

as to the making of contracts for special instruction beyond the scope of the public high school with institutions that measure up to certain standards as defined in Section 7650, General Code. Such a contract may be made by a board of education of a city school district for teacher training if the institution with which the contract is made meets the requirements of the statute. Regardless of the terms of such a contract, any payments that might be made by the board of education to the college or university would not pay tuition in the sense that that term is used in the statutes.

There is no authority found in the statutes anywhere which authorizes a board of education of a school district in Ohio, to pay tuition as such, to any institution, public or private, or any agency other than the board of education of another school district within the state.

I am therefore of the opinion in specific answer to your question, that the Board of Education of the Cleveland City School District may not pay tuition for persons residing in the school district who attend a teachers' training school or college located either within or without the district.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5988.

VACATION OF PLAT—NO INJUNCTION FILED OR DISSENT MADE—MANDATORY DUTY OF AUDITOR TO VACATE PLAT ON RECORD—NO VACATION OF DEDICATED STREETS WITHIN PLAT.

SYLLABUS:

1. *Where proceedings have been brought pursuant to the provisions of Sections 3601, et seq., General Code, to vacate a plat and no notice of an injunction has been served upon the county auditor or notice of dissent from such vacation by the owners of any of such lots, it is the mandatory duty of the county auditor to vacate such plat on his records.*

2. *Proceedings for the vacation of a plat under the provisions of Sections 3601, et seq., General Code, do not vacate the dedicated streets within the limitations of the plat.*

COLUMBUS, OHIO, August 22, 1936.

HON. WARD C. CROSS, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion which reads as follows:

"The county auditor has raised the question as to whether under Section 3601 of the General Code, advertisement having been completed as prescribed thereby, a plat located within three miles from the municipal corporation can be vacated upon his record.

Also, whether or not a proceeding held under this section of the statute vacates the dedicated streets within the limitation of the plat as well as the blocks of lots contained therein."

In reference to your first question, I call your attention to the provisions of Sections 3601, 3602 and 3603, General Code. These sections read as follows:

Sec. 3601.

"Any person or persons owning, either jointly or severally, either in their own right or in trust, and having the legal title to any land laid out in town lots, or to any whole block or blocks of lots in any land laid out in town lots, and not within the limits or under the control of a municipal corporation, may vacate such lots or block or blocks of lots upon giving notice of his, her or their intention so to do, for two weeks in a newspaper published, and of general circulation, in the county where such land lies, and if any of such lots have been sold, personal written notice to the owner thereof."

Sec. 3602.

"If no notice of an injunction granted against such vacation is served upon the auditor of the county where the lands lie, or notice of dissent from such vacation, by the owners of any of such lots, within ten days after the completion of such notice, he shall make all necessary changes and transfers in and upon his duplicate after such ten days from the time of the completion of the notice, proof of which shall be furnished him."

Sec. 3603.

“The auditor shall give to the party or parties at whose instance such vacation is made, a certificate stating that such lots or block or blocks of lots have been vacated, upon the presentation of which to the recorder of the county, he shall write upon such plat of lots, block or blocks as they appear on the plat of such lots the word ‘vacated’, and such vacation shall have the same effect as if made by the judgment of a court having jurisdiction thereof. The auditor and recorder shall be entitled to such fees for their services under this section as they are entitled by law in like cases, which shall be paid by the party or parties making such vacation.”

As indicated by the above quoted sections, it is the mandatory duty of the county auditor to vacate the plats on his records when the provisions of Sections 3601, et seq., General Code, have been fully complied with. The language of Sections 3601, et seq., General Code, is plain and free from doubt and effect must be given to its clear import. As stated by the case of *Slingluff v. Weaver*, 66 O. S. 621:

“1. The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it. And where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear understanding and, as shown by the context manifestly intended, inserted.

2. But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

It would, therefore, appear that your first question must be answered in the affirmative.

I come to your second inquiry as to whether or not such vacation

of the block of lots contained in the plat would likewise vacate the dedicated streets within the limitation of such plat. An examination of Sections 3601, et seq., General Code, discloses that there is nothing contained in these sections relative to the vacation of streets where a block of lots is vacated. In this connection it might be of importance to call your attention to Section 3600, General Code, which refers to the changing of plats rather than the vacation of plats. Several opinions of this office with reference to all of the above referred to sections have been rendered and an examination of these opinions may be of assistance. In an opinion to be found in the Opinions of the Attorney General for 1919, Volume II, Page 1104, it was held, as disclosed by the syllabus:

“Proceedings for the vacation of a street, road or highway in an unincorporated village may be had in accordance with sections 6860 G. C. et seq., unless such street, road or highway be part of an intercounty or main market road.”

From the opinion I quote the following language at Page 1109:

“The data submitted indicates that it is being claimed that the proceeding for vacation should be had under the provisions of section 3600 or 3595. However, an examination of those sections shows that section 3600 relates to a change in plats of lands outside of municipal corporations, and not to the vacation of a street; while section 3595 is part of a series making provision for the altering or vacating of a plat upon application to the common pleas court. For these reasons it is not perceived how either of the two sections is in point in the present instance.”

See also Opinions of the Attorney General for 1920, Volume I, Page 566. An analogous question to the one presented by you was passed upon in an opinion to be found in Opinions of the Attorney General for 1932, Volume III, Page 1490. The first branch of the syllabus reads as follows:

“1. When lands lying without a municipality the title to which has been registered under the Ohio Land Title Registration Act, have been subdivided and the plat of such subdivision or allotment duly recorded and subsequent thereto it becomes advisable to vacate a portion of one of the streets lying within such allotment, proceedings to accomplish such purpose should be had by virtue of the provisions contained in Section

6862 et seq., General Code, rather than Section 3600, General Code, and a memorial of such proceedings entered upon the land title registration certificate.”

Section 6862 referred to in the above opinions would seem to be pertinent with reference to the manner of vacating such streets. This section reads in full as follows :

“When the county commissioners are of the opinion that it will be for the public convenience or welfare to locate, establish, alter, widen, straighten, vacate or change the directions of a public road they shall so declare by resolution, which resolution shall set forth the general route and termini of the road, or part thereof, to be located, established, or vacated, or the general manner in which such road is to be altered, widened, straightened, or the direction thereof changed. When a petition signed by at least twelve freeholders of the county residing in the vicinity of the proposed improvement is presented to the board of county commissioners of any county requesting said board to locate, establish, alter, widen, straighten, vacate or change the direction of a public road, such board of county commissioners shall view the location of the proposed improvement, and if they are of the opinion that it will be for the public convenience or welfare to make such improvement, they may take the action prescribed by this and the succeeding sections and proceed to make such improvement. Such petition shall set forth the general route and termini of the road, or part thereof, to be located, established or vacated, or the general manner in which such road is to be altered, widened, straightened or the direction thereof changed.”

In your letter you state that the plat is located within three miles of a municipal corporation. In this connection I call your attention to the fact that the provisions of Section 3586-1, General Code, definitely prescribe the jurisdiction of a city planning commission, which includes the territory within three miles of the corporate limits, providing that the planning commission has adopted a plan for the territory within three miles of the corporate limits of the municipality. If the plat in question is located within three miles of a city having a city planning commission and the commission has adopted a plan for such territory, it would, of course, be necessary to comply with the provisions of Section 4366-2, General Code.

In view of the above, it would appear, in answer to your inquiries that :

1. Where proceedings have been brought pursuant to the provisions of Sections 3601, et seq., General Code, to vacate a plat and no notice of an injunction has been served upon the county auditor or notice of dissent from such vacation by the owners of any of such lots, it is the mandatory duty of the county auditor to vacate such plat on his records.

2. Proceedings for the vacation of a plat under the provisions of Section 3601, et seq., General Code, do not vacate the dedicated streets within the limitations of the plat.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5989.

APPROVAL—BONDS OF CUYAHOGA FALLS CITY SCHOOL DISTRICT, SUMMIT COUNTY, OHIO, \$3,000.00.

COLUMBUS, OHIO, August 24, 1936.

State Employes Retirement Board, Columbus, Ohio.

5990.

APPROVAL—BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO, \$20,000.00.

COLUMBUS, OHIO, August 24, 1936.

State Employes Retirement Board, Columbus, Ohio

5991.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, August 24, 1936.

State Employes Retirement Board, Columbus, Ohio.