

institutions and could have had only such from the language then used in the statute. The original statute said "asylums provided by the state."

You will observe further that the statute in each case and in the present law says:

"After the husband or wife of such insane person is adjudged insane and is an inmate of an asylum for the insane."

What, under the law, may be done by the probate court after it has adjudged a person to be insane with that insane person?

Section 1958 provides that the probate judge shall "apply to the superintendent of the hospital situated in the district in which such patient resides" and if the superintendent advises that the patient can be received then sends such insane person to the indicated hospital.

Section 1959 is in part as follows:

"When advised that the patient will be received the probate judge shall forthwith issue his warrant to the sheriff commanding him forthwith to take charge of and convey such insane person to the hospital * * *"

In other words, the probate judge may commit an adjudged insane person to a state institution only.

Section 1961 provides that the probate judge may turn over a person adjudged insane to the relatives of such insane person but in that event the insane person does not come within the purposes intended in section 12025 because such person is not then an inmate of an asylum.

From what is disclosed by the history of section 12025 and the further fact that a probate judge may commit a person adjudged by him to be insane to a state institution only or permit such insane person to be kept by his relatives, I am of the opinion that the language of section 12025, G. C., to wit: "is an inmate of an asylum for the insane in this state" means a state institution and cannot mean a private one.

Very respectfully,

JOHN G. PRICE,
Attorney-General.

1401.

SCHOOLS—SUPERINTENDENT OF A SUPERVISION DISTRICT (4740 G. C. DISTRICT) MAY SERVE UPON BOARD OF COUNTY SCHOOL EXAMINERS AS TEACHER MEMBER.

A superintendent of a supervision district (commonly known as a 4740 district) may serve upon the board of county school examiners as the teacher member thereof to be appointed by the county board of education.

COLUMBUS, OHIO, July 3, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter requesting the opinion of this department on the following question:

"Can a superintendent of a supervision district (commonly known as a 4740 district) serve upon the board of school examiners as a 'teacher' member?"

Attention is invited to the following two sections of the statutes, which are pertinent to this question, and which read as follows:

"Section 4740. Any village or wholly centralized rural school district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent shall upon application to the county board of education before June 1st of any year be continued as a separate district under the direct supervision of the county superintendent until the board of education of such district by resolution shall petition to become a part of a supervision district of the county school district. Such superintendents shall perform all the duties prescribed by law for a district superintendent, but shall teach such part of each day as the board of education of the district or districts may direct."

"Section 7811. There shall be a county board of school examiners for each county, consisting of the county superintendent, one district superintendent and one other competent teacher, the latter two to be appointed by the county board of education. The teacher so appointed must have had at least two years' experience as teacher or superintendent, and be a teacher or supervisor in the public schools of the county school district or of an exempted village school district. Should he remove from the county during his term, his office thereby shall be vacated and his successor appointed."

It is clear from the language of section 7811 G. C. that the purpose of the General Assembly in providing that the county board of school examiners should consist of the county superintendent, one district superintendent and one other teacher, was to provide that the membership of such board should be composed of a personnel that was actually engaged in school work. The section says "one other competent teacher," thus indicating that the third party shall be a teacher, but the use of the word "other" includes the county superintendent and one district superintendent as being teachers also in the first instance. It is noted also that the section says "competent teacher," thus carrying the idea that competency was the first essential to be considered in appointing the third member of the county board of school examiners by the county board of education. It must be presumed that competency comes very largely through experience gained in the following of a chosen profession or vocation. Thus the superintendents or principals in the "4740 districts" have been chosen very largely because they are competent teachers, that is, teachers who through experience in rural schools were later selected by the boards of education in the 4740 districts to supervise and teach in their district. The section further says that:

"The teacher so appointed must have had at least two years experience as teacher or superintendent, and be a teacher or supervisor in the public schools of the county school districts."

Here it is noted that the experience necessary may have been either "as teacher or superintendent," and again, the appointee must be a "teacher or supervisor in the public schools," from which it must be inferred that it was not the intent of the General Assembly that a teacher who happened to have a supervisory capacity as superintendent or principal in a 4740 district should be prevented from being chosen as the third member of the county board of school examiners. Again, after reading this section carefully, it is noted that this third member of the county board of school examiners can be a "teacher or supervisor in the public schools * * * of an exempted village school district." It thus appears that the third member of the county board of school examiners could be a supervisor or superintendent of an exempted village school district, which latter class under present conditions is often in the first

instance a 4740 school district, which has later moved into the exempted village class because it can show a population of 3000 or more, and secured its exemption under the provisions of section 4688 G. C. It is not believed that it was the intent of the General Assembly that these persons, who occupy a supervisory capacity in a 4740 district, while teaching part of their time, should be prevented from occupying a position which under the provisions of section 7811 G. C., they were eligible to as a mere teacher in the 4740 district or later when such 4740 district might become an exempted village district, as provided in section 4688 G. C. The effect of this would be that a certain portion of the personnel engaged in teaching in the state would be prevented from serving on the county board of school examiners simply because the district in which they were employed had that status which is peculiar to the 4740 district.

