

the contract was made in December, 1931, and was not to take effect until January, 1932, there would be no amount required to meet the obligations of this contract for the year 1931, and I am of the opinion that the certificate of the clerk certifying that the amount which is actually required for the first year of the life of the contract has been appropriated and in fund or process of collection, is a sufficient compliance with this statute.

I am returning herewith the contract which you have submitted to me.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4174.

CONTRACT — SUPERINTENDENT OF SCHOOLS — INVALID WHERE TERM OF EMPLOYMENT DOES NOT COMMENCE TILL FOUR MONTHS AFTER DATE OF CONTRACT — SECTION 7691, CONSTRUED.

SYLLABUS:

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.

COLUMBUS, OHIO, March 24, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

This will acknowledge receipt of your inquiry with respect to the following question:

"One of the township school districts two years ago employed a Superintendent of Schools for a period of three years. The contract was made and entered into in April, which was more than four months prior to the time of the commencement of the term for which he was hired. Almost two years of the term have expired. A new board of education is now in office, and is desirous of canceling and rescinding this contract. The board feels that the salary is higher than it should be during these times, and wants to be relieved of the contract. The board inquires as to whether or not under the provisions of Section 7691, the contract was illegally made, because it was made more than four months prior to the commencement of the term, the contract being made in April, and the term commencing the following September."

In the solution of your inquiry it must be borne in mind that the powers of a board of education are limited to a greater extent than are those of a

general municipal corporation. The rule applicable is well stated in 1 McQuillin on Municipal Corporations, 2nd ed., Section 138, as follows:

"The powers of school districts are derived wholly from the statutes. Incidental or implied corporate powers do not belong to them, as is held with respect to the municipal corporation proper, constituted for the purposes of self-government. Unless the statute confers the right to exercise any given power courts usually deny the power. One who deals with a school board must take notice of, and is bound by, the limitations on its powers. All powers must be exercised in substantial conformity with the statutes applicable."

I must therefore look to the statute for authority of the board of education to enter into the employment contract in question.

Section 7691 of the General Code, to which you refer, in so far as applicable to your inquiry, reads:

"No person shall be appointed as a teacher for a term longer than four school years, nor for less than one year, except to fill an unexpired term, the term to begin within four months of the date of the appointment. * *"

Since this employment contract, under any interpretation, could not come within the four year inhibition contained in the statute, the only question of law raised by your inquiry is whether the fact that the contract was entered into in April, and the term was not to commence until more than four months thereafter, renders such contract void or voidable.

In your letter you do not state whether the contract specifically provided that the term of employment was not to commence until more than four months thereafter, or whether you had in mind that the "school term" did not commence until more than four months thereafter. It must be borne in mind that the school year extends from July 1st until June 30th of the following year, by reason of the provisions of Section 7689 of the General Code, which in so far as material, reads as follows:

"Beginning on July 1, 1925, the school year shall begin on the first day of July of each calendar year and close on the thirtieth day of June of the succeeding calendar year; * *"

Prior to July 1, 1925, the school year commenced on September 1st, but this date was changed by the legislature. (111 O. L., 371).

Thus, if the contract entered into, employed the superintendent for the next ensuing three years, the term of employment would begin on July 1st, that being the beginning of the next school year. If such was the provision of the contract, it would be immaterial as to when the school term actually commenced. The contract contemplates three school years and not three periods of time during which school is in actual session. If the language of the contract does not definitely fix a different date for the commencement of the performance of the contract it would be presumed that the term of employment would begin at the first of the next school year. Under this state of facts the contract would clearly be legal.

If, however, the contract specifically provides that the three year term com-

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