

is not liable to pay the minimum excise tax when no intrastate business is shown. That opinion also held that such a corporation was required to file the report of its earnings under the provisions of Section 5472 of the General Code so that it would affirmatively appear that no intrastate business was done. It therefore appears that such a corporation is required to file reports irrespective of whether or not it has intrastate business, and it also is required to pay an excise tax *as provided in this act*.

Since, however, my previous interpretation of the terms of the act has been that no minimum fee is payable where there is no intrastate business, it is readily apparent that a company is fully complying with the law as to public utilities when it has filed its report, which, upon proper investigation, establishes that there is no tax due.

I have no difficulty in reaching the conclusion that the exemption from the franchise tax provided by Section 5503 of the General Code in favor of public utilities is applicable to a foreign public utility, which is, by the terms of the excise tax law, not required to make any payment thereunder.

Respectfully,
EDWARD C. TURNER,
Attorney General.

517.

COUNTY BOARD OF EDUCATION—ELECTION OF A SUPERINTENDENT OF SCHOOLS AT A SPECIAL MEETING IS NOT LEGAL.

SYLLABUS:

The election of a superintendent of schools by a county board of education at a special meeting is not legal.

COLUMBUS, OHIO, May 20, 1927.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion as follows:

“I am writing for your opinion as to the legality of the election of a superintendent of schools by a county board of education at a special meeting not called for that purpose.

You may assume the facts which give rise to this question to be substantially as follows:

Our county board of education under General Code, Section 4733, has set the second Monday of each month as the date for holding its regular monthly meetings. We will assume that the regular monthly meeting was not held on April 11, 1927. That being the case the Secretary of the board of education wrote a letter to all members stating that it appeared that it would be convenient for the members to meet on Wednesday, April 20th, and unless he heard to the contrary the April meeting would be held at that time. The object and purpose of the meeting was not stated in the notice.

Assuming further that at the meeting held on April 20th, all members were present and proceeded to and did elect a superintendent of schools; the question then arises whether the meeting of the Board was a legal

one and whether the Superintendent was legally elected and if the election was illegal, should the superintendent be elected at the next regular May meeting?"

Your question is answered by the provisions of Sections 4733 and 4744, of the General Code.

Section 4733, General Code, reads as follows:

"The regular meetings of the county board of education shall be held at the office of the county superintendent. At the time of the first meeting, the board shall fix the time for holding its regular meetings. Regular meetings shall be held at least every two months and when necessary other meetings may be held at the call of the president, or any two members. A majority of the board shall constitute a quorum at any regular or special meeting."

This discloses that the legislature in authorizing the holding of meetings other than those to be held at the regular time recognized a distinction between regular meetings by the county board of education and other meetings. This section requires the board to fix a time for regular meetings so that all persons interested therein may have notice thereof and appear before it or be present if they so desire.

Section 4744, General Code, reads as follows:

"The county board of education at a regular meeting held not later than July 20th, shall appoint a county superintendent for a term not longer than three years commencing on the first day of August. Such county superintendent shall have the educational qualifications mentioned in section 4744-4. He shall be in all respects the executive officer of the county board of education, and shall attend all meetings with the privilege of discussion but not of voting."

The language is very plain and needs no interpretation. It specifically provides that the county superintendent shall be appointed at a regular meeting of the board not later than July 20th. This provision is mandatory and the action of your board in appointing the superintendent at a special meeting was not in compliance with said section and is therefore not legal.

This answer makes it unnecessary to consider the effect of the special meeting not being called as provided by Section 4733 of the General Code.

It is my opinion that the election of a superintendent of schools by a county board of education at a special meeting is not legal.

Respectfully,

EDWARD C. TURNER,

Attorney General.