed for terms which do not precisely correspond with a year or years that end upon the 31st day of August of a calendar year.

Superintendent "A" had been employed in 1925, for two years beginning September 1st, 1925, and ending August 31st, 1927. It does not appear that he resigned or was removed at any time during this term or that his contract was dissolved for any reason, therefore there was not a vacancy in the spring of 1927, in the position of superintendent of schools, and the board had no authority to employ anyone as superintendent for the months of July and August of 1927. It clearly follows, in my opinion, that the employment of Superintendent "B" for those months, even though otherwise regular, was unauthorized and that the action of the board in September, 1927, in attempting to employ Superintendent "B" for the months of July and August, 1927, was void.

Coming now to the question of the legality of the payment of Superintendent "A" for a full year, at the end of nine months. It has been for a number of years a common practice for school boards to fix the salary of teachers on a yearly basis, and instead of paying them monthly during a year they are paid the entire years' salary in nine or ten monthly payments, as the case may be, while school is in session. Some boards pay teachers while the school is in session one-twelfth of their yearly salary each month and when school sessions are over for the year they are paid the entire balance of their yearly salary. This arrangement is sometimes made by the specific terms of the contract of employment entered into with the teacher, and sometimes by rules adopted by the board. The power to do this has never been questioned. The law is silent on the subject and it has always been considered as being within the discretion of the board to pay the teachers' salaries in such a manner as is agreed upon. I know of no reason why the same method of paying salaries might not be made applicable to the payment of superintendents' salaries as well as teachers. This question was under discussion in Opinion 2331 rendered under date of September 12, 1930, where it was held that a rule of the board of education providing for the payment of teachers on the basis of a ten month year might lawfully be made to apply to a city superintendent of schools.

The law does not specifically state that salaries of teachers or superintendents be paid monthly as it does with reference to some public offices. For instance, Section 2260, General Code, in the chapter providing for the payment of salaries of state officers and employes of state institutions, provides:

"The salaries provided in this chapter to be paid by the state shall be paid in equal installments as follows:

Lieutenant governor, judges, officers and employes of state institutions, monthly.

All other salaries herein provided, semi-monthly. \* \* \*

Section 3001, General Code, provides that the salaries of county commissioners shall be paid monthly. A similar provision is contained in section 3003, General Code, with reference to the payment of the salaries of prosecuting attorneys. No similar provision is made, however, with reference to school teachers or school superintendents. The method of paying teachers and superintendents apparently is left to the parties to fix by contract. I am therefore of the opinion in specific answer to your questions:

First: The action of the board of education in question, taken in September, 1927, whereby the board sought to modify its former contract entered into with Superintendent "B" was not legal.

Second: Superintendent "B" is not legally entitled to receive compensation for the months of July and August, 1927.

Third: The action of the board of education in paying Superintendent "A" for a full year at the expiration of nine months of said year was not illegal, providing it was done in accordance with the terms of his contract of employment.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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3547.

APPROVAL, BONDS OF BUCYRUS CITY SCHOOL DISTRICT, CRAWFORD COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, September 9, 1931.

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

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3548.

APPROVAL, BONDS OF LIVERPOOL TOWNSHIP RURAL SCHOOL DISTRICT, MEDINA COUNTY, OHIO—\$18,000.00.

COLUMBUS, OHIO, September 9, 1931.

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

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3549.

APPROVAL, BONDS OF SHAKER HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO.

COLUMBUS, OHIO, September 9, 1931.

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

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3550.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN LICKING, DEFIANCE, CUYAHOGA AND LUCAS COUNTIES.

COLUMBUS, OHIO, September 9, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*