Section 7811 G. C. seems to mean that first the county superintendent and second one district superintendent in the county must be two of the members of the county board of school examiners and that the third person to be appointed by the county board of education can be any other competent teacher engaged in teaching in the county school district or an exempted village school district in the county school district.

Speaking of the term supervisor, as employed in section 7811 G. C., supra, the Attorney-General in Opinion 1341, Opinions of the Attorney-General for 1914, Vol. 2, said:

"The term 'supervisor' as employed in section 7811, 104 O. L., 102, is intended to apply to teachers who have had experience in overseeing or have had charge of schools with authority to direct or regulate matters in connection with the schools, either as an actual superintendent or in a supervisory capacity. The term 'exempted village school district' as employed in said section 7811, applies to village school districts which are exempt from county school districts by virtue of sections 4688 and 4688-1, General Code, as amended in 104 O. L., 134."

Your attention is also invited to opinion No. 1226, addressed to the superintendent of public instruction, under date of May 8, 1920, wherein it is held:

"A part time 'superintendent' employed under section 4740 G. C. is to be considered as a 'teacher' with respect to such part of his salary as is referable, on a strict time basis, to the amount of teaching service required of him by the employing board or boards of education."

In arriving at the above conclusion the following language occurs in such opinion, clearly establishing that the person in charge of a 4740 school district is a teacher as well as performing the duties of a superintendent:

"By a previous opinion of this department you have been advised that the word 'teacher' as it occurs in such sections as section 7600, 7603, etc., as amended in house bill 615, is used in the same sense in which it has always been used in these sections of the General Code; and that that sense, generally speaking, excludes superintendents from the scope of the meaning of the term. The position referred to in section 4740 partaking more or less of the character both of teacher and of superintendent would seem to require separate consideration, which you now request.

He must actually serve as a teacher for a definite part of each day. In the absence of any direct provision, it is believed that the related statutes should be given an application consistent with their spirit and purpose.

Such an application would require that the part time 'superintendent' employed under section 4740 be treated as a teacher to the extent of the teaching service which he renders, and that a proportionate part of his compensation, arrived at strictly on a time basis, should be reported as the salary of a teacher and considered as such for the purposes of section 7600 and related sections.

This conclusion is justified on the same ground as the conclusions of the former attorney-general who arrived at a similar result for the purpose of the administration of the state aid law."

Section 4679 provides that the school districts of the state shall be styled respectively city school districts, village school districts, rural school districts and county school districts.

Section 4740 G. C., heretofore quoted, provides that of these four classes any village or rural school district (where wholly centralized) or a union of school districts for high school purposes, may operate its schools under the provisions of that section. Thus a 4740 school district can be either a village school district or a rural school district. An investigation shows that the 4740 school districts of the state range in size and importance from several county seats in the state down to those rural school districts which were formerly merely local special school districts. As pointed out before, an exempted village school district (4688 G. C.) is usually a school district operated under section 4740 before it becomes an exempted village school district, and if the teacher or supervisor in the exempted village school district can be a member of the county board of school examiners, it would appear to be the intentment of the General Assembly that the same school district, even though not then exempted, should have the privilege of having its superintendent or principal eligible as a member of the board of county school examiners. County school examiners, except the county superintendent, must be employed in school work under the statutes in either the village school districts or the rural school districts of the county. Investigation shows that of the whole number of village and rural school districts in the state, possibly some 350 are operated under section 4740 G. C. The superintendents of these 4740 districts are found in several county seats and down to minor school districts, and if it were held that a superintendent of a 4740 school district was ineligible to serve as the third member of the county board of school examiners, it would appear that the state would be losing the services and experience as county examiners of a considerable number of very valuable and *competent persons who are engaged in teaching*, and it is not believed that this was the intention of the assembly that a portion of the competent teachers in the county school districts should be prevented from serving upon the county board of school examiners, because they were part-time superintendent though engaged actively in teaching.

Respectfully,

JOHN G. PRICE,
Attorney-General.