

4776.

SALARY—CLERK OF VILLAGE BOARD OF EDUCATION—MAY BE INCREASED OR DECREASED.

*SYLLABUS:*

*The salary of a clerk of a village school board may be increased or decreased during his term of office.*

COLUMBUS, OHIO, December 2, 1932.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"I should appreciate your opinion on this question, to wit: May the salary of a clerk of a village school board be increased or decreased during his term of office?"

Section 4747, General Code, provides for the election of a clerk of a board of education in a city, exempted village, village and rural school district, reading as follows:

"The board of education of each city, exempted village, village and rural school district shall organize on the first Monday of January after the election of members of such board. One member of the board shall be elected president, one as vice-president and a person who may or may not be a member of the board shall be elected clerk. The president and vice-president shall serve for a term of one year and the clerk for a term not to exceed two years. The board shall fix the time of holding its regular meeting."

From the provisions of the above section, it may be seen that a clerk shall serve for a term not to exceed two years.

Section 4781, General Code, provides for the fixing of the compensation of a clerk of each school district by the board of education, reading as follows:

"The board of education of each school district shall fix the compensation of its clerk and treasurer, which shall be paid from the contingent fund of the district. If they are paid annually, the order for the payment of their salaries shall not be drawn until they present to the board of education a certificate from the county auditor stating that all reports required by law have been filed in his office. If the clerk and treasurer are paid semi-annually, quarterly, or monthly, the last payment on their salaries previous to August thirty-first, must not be made until all reports required by law have been filed with the county auditor and his certificate presented to the board of education as required herein."

It should be observed that nowhere in the last quoted section is there any limitation upon the right of the board of education to change the compensation or salary of a clerk during his term. Hence, it would appear that the legislature

intended to vest discretion in a board of education to fix the remuneration of a clerk, and allow it to change the salary at will, if circumstances so warranted.

This conclusion is strengthened by a reference to sections 4213, 4219, 7690-1 and 7697, General Code. In the first two sections, the legislature specifically provided that the salaries of municipal officers and employes could not be increased or diminished during their term of service. In the third mentioned section, namely section 7690-1, General Code, it is provided that a board of education may increase but not diminish the salary of a teacher during the term.

The last mentioned section, 7697, General Code, provides that the salary of a city director of schools may not be changed during his term. Obviously, the legislature has seen fit in these cases to provide against change of salary, but has not in the case of a clerk of a board of education.

It is true that article II, section 20, Ohio Constitution, provides as follows:

"The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

However, in the cases of the *Board of Education of the City School District of the City of Cleveland vs. Juergens*, 110 O. S. 667, and the *Board of Education of the City School District of the City of Cleveland vs. Featherstone*, 110 O. S. 669, it was held that the salary of a clerk of a city school district could be increased during his term since said clerk was not an "officer" within the inhibition of article II, section 20, Ohio Constitution, supra. These cases are directly in point here, as the statutes, under consideration in said cases, namely sections 4747 and 4781, General Code, quoted supra, apply to a clerk of a village school district as well as to a clerk of a city school district. For a complete analyzation of the above cases, I refer you to an opinion of the Attorney General found in Opinions of the Attorney General for 1925, Vol. I, page 327, pages 327, 328, and 329, being particularly applicable to your question.

In view of the above discussion, I am of the opinion that the salary of a clerk of a village school board may be increased or decreased during his term of office.

Respectfully,  
GILBERT BETTMAN,  
Attorney General.

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4777.

MUNICIPALITY—MAY EXCHANGE LAND OWNED BY CITY FOR OTHER LAND—COMPETITIVE BIDDING NOT REQUIRED WHEN.

**SYLLABUS:**

*When a municipality, after having acquired a parcel of real estate for the purpose of extending a street, determines that a portion of such real estate is not needed by the city for such purpose or any other purpose, if such land is of no legal value to anyone, by reason of its shape and dimensions, except one adjoining owner who is willing to exchange therefor lands needed by the city for the completion of such improvement, such exchange may legally be made without*