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CLERK OF BOARD OF EDUCATION—INCAPACITATED—MAY APPOINT OFFICER OF SCHOOL TO SIGN CHECKS—CANNOT RECEIVE FUNDS DUE SCHOOL DISTRICT—CLERK CANNOT DESIGNATE ATTORNEY-IN-FACT TO RECEIVE — SECTION 3313.51 R. C.

SYLLABUS:

Under the provisions of Section 3313.51, Revised Code, where the clerk of a board of education is incapacitated in such manner that he is unable to sign checks, such board may appoint an officer of the school district concerned to sign such checks in the capacity of the clerk. The individual thus designated is without authority to receive, receipt for, and assume custody of funds due the school district concerned, nor is the clerk himself authorized in such case to designate an attorney-in-fact to receive them in his stead.

Columbus, Ohio, September 13, 1956

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Revised Code Section 3313.23 provides:

“‘If the clerk of a board of education is absent from any meeting of the board, the members shall choose one of their number to serve in his place pro tempore.’

“In his Opinion 1933 OAG 221 rendered March 17, 1933, the Attorney General ruled that a clerk pro tempore *may not* during the disability of a clerk sign orders on the depository for disbursement of funds, nor may he sign checks issued against a payroll account.

“In a local school district in Fulton County, the clerk has been hospitalized and it may be sometime before he can again assume his duties, or at least that duty which relates to the writing of checks and warrants.

“An opinion is requested as to:

“(1) Whether or not such clerk may by the granting of a power of attorney, appoint some suitable person as his attorney-in-fact to do and perform such acts relating to the

fiscal officer of the district, such as receiving funds made payable to the district and issuing receipts therefor, depositing same in the depository and issuing warrants and checks of the school district for salaries, services, supplies, etc., of the district?

“(2) May the school board appoint an acting clerk during such absence and should such acting clerk be required to furnish bond and by what style name should such acting clerk certify as to availability of funds and sign the vouchers, warrants and checks?”

The reasoning upon which the conclusion you note was reached in Opinion No. 221, Opinions of the Attorney General for 1933, p. 317, is set out therein as follows:

“* * *

“Section 4754 of the General Code states the duties of the clerk at the meetings of said board as follows:

“‘The clerk of the board of education shall record the proceedings of each meeting in a book to be provided by the board for that purpose, which shall be a public record. The record of proceedings at each meeting of the board shall be read at its next succeeding meeting, corrected, if necessary, and approved, which approval shall be noted in the proceedings. After such approval, the president shall sign the record and the clerk attest it.’

“The clerk has other duties imposed upon him in his official capacity as can be seen by sections 4768 and 7612-1 of the General Code, but these are all functions exercised outside of the meeting proper. Section 4753, General Code, reads as follows:

“‘If the president or clerk is absent at any meeting of the board of education, the members present shall choose one of their number to serve in his place pro tempore. If both the president and clerk are absent, both places shall be filled. On the appearance of either at the meeting after his place has been so filled, he shall immediately assume the duties of his office.’

“Bouvier’s dictionary defines ‘pro tempore’ thus: ‘For the time being; temporary.’ It is apparent that section 4753, supra, only authorizes the members of the board of education to elect a clerk pro tempore for a particular meeting with the duty as specified in section 4754, General Code, of recording the proceedings of that meeting and reading the records of proceedings at the board’s last meeting. There is nothing in this section or any other section giving him any other or broader powers. Provisions have been made for the absence or disability of practically every officer of the state government. It has been provided who shall take the place of the

absent officer and what his powers and duties shall be. Such provisions relate only to temporary absences and in no case do they apply to permanent disability or absence. * * *

I am in agreement with this reasoning and with the view that the scope of Section 3313.23, Revised Code, quoted in your inquiry, is thus limited to those duties pertinent to board *meetings*, and has no application to duties exercised entirely apart from such meetings.

You will observe, however, that since that ruling the General Assembly has made express provision for the signing of checks to disburse school funds where the clerk is unable to do so. In Section 3313.51, Revised Code, enacted as emergency legislation in 1953, we find these provisions:

“In every school district the clerk of the board of education shall be the treasurer of the school funds. No moneys of a school district shall be paid out except on a check signed by not less than two officers of the school district, one of whom shall be the clerk and the other shall be the president, vice president, business manager, or assistant superintendent in charge of business administration. If the clerk is incapacitated in such manner that he is unable to sign such checks, the board may appoint an officer of the school district to sign such checks in the capacity of the clerk; provided, the two officers who sign such checks shall not be the same person. Payroll disbursements constitute an exception to this requirement if otherwise provided by law. All moneys received by a clerk of a school district from any source whatsoever shall be immediately placed by him in a depository designated by the board of education of such school district, as provided by sections 135.01 to 135.23, inclusive, of the Revised Code.”

The third sentence in this section, added in the 1953 amendment, quite clearly provides a solution of the question with which you appear to be principally concerned, i.e., the disbursement of funds.

As to the receipt of funds, issuing receipts therefor, and assumption of custody thereof until placed in a depository, it does not appear that the statutory enactment above noted has any application, for provision is made therein for the designation of a “substitute” with only limited powers.

It will be noted that there is no statutory authority conferred on the clerk to appoint a deputy, and in the absence of such power it is held that a public officer is without authority to delegate to another the exercise of his duties as such, especially when such duties involve the exercise of judgment or discretion. See 32 Ohio Jurisprudence, 946, Section 86. It is my

view that the receipt of public money and the assumption of custody thereof, no matter for what brief period, is a duty which is non-delegable under this rule.

A possible practical solution of the problem of receiving payment of funds due the board may perhaps be found in the fact that the clerk, as provided in Section 3313.51, Revised Code, is required immediately upon receipt of such funds to place them in a depository designated by the board of education. I see no reason why the clerk should not give such depository written authorization to receive and credit to the district's account such funds due the district as the persons from whom they are due are willing thus to pay over, provided, of course, the depository is willing thus to act. In such case, if payment is made by check or warrant payable to the clerk, the board, or the district, the cancelled checks, etc., would in legal effect constitute evidence of receipt by the payee. Such an arrangement would not appear to be a delegation of the clerk's duty since it does not involve the action of any person or agency in his stead except the depository which is authorized by the law and the board's designation to do all that is contemplated under the suggested arrangement.

Accordingly, in specific answer to your inquiry, it is my opinion that under the provisions of Section 3313.51, Revised Code, where the clerk of a board of education is incapacitated in such manner that he is unable to sign checks, such board may appoint an officer of the school district concerned to sign such checks in the capacity of the clerk. The individual thus designated is without authority to receive, receipt for, and assume custody of funds due the school district concerned, nor is the clerk himself authorized in such case to designate an attorney-in-fact to receive them in his stead.

Respectfully,

C. WILLIAM O'NEILL

Attorney General