

am clearly of the opinion that under the law of Ohio the mayor is not entitled to the compensation or salary for the period of thirty days during which time he was suspended.

However, should it ultimately be determined that he was wrongfully removed, then under the decision in the 92 O. S. 493, he would be so entitled.

Respectfully,

C. C. CRABBE,
Attorney General.

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BOARD OF EDUCATION—SECTIONS 3751 TO 3761 G. C. CONSTRUED—
AUTHORIZED TO CONTRACT FOR OILING STREETS—PAID OUT
OF CONTINGENT FUND—SECTIONS DO NOT AUTHORIZE AS-
SESSMENT TO BE LEVIED AND COLLECTED.

SYLLABUS:

Under the provisions of section 3751 to 3761 G. C., the board of education is authorized to contract for the oiling of the streets upon which the school property abuts and pay for the same from its contingent fund. However, such sections do not authorize an assessment to be levied and collected against the school property to pay such costs.

COLUMBUS, OHIO, April 13, 1923.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—In your recent communication you request the opinion of this department as follows:

“Under the provisions of section 3753 G. C., oiling districts have been created in the City of Cincinnati by resolution of the Director of Public Service, within which districts property of the board of education abuts on streets which have been treated with oil and the cost of such oiling has been assessed against the abutting property of the streets in question, including the property of the board of education.

Question: Can assessments for such oiling be legally assessed and collected from the board of education under the conditions described?

We are enclosing herewith letter received from our examiner at Cincinnati, citing decisions of the courts, etc., in relation to street improvements.

The City of Cincinnati is anxious to certify their 1922 delinquent oiling account for the 1923 duplicate and we would greatly appreciate an immediate or early reply, if possible.”

The question of the authority to certify assessments against school property for street improvements, etc., has frequently been under consideration by the courts and this department. The law is definitely settled that a school board is not

liable for such an assessment unless there should be special legislation clearly expressing such liability. See Opinions of the Attorney General 1916; page 663, 1920; page 808 and 1922 No. 3842.

In the communication to your department from the state examiner it is suggested that the language of the statutes relating to the oiling of streets provides that "such treatment with oil shall be regarded as a cleaning and repairing of the streets and alleys," and the conclusion is further suggested that this language takes such a repair of the streets out of the rule relative to school property not being liable for assessment for *street improvement*.

In this connection your attention is invited to an opinion rendered by this department found in Reports of 1921, page 1180, wherein the question was considered as to whether the oiling of a street constituted a maintenance and repair of the street in view of the provisions of section 6309-2 of the General Code. It was held as disclosed by the syllabus:

"The process of treatment with oil of municipal streets and public roads, authorized by sections 3751, 3752, 3753 and 3754 G. C. is such a street or road improvement as to come within the meaning of the words "maintenance" and "repair" as used in section 6309-2 of the General Code."

The reasoning in this opinion would to some extent indicate that the oiling of the street is an improvement. The courts have frequently said there is no magic in words.

Section 3758 G. C., among other things, provides:

"The assessment may be collected in one or more installments in the manner provided for assessments for street improvements, with a penalty of five per cent. and interest for failure to pay at the time fixed in the assessing ordinance."

So irrespective of what the provisions of section 3760 G. C. contain in reference to such a repair being regarded as a *cleaning*, etc., we cannot escape the conclusion that it is physically a street *improvement* and that the assessment proposed would be made pursuant to the provisions of said statute authorizing the assessment and collection of the same as *street improvement assessments* are levied and collected. However, it is believed that the conclusion is not necessarily depending upon this technical construction of the language. The former opinions and decisions in reference to the exemption of school property from assessments were based upon the proposition that other sections of the statutes enacted in pursuance to the provisions of the constitution have exempted school property from such levy. However, as heretofore indicated, in the event that there is special legislation authorizing such a proceeding the same might be accomplished.

The question now is, does the provisions of the code relating to the oiling of streets and the levying of assessments as provided in sections 3751 to 3761 G. C., inclusive, authorize such an assessment on school property?

Section 3761 G. C. provides:

"The term 'owner,' within the meaning of these provisions for such treatment with oil, or sprinkling with water, shall be held to include the legal equitable owner, the person in whose name the property may be assessed for taxation on the tax duplicate, or a tenant giving satisfactory

guaranty that the assessment against the property signed for will be paid, or the board of education having the control of any school property, and any such board of education is authorized to provide for sprinkling with water or treatment with oil, any street abutting on such property by private contract and pay for the same as other contingent expenses."

Section 3753 G. C. provides:

"When a written petition signed by the owners of a majority of the abutting feet of property on a street or alley, or part thereof, or of connecting or intersecting streets or alleys, or parts thereof, is presented to the director of public service in a city, or to the council in a village, praying that the roadways within the territory described be treated with oil, and for the assessment of the whole cost thereof on the property abutting such streets or alleys, the director or council shall forthwith declare, by resolution, such territory to be, and thereafter it shall be, a district within which the roadways will be treated with oil, for a period named in the petition, not to exceed the life of the contract, and the cost thereof assessed upon the property abutting the streets or alleys therein, by the abutting foot."

It might be arguable that since the statutes provide for an owner filing a petition and the statutes declare a school board to be an owner, that the assessment could be properly certified against the school property. However, in the communication submitted it appears that in the case you have under consideration the school board had signed no petition. However, while section 3761 G. C. designates the board of education as an owner, it will be noted that the same sentence which creates such owner specifies how such expense should be paid. The school board under the provision of this section is authorized to contract for such oiling and pay for the same as other contingent expenses. While this same section provides that they are owners it would seem clear that in the same breath the legislature provides for the method of payment.

While the question is not free from doubt in view of the general policy against the provision for an assessment upon school property it is my opinion that the language in this section is insufficient to justify the conclusion that such an assessment may be made. An assessment if it could be properly levied would subject the school property to sale to pay such a levy and doubt should be resolved against such a procedure. There is no doubt but that the school board under the provisions of this section could contract to make such improvement and pay its proportionate share of such a charge from its contingent fund.

However, it is my conclusion that the sections of the statutes to which you refer do not authorize the placing of an assessment against the property of the school board.

Respectfully,

C. C. CRABBE,
Attorney General.