

ization or consolidation of schools with transportation furnished. It can hardly be contemplated that it was the intent of the General Assembly that where a school district or a portion of it was satisfied with its own local school procedure, that a corner of such school district could be mandatorily transferred to another county school district by being attached on a map to a portion of a contiguous school district and a petition presented for transfer under section 4696 G. C. where the petitioners very largely came from the other district, and the required number in the local district itself showed no desire to be transferred. To all appearances this would be taking advantage of electors in a second district by simply placing them on a map as attached territory to be considered and adding them as a part of the territory described in the petition and taking from them the right of local representation on an educational matter of this kind.

In reply to your inquiry, then, you are advised that it is the opinion of this department that:

Where it is desired to transfer school territory under section 4696 G. C. and such school territory is taken from more than one school district, a petition (required for a mandatory transfer of such school territory) should be presented from each school district and must contain at least seventy-five per cent of the electors in each school district residing in the territory proposed to be transferred.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2918.

SCHOOLS — CHIEF ARCHITECT — SUPERINTENDENT OF SCHOOLS — EXPENSES IN ATTENDING CONVENTIONS NOT LEGAL PRIOR TO CREATION OF SERVICE FUND IN SECTION 7704 G. C. (109 O. L. 589) — EXPENSES PAID FOR ENTERTAINING NATIONAL EDUCATIONAL ASSOCIATION ILLEGAL — ALSO PLACING MONEYS IN HANDS OF AN OFFICER OR EMPLOYEE TO PAY CLAIMS AGAINST BOARD OF EDUCATION ILLEGAL — HOW WARRANTS TO PAY VALID CLAIMS SHOULD BE ISSUED — CITY OF CLEVELAND.

1. *The expenses of the chief architect or of the superintendent of schools made in attending meetings of conventions, educational or otherwise, prior to the amendment of section 7704 G. C. could not legally be paid from the funds of the school district, but since amendment effective September 7, 1921, under the conditions imposed, such expenses may be paid from the service fund of a city school district.*

2. *Expenses paid for entertaining the National Educational Association at its meeting in the city of Cleveland is an unauthorized use of a school fund and illegal.*

3. *Placing cash in the hands of an officer or employe of a city board of education other than the treasurer, out of which to pay claims against the board before or after such claims are properly approved, is unauthorized and illegal.*

4. *A duty of the clerk or of the director of schools is the issuing of warrants for the payment of claims properly approved by the board of education or its auditor. Such officials are clothed with no discretion in the issuance of warrants to*

*pay valid approved claims. For a greater reason, a clerk employed by the director of schools may not refuse such a duty assigned to him to perform.*

COLUMBUS, OHIO, March 9, 1922.

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

GENTLEMEN:—This will acknowledge receipt of your request for the opinion of this department upon the following questions:

"In view of the fact that the general policy of the law as construed by numerous opinions of the Attorney-General in the past has been to hold against the payment of expenses from public funds for attendance at and in connection with conventions, conferences, etc., except in a few instances in which the law specially provides for the expenses of delegates, etc., in attendance at certain meetings, we respectfully request your opinion as to the extent of the use of the 'service fund' provided for in amended section 7704 (109 O. L. 589) in this connection.

QUESTION 1. May the board of education of the city of Cleveland legally reimburse the chief architect for expenses incurred in attendance at the National Educational Association when such attendance took place either before or after such amendment became effective?

The board of education of the city of Cleveland passed a resolution for the expenditure of \$1,500.00 in the payment of certain expenses in connection with the National Educational Association convention to be held in the city of Cleveland; said board also approved claims by superintendents for expenses in attending educational conventions.

QUESTION 2. Is such act of the board of education of such city authorized by law, and may said sum be legally expended for the purposes mentioned; and may the expenses of such superintendents in attending educational conventions be legally paid from public funds?

In the department of director of schools in the city of Cleveland there is maintained a so-called 'Petty Cash Account.' The board allowed \$3,000.00 to be placed in this account to be used as a kind of rotary fund. Bills of nearly all descriptions are paid by check or cash from this fund, then the amounts of said bills are presented in a lump sum to the board in the name of H. P. Cole, chief accountant. H. P. Cole is then issued a warrant for said sum, which warrant is cashed and deposited in petty cash fund, thereby replenishing said fund. The business transacted through this petty cash fund amounts to about \$60,000.00 per year.

QUESTION 4. Is the above described procedure legal? See section 7695 G. C.

QUESTION 5. If a claim comes to the clerk approved by the board and O. K.'d by the director of schools has said clerk any authority to refuse payment of same? Or must every claim approved by the board be paid?"

In a conversation with you concerning this request it is learned that the chief accountant spoken of in your fourth question is not the auditor of the board of education mentioned in section 7696 G. C.

Section 7704 G. C. (109 O. L. 589) reads:

"On the third Monday of every January or on the Monday preceding the close of school each year, the clerk of the board of education of a city school district shall certify to the board of education of which he is clerk, the number of pupils enrolled in the public schools of that district, whereupon the board of such city school district may by resolution set aside from the contingent fund a sum not to exceed five cents for each child so enrolled, such sum of money to be known as the "service fund" to be used only in paying the expenses of such members actually incurred in the performance of their duties, or of their official representatives when sent out of the city school district for the purpose of promoting the welfare of the schools under their charge; such payments to be made only on statement of the several members, or their official representatives, furnished at the last meeting held in each month."

In amended section 7704 G. C. just quoted, in the sentence stating the uses of the service fund appears these new words, to-wit, "or of their official representatives when sent out of the city school district for the purpose of promoting the welfare of the schools under their charge."

In an opinion of this department found in Opinions of the Attorney-General, 1920, Vol. I, p. 706, construing section 7704 G. C. before amendment, the headnote says: "The service fund, once created, may be used only to pay expenses of the members of the board actually incurred in the performance of their duties."

Before the amendment of section 7704 G. C. the expenses of the chief architect in attending National Educational Association meetings could not legally be paid from the service fund. Since amendment, as the official representative of the board, for the purposes and in the manner set out in the statute, his expenses may be paid from that fund. Answering the second part of your second question out of its order, the same statement will apply to the expenses of the superintendent of schools in attending National Educational Association meetings. There is no statutory provision for the payment of expenses of school officers or employes attending educational conventions other than that found in amended section 7704 G. C., *supra*, which became effective September 7, 1921.

There appears to be no statute expressly allowing the payment of expenses incurred in attending an educational convention or meeting other than teachers' institutes. The National Educational Association is, in a general sense, a great teachers' and superintendents' institute, but our statutes apply only to county or city teachers' institutes. The expenses incurred in entertaining the National Educational Association in Cleveland recently is, no doubt, the matter to which your second question refers.

Sections 7622 et seq. G. C. recite certain uses for which school property may be had and allowed by the board of education. Thereunder the board may entertain educational bodies in its school buildings when such use does not interfere with the work of the schools. In section 7622-2 G. C. certain users of school property are required to pay for janitor service; thus showing that the use of the school property is not to be wholly without expense, that is, not wholly at the expense of the school district; so also in section 7622-3 G. C., although in city districts certain exceptions are made in sections 7622-5 and 7622-6 G. C. In the absence of an express provision for the payment of the cost of attending the National Educational Asso-

ciation or other educational conventions, the implication, if there be any such intended, of the sections above cited is that such cost shall not be paid by the school district, and payment of such expenses from the school treasury is unