

169.

APPROVAL, BONDS OF JACKSON TOWNSHIP RURAL SCHOOL DISTRICT, PREBLE COUNTY, OHIO—\$30,600.00.

COLUMBUS, OHIO, March 10, 1927.

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

170.

APPROVAL, ARTICLES OF INCORPORATION OF THE AMERICAN CITIZENS LIFE INSURANCE COMPANY.

COLUMBUS, OHIO, March 11, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am returning to you herewith certificate of amendment of the articles of incorporation of "The American Citizens Life Insurance Company," with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

171.

APPROVAL, BONDS OF CITY OF PORTSMOUTH, SCIOTO COUNTY, OHIO—\$3,430.57.

COLUMBUS, OHIO, March 10, 1927.

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

172.

RURAL SCHOOL DISTRICT—DISSOLUTION UNDER SECTION 4735-1, GENERAL CODE—ELECTION REQUIREMENTS.

SYLLABUS:

1. *Under the provisions of Section 4735-1, General Code, in proceedings to dissolve a rural school district and join its territory to another contiguous thereto, before a valid election may be held, it is necessary that a petition therefor be regularly filed with the board of education of such district, or that such board, by a majority vote of*

the full membership thereof, shall decide to submit the question to the electors of the district.

2. *There is no statutory inhibition against holding a second election within the same year.*

COLUMBUS, OHIO, March 11, 1927.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent letter requesting my opinion as follows:

“I desire your opinion under Section 4735-1, General Code of Ohio, as to the following submitted statement of facts:

An election in a rural township was held last year to determine the question of consolidating the rural district with a village district, and a special election and consolidation was thereat defeated. Afterwards, about four months approximately, in the same year the proposition was again submitted by the school board and carried by a few voters.

“Was the action of the rural board, in submitting the question to consolidate, *twice* in the *same* year, without a petition of the electors of said district, legal?”

Section 4735-1, General Code provides as follows:

“When a petition signed by not less than one fourth of the electors residing within the territory constituting a rural school district, praying that the rural district be dissolved and joined to a contiguous rural or village district, is presented to the board of education, of such district; or when such board, by a majority vote of the full membership thereof, shall decide to submit the question to dissolve and join a contiguous rural or village district, the board shall fix the time of holding such election at a special or general election. The clerk of the board of such district shall notify the deputy state supervisors of elections of the date of such election and the purposes thereof, and such deputy state supervisors shall provide therefor. The clerk of the board of education shall post notices thereof in five public places within the district. The result shall be determined by a majority vote of such electors.”

Where a statute authorizes the holding of an election only on the taking of a prescribed preliminary step, this prescribed preliminary step constitutes the foundation for holding an election.

In a given case, where the petition is necessary to be filed with the regularly constituted authority for receiving it and acting thereon, the presentation of such petition is a condition precedent to the holding of an election. Should said petition be signed by less than the required number of qualified persons prescribed in the statute, an election thereunder would be void. A petition must contain all the necessary averments and facts to get jurisdiction to call an election.

In the case of *Peo vs. Cline*, 63 Ill., 394, it was held that in a case where a statute allowed an election to be called when a petition therefor should be signed by ten legal voters, an election called upon the filing of the petition signed by ten persons, a portion of whom were not legal voters, was illegal.

Where a petition for the call of an election was required to be signed by ten legal voters of the township, proof that it was signed by ten citizens was held not to be sufficient. *Peo vs. Oldtown*, 88 Ill., 202.

In a given case where an election has been held on a petition regularly filed there-

for, it is believed that the power to act under that petition is merged in an election, and that before another election could be held in a case where a petition is necessary, it would require another petition to be regularly filed therefor. The last sentence of the section referred to is: "The result shall be determined by a majority vote of such electors."

However, a careful examination of Section 4735-1, General Code, discloses that it contains another provision, to-wit:

" * * * or when such board, by a majority vote of the full membership thereof, shall decide to submit the question."

Your letter apparently overlooks that feature of the section above referred to.

In the case of the Board of Education of Hancock county vs. Boehm et al., 102 O. S., 292, the court on page 303 used the following language:

"Sections 4735-1 and 4735-2 are only effective to dissolve and transfer an entire existing district to another existing district *upon the initiative of the electors* of the district seeking dissolution and union with another district, *or upon the initiative of the board of such district* seeking dissolution and union with another district. * * * "

We therefore find in the above mentioned section two methods of procedure, one upon the authority of a petition regularly filed, the other upon "a majority vote of the full membership" of the board itself. If either of those conditions obtains before the certificate of the clerk to the board of deputy state supervisors of elections is made, it is my opinion that an election thereafter following would be regularly held so far as the action of the board of education is concerned.

Specifically answering your question, therefore, if you find that the board complied with the latter provision mentioned in the section it would be a sufficient condition precedent on which to hold a valid election, and I find no statutory inhibition against holding a second election within the same year.

Respectfully,
EDWARD C. TURNER,
Attorney General.

173.

DISAPPROVAL, OIL AND GAS LEASE BETWEEN STATE OF OHIO AND RUTTER & HARTWELL, CERTAIN LAND LOCATED IN ROSS COUNTY, OHIO.

COLUMBUS, OHIO, March 11, 1927.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Examination of an oil and gas lease between the State of Ohio and Rutter & Hartwell, covering 1760 acres of land located in Sections 35 and 36, southwest quarter of Section 27, southeast quarter of Section 29 and the southeast quarter of Section 33 in Ross county, Ohio, reveals the following:

(1) The lease recites that the same has been executed in triplicate. Only two copies of the lease have, however, been submitted to this office.