

1683.

DISAPPROVAL, LEASE TO OFFICE ROOMS FOR USE OF DEPARTMENT OF INDUSTRIAL RELATIONS, IN ULMER BUILDING, CLEVELAND, OHIO.

COLUMBUS, OHIO, March 27, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of March 25, 1930, requesting approval of a lease between The Public Square Improvement Company and yourself for office space for the Department of Industrial Relations, at Rooms 708, 709 in the Ulmer Building at Public Square, Cleveland, Ohio.

After careful consideration, I find that:

1. The last two lines in paragraph 4 on page 1 of the lease reading "and the lesese will pay on demand for any damage to the premises suffered or caused by the lessee or the lessee's agents," should be stricken out.

2. The last sentence in Rule 2 under "Rules and Regulations" on page 2 of the lease beginning "Safes and other heavy articles shall be placed," etc., should also be stricken out.

In my Opinion No. 176, addressed to your predecessor, Richard T. Wisda, under date of March 8, 1929, and my Opinion No. 1624, rendered to you under date of March 15, 1930, I discussed exhaustively my objections to provisions similar to the above. I am enclosing copies of those opinions, so that it will be unnecessary to again repeat my reasons for disapproving such provisions.

I would also like to call your attention to the fact that sub-head 2 of paragraph 2 of page 1 of the lease is crossed out with red marks in four copies of the lease, but one copy does not appear to have such material crossed out. This should be marked out like the other copies. Also paragraphs 19 and 20 on page 3 of the lease appear to be typed in on four copies of the lease, but not on the fifth copy. This should be typed in like the other copies.

Finally, there does not appear to have been any date of execution placed in the space just above the signature of the parties to the lease. In this connection, Section 2288-2, General Code, should be considered.

In view of the above objections, I am forced to disapprove the lease, and am returning it, together with all papers submitted.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1684.

MERGER OF SCHOOL DISTRICTS—RESOLUTION OF COUNTY BOARD REFERRING TO RURAL SCHOOL DISTRICT INSTEAD OF VILLAGE SCHOOL DISTRICT NOT INVALIDATED—RURAL AND VILLAGE SCHOOL BOARDS DETERMINE AMOUNT OF BOND TO BE GIVEN BY THEIR CLERKS.

SYLLABUS:

1. *The mere fact that the county board of education in creating a new school district by authority of Section 4736 of the General Code, refers to the new district*

thus created in the resolution creating the same as a rural school district, whereas it in fact is a village school district, is not sufficient to invalidate the action of the county board so taken.

2. It is within the discretionary powers of a board of education of a rural or village school district to require of the clerk of the board a bond in such an amount as may seem proper to the board.

COLUMBUS, OHIO, March 27, 1930.

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

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

“I am enclosing copy of resolution adopted by the County Board of Education of Pike County, Ohio, merging, or attempting to merge, two districts within their jurisdiction into a single district.

You will note that the said resolution includes all the territory in Beaver Township School District and Beaver Village School District. Within Beaver Township is located an incorporated village named Beaver. The territory within said corporation and the adjacent territory in Beaver, Marion and Scioto Townships prior to said merger constituted the Beaver Village School District.

In a former opinion of the Attorney General to the Bureau of Inspection and Supervision of Public Offices the Attorney General held (see Vol. 1, 1928, Reports, page 129) that when a village district was merged with one or more township districts, the new district was a village district and not a rural district as set forth in the instant case.

Question: By reason of this error, are the proceedings held on December 28, 1929, and the later proceedings of January 28, 1930, invalid; and do the two previous boards which qualified on January 1, 1930, constitute at this time legal boards having control of the schools of said district?

This comes directly to my notice by reason of the fact that I hold in my hand two warrants for State Aid amounting in the aggregate to \$2400.00, which, I am informed, is in excess of the bond given by the new treasurer for ‘Beaver Rural School District,’ and we desire to deliver these warrants, drawn separately, in accordance with the certification made to this department by the department of education to the clerk of ‘Beaver Village School District \$1,600.00,’ ‘Beaver Township School District \$800.00.’”

Enclosed with your letter is a copy of the resolution adopted by the county board of education of Pike County on December 28, 1929, by which resolution the board apparently sought to create a new school district by joining the previously existing Beaver Village School District and Beaver Township School District, two then existing districts of the Pike County School District, by authority of Section 4736, General Code. Section 4736 reads as follows:

“The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall make an equitable division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the

territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it. Members of the board of education of the newly created district shall be appointed by the county board of education and shall hold their office until the first election for members of the board of education held in such district after such appointment, at which said first election two members shall be elected for two years and three members shall be elected for four years, and thereafter their successors shall be elected in the same manner and for the term as is provided by Section 4712 of the General Code. The board so appointed by the county board of education shall organize on the second Monday after their appointment."

The resolution appears to be proper in form and substance to accomplish what the board was apparently seeking to accomplish. One part of the resolution questioned by you is that wherein it recites that the "said newly created school district shall be the Beaver Rural School District."

Obviously, if the new school district created by the said resolution of the board contains the territory formerly embraced within the Beaver Village School District and the said Beaver Village School District was a village school district because it contained a village, which together with the territory attached to it for school purposes had a total tax valuation of not less than five hundred thousand dollars, the said new school district will also be a village school district.

Section 4681 of the General Code provides that each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district.

It is provided by Section 4682-1, General Code, that a village school district containing a population of less than fifteen hundred may vote at any general or special election to dissolve and join any contiguous rural district.

While I do not have before me the facts with reference to the district formerly called Beaver Village School District, I assume that the district did contain a village and that the district had a tax valuation of not less than five hundred thousand dollars and had not voted to join a contiguous rural school district as provided in Section 4682-1, General Code, and therefore any new district that would be formed by incorporating in the new district all the territory of Beaver Village School District would likewise be a village school district, and I am of the opinion that merely misnaming it by calling it a rural district did not change its status as a village district, which status is fixed by law.

The difference between rural and village school districts was pointed out by my predecessor in the opinion to which you refer (Opinions of the Attorney General for 1928, p. 129). I also had occasion to consider this question within the past few weeks in Opinion No. 1360, rendered January 3, 1930, and addressed to the Prosecuting Attorney of Portage County. It was there held as stated in the syllabus:

"A school district containing within its boundaries an incorporated village, which, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed, a total tax valuation of not less than \$500,000, is a village school district, unless proceedings have

at some time theretofore been had dissolving such village district and joining the same to a contiguous rural district, by authority of Section 4682-1 of the General Code."

From the facts considered in said Opinion 1360, it appeared that a school district in Portage County had been commonly called the Windham Rural School District, when in fact it contained the village of Windham, with a tax duplicate of considerably more than half a million dollars and was really a village school district under the law. The calling of this district a rural district instead of a village district had gone so far that sometime during 1927, upon the issuing of bonds by the board of education of the district, the bonds showed upon their face to have been issued by the Windham Township Rural School District. The bonds were approved, however, by my predecessor in his opinion No. 1092 and the bonds were purchased by the State Teachers Retirement Board. The Attorney General did not comment on the fact that the district was a village district instead of a rural district as the bonds showed upon their face, apparently not believing that this made any difference.

I am of the opinion that the resolution adopted by the board of education of Pike County School District, copy of which is enclosed with your letter, is regular and sufficient to create a new school district of the territory formerly embraced within Beaver Village School District and Beaver Rural School District and that the effect of the resolution, if remonstrances were not filed according to law, is to create a new school district which should properly be called a village school district, and the mere fact that the board in its resolution referred to it as a rural school district and specifically resolved that it should be called a rural school district does not serve to invalidate the consolidation of the districts.

With reference to your statement that the amount of money which the two warrants for the former Beaver Village School District and the Beaver Township School District aggregate is in excess of the bond given by the new treasurer and for that reason you are in doubt as to whether you have authority to authorize the payment of these warrants:

Section 4764, General Code, provides that the treasurer of a school district should execute a bond with sufficient sureties in a sum not less than the amount of school funds that may come into his hands. It further provides that if a depository of the school funds is provided for in accordance with sections 7604 to 7608, inclusive, the bond shall be in such amount as the board of education may require. Some years after this statute was passed, Section 4763 was enacted which provided that where a legal depository was not provided for school funds, the county treasurer should be the treasurer of the school funds of such district. In the meantime, another statute, Section 4782, had been enacted, which provided that when a depository had been provided for the school moneys of the school district, the board of education should dispense with the treasurer and the clerk should perform all the services, discharge all the duties and be subject to all the obligations required by law of the treasurer of the district. Another statute, Section 4774, relating to the bond of the clerk, provided that he should execute a bond in an amount and with surety to the approval of the board of education. This last referred to statute was enacted in 1873, when the clerks of boards of education handled very little, if any, money.

Upon consideration of these several statutes, I am led to believe that the board of education has full control of the question as to how large a bond a clerk shall give in districts where legal depositaries are provided for the school district moneys, and, of course, where such depositaries are not provided for, the

county treasurer is the treasurer of the district and the clerk does not handle the money. Inasmuch as it is purely within the discretion of the board of education as to the size of the bond to be given by the clerk of the board of education, I am of the opinion that you, as Auditor of State, are not authorized to hold up the payment of the warrants referred to on account of the size of the bond given by the clerk of the school district in question.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1685.

APPROVAL, BONDS OF BENNINGTON TOWNSHIP RURAL SCHOOL DISTRICT, MORROW COUNTY—\$50,000.00.

COLUMBUS, OHIO, March 27, 1930.

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

1686.

APPROVAL, BONDS OF ST. JOHN RURAL SCHOOL DISTRICT, MERCER COUNTY—\$35,000.00.

COLUMBUS, OHIO, March 27, 1930.

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

1687.

APPROVAL, BONDS OF VILLAGE OF KILLBUCK, HOLMES COUNTY—
\$35,000.00.

COLUMBUS, OHIO, March 27, 1930.

Industrial Commission of Ohio, Columbus, Ohio.