

468.

SUPERINTENDENT OF SCHOOLS—EMPLOYED BY MAJORITY VOTE OF DISTRICT BOARD OF EDUCATION—BOARD NEED NOT AUTHORIZE PRESIDENT AND CLERK TO EXECUTE CONTRACT—RATIFICATION UNNECESSARY.

SYLLABUS:

1. *A superintendent of schools employed by authority of Section 4740, General Code, may be so employed by a majority vote of the full membership of the board of education of the district even though he is not nominated by the county superintendent of schools of the county district of which the local district is a part.*

2. *Action of a district board of education in the employment of superintendents or teachers does not require that the president and clerk of the board be specifically authorized to execute contracts in furtherance of the employment so made, nor is it necessary that the execution of the contracts by the president and clerk of the board be later ratified by the board.*

COLUMBUS, OHIO, June 1, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“For the guidance of the board of education of Plain City, Ohio, an opinion is desired upon the following situation:

In a statement of facts upon which the board of education of Plain City, Ohio, desires a ruling by the Attorney General upon each fact presented:

1. A superintendent (principal of a 4740 district) was employed for the year 1929 and 1930 on March 28, 1929.

2. Not ratified by the board since May 1st, 1929.

3. The president and clerk not authorized since to sign the contracts of any of teachers or superintendent.

4. The president and clerk signed the superintendent's contract May 2nd, 1929, which has not since been approved by the board.

5. Superintendent was hired without the county superintendent's nomination.

Query: Was said superintendent legally hired and may he retain his position as superintendent for the coming year?”

Section 4740, General Code, reads as follows:

“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 upon the nomination of the county superintendent shall upon application to the county board of education before June first of any year be placed under the supervision of the county superintendent. Such superintendents shall be employed by the local boards of education upon the nomination of the county superintendent, but the local board of education, by a majority vote of its full membership, may employ a superintendent not so nominated. Such superintendent shall perform the duties prescribed by law for assistant county superintendents, but shall teach for such part of the day as the board of education of the district or districts may direct.”

It will be observed that the above statute, 4740, General Code, provides that a superintendent in a so-called 4740 district shall be employed by the local board of education upon the nomination of the county superintendent, or the local board of education by a majority vote of its full membership may employ a superintendent not so nominated.

Your communication does not state whether or not the superintendent in question was employed by a majority vote of the full membership of the board or merely by a majority of a quorum present. If he was not employed by a majority vote of the full membership of the board, the fact that he had not been nominated by the county superintendent would cause his employment to be illegal. I take it, however, from your statement of facts, Number 1, submitted, that the employment was made in a lawful way, that is, by a majority of the full membership of the board and that when this was done, on March 26th, 1929, the employment was complete. If that be true, it need not later be ratified by the board, nor is it necessary that there be specific authorization to the president and clerk to sign the superintendent's contract, nor need the signature of the president and clerk, when later made, be ratified. If the employment is made and completed by the board, it is the duty of the president and clerk to sign the contract in their official capacity without any specific authorization therefor.

There is no definite provision of the statutes as to when a superintendent in a so-called 4740 district be employed. It is provided by Section 7705, that teachers must be employed within four months prior to the beginning of their term of service. There is some doubt whether this statute would apply to the employment of a superintendent for a 4740 district, but even if it does the employment having been made on March 28th, 1929, for the school year of 1929 and 1930, it was made within four months prior to July 1st, 1929, the time when the term of service would begin.

It may be noted that by the terms of House Bill No. 362, of the 88th General Assembly, Section 4740, General Code, was repealed, the repeal to become effective July 26th, 1929. This fact, however, would make no difference in the instant case if the contract with the superintendent had been consummated prior to the effective date of the repeal of the statute.

In my opinion, if the superintendent of Plain City district was employed on March 28th, 1929, as superintendent for the school year of 1929 and 1930 by a majority vote of the full membership of the board of education of Plain City district, his employment was legal even though he had not been nominated by the county superintendent, and he may retain his position as superintendent for the coming school year.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

469.

APPROPRIATION BILL NO. 513—FUND FOR ADJUSTING COMPENSATION TO WORLD WAR VETERANS—LEGAL METHOD OF DISBURSING SUCH FUND.

SYLLABUS:

*The provisions of supplemental appropriation bill No. 513, passed by the 88th General Assembly, relating to the appropriation to the commissioners of the sinking*