

mences at a date certain, which date of commencement is more than four months after the date of appointment, such contract would clearly violate the provisions of Section 7691, *supra*.

Section 7691, General Code, by its language is an express limitation on the authority of the board of education. The board of education has only such powers as are given it by the legislature, and such as are necessarily implied from the language used in granting the express powers. See *McQuillin on Municipal Corporations*, 2nd Ed., Sec. 2598. It would, therefore, necessarily follow that when the legislature provided that such body had power only to do it in a certain manner, it would do it in no other manner. I do not believe that the terms of a contract of the board of education require a different rule of construction than any ordinary contract. Nor am I of the opinion that a board of education has a right to rescind a contract on any different grounds than a private individual or a private corporation can. I believe the law in this regard is well settled. *Houck, J., in Layton vs. Clements*, 27 O. C. A. 369, 375, in rendering the opinion of the Court of Appeals for Fairfield County, said:

“A contract entered into between a board of education and an individual is just as binding on the parties as if made between individuals; and a court will not permit a board of education to abrogate and hold for naught a valid contract made by its predecessor in office, unless it first establishes its legal right so to do.”

However, if the language of the contract of employment is such that the term of employment can not be held to be commenced within four months from the date thereof, such contract was void at its inception and never had any existence, being beyond the powers of the board of education. If the contract, by its terms, comes within this rule, the superintendent would have no contractual rights and might be discharged at any time.

In specific answer to your inquiry, I am of the opinion that, when by contract, a rural board of education employs a “superintendent of schools” and when by reason of the provisions of such contract the term of employment, as distinguished from the school term, is not to begin until more than four months after the date thereof, such contract is void, being in violation of the provisions of Section 7691, General Code, and beyond the powers of such board of education. Such superintendent can therefore obtain no rights thereunder.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

4175.

ANNEXATION — PART OF TERRITORY OF SCHOOL DISTRICT TO  
SANITARY DISTRICT—SUCH LAND EXEMPT FROM TAXATION—  
SANITARY DISTRICT NOT REQUIRED TO ASSUME ANY PART  
OF BONDED INDEBTEDNESS OF SCHOOL DISTRICT.

**SYLLABUS:**

*When lands constituting part of the territory of a school district become the property of a sanitary district organized under the provisions of Section 6602-34, et seq., General Code, by purchase or otherwise, and such lands are thereafter*

*exempted from taxation by reason of their public use by the sanitary district, the sanitary district is not required to assume or to pay the school district any part of the amount of such bonded indebtedness, on account of the loss of such lands from the taxable property of the school district.*

COLUMBUS, OHIO, March 24, 1932.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you which reads as follows:

“Some years ago the Mahoning Valley Sanitary District was organized in accordance with §6602-34 et seq., of the General Code, for the purpose of providing water for the Cities of Youngstown and Niles. This corporation procured certain lands in Weathersfield Township, Trumbull County, and in Austintown and Jackson Townships in Mahoning County, upon which to construct a lake for the impounding of water.

During the year 1928 the Tax Commission of Ohio exempted from taxation, under the provisions of §5351, G. C., properties in Weathersfield Township of a tax value of \$161,770.00; and in 1929 further exempted an additional amount of \$24,640.00, making a total of exempt property of \$186,410.00.

The Weathersfield Township School District had a taxable valuation in 1928 of \$5,215,380.00, which was reduced in 1929 to \$4,900,550.00.

This same school district had bonds outstanding in 1928 in the approximate amount of \$175,000.00, which had been issued for the purpose of constructing school buildings in the district, and were issued, of course, on the faith and credit of the entire amount of real estate within the taxing district.

Our opinion is that the Mahoning Valley Sanitary District, at the time it withdrew from taxation the real estate of the value above mentioned, should assume and pay its proportionate share of the outstanding bonds of this district, approximately one-twenty-fifth of the total.

There is no doubt under the law that the Tax Commission has the power and authority to exempt property used for public purposes from taxation. Neither the City of Niles nor the City of Youngstown are included within the Weathersfield Township School District, and there is an interesting question as to whether or not this property is used for public purposes of the Township School District, and whether an outside municipal corporation should have the right to take away from the Township School District property on the faith and credit of which bonds have been issued.

The determination of this question might also touch the right to exempt the property entirely from taxation; although we are now interested in what we believe an equitable right on the part of the school district to be reimbursed in the proportionate value of the bonds outstanding.

Assuming there may be such equitable right, what is the mode of procedure?

May the Tax Commission of Ohio reconsider a former order, exempting property from taxation, and modify the same in accordance

with the foregoing proposal, if they should find the foregoing proposition just."

Though you do not so state, I assume that the lands constituting a part of the territory of Weathersfield Township Rural School District exempted from taxation by the Tax Commission of Ohio were so exempted by said commission as "public property used for a public purpose", as provided for in Section 5351, General Code, and that such action of the commission was taken pursuant to the authority conferred upon it by Sections 5570-1 and 5616, General Code.

You do not state when the outstanding bonds of the Weathersfield Township Rural School District were issued. As to this, it is noted, however, that at the times referred to in your communication and long prior thereto section 2 of article XII of the state constitution provided, among other things, that public property used exclusively for any public purpose might by general law be exempted from taxation; and, pursuant to this constitutional authority, Section 5351 was amended by the 85th General Assembly in the year 1923 so as to provide generally for the exemption of public property used for public purposes. 110 O. L. 77.

Whether the outstanding bonds of the Weathersfield Township Rural School District were issued prior to the enactment of Section 5351, General Code, in its present form, providing for the exemption of public property used for public purposes, such bonds were issued and purchased with the knowledge that if particular lands constituting a part of the school district should thereafter become public property devoted exclusively to public use, the same might by legislative and subsequent administrative action be exempted from taxes thereafter levied and collected upon the taxable property of the school district.

You state that the exempted lands here in question have become the property of the Mahoning Valley Sanitary District which was organized under the provisions of Section 6602-34, et seq., General Code, for the purpose of providing water for the cities of Youngstown and Niles. By Section 6602-39, General Code, it is provided that after such sanitary district has been recognized by the adjudication and entry of the common pleas court, and it has been given a corporate name, by which in all proceedings it shall thereafter be known, such district "shall be a political subdivision of the State of Ohio, a body corporate with all the powers of a corporation, (and) shall have perpetual existence, with power to sue and be sued, to incur debts, liabilities and obligations; to exercise the right of eminent domain and of taxation and assessment as herein provided; to issue bonds and to do and perform all acts herein expressly authorized and all acts necessary and proper for the carrying out of the purposes for which the district was created, and for executing the powers with which it is invested."

Touching the question here presented, it is noted that in 50 C. J. 745 the term "public property" is defined as follows:

"Public property is that which belongs to a state or political subdivision thereof, or title to which is vested directly in the state or one of its political subdivisions, or in some person holding exclusively for the benefit of the state or a subordinate public corporation, and which is necessarily used for governmental purposes, or which is used for a purpose for which the state or one of its municipal subdivisions is authorized to use property held for the benefit of the public."

Tested by this rule, there can be no question but that the lands here in question are public property and on the facts stated in your communication it is likewise clear that this property is being used for a public purpose; and that as public property used for a public purpose this property is rightfully exempt from taxation.

With respect to the question presented in your communication as to whether or not, in this situation, the Mahoning Valley Sanitary District can be required to reimburse the Weathersfield Rural School District for a proportionate amount of such outstanding school district bonds, on account of the exemption from taxation of the lands here in question, I know of no principle of law, either statutory or otherwise, which requires this to be done. The situation of the Weathersfield Township Rural School District with respect to these exempted lands is no different than would be the situation if these lands, by competent and lawful administrative action, had been transferred to another school district. In such case, although the lands so transferred would be required to bear the burden of taxes imposed to retire bonds issued by the school district to which they were transferred, they could not legally be assessed for taxes to retire outstanding bonds issued by the district from which they were transferred.

On the consideration above noted, I am of the opinion that the Weathersfield Township Rural School District does not have a claim of any kind against the Mahoning Valley Sanitary District with respect to the exemption from taxation of the lands here in question; and, moreover, I am of the opinion that the Tax Commission of Ohio can not, by reconsideration of its former orders, or otherwise, impose any conditions with respect to the exemption of these lands, so far as the outstanding bonds of the school district are concerned.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4176.

APPROVAL, ABSTRACT OF TITLE TO LAND OF W. J. WARD, IN VILLAGE OF McARTHUR, VINTON COUNTY, OHIO.

COLUMBUS, OHIO, March 24, 1932.

HON. O. W. MERRELL, *Director of the Department of Highways, Columbus, Ohio.*

DEAR SIR:—I wish to acknowledge receipt of your letter submitting for my analysis an abstract of title, warranty deed and encumbrance estimate No. 1375, relating to the proposed purchase of a parcel of land in Outlot No. 16 in the village of McArthur, Vinton County, Ohio, from one W. J. Ward.

I am of the opinion that with the exception of the taxes for the second half of the year 1931, said William J. Ward has a good and marketable fee simple title to said property, free and clear of all encumbrances.

Encumbrance estimate No. 1375 shows that sufficient money has been appropriated to pay for said land. The authority of the state controlling board has been granted.

The proposed deed submitted is executed in proper form to convey a fee simple title to the state of Ohio. Said deed makes reservations in the following words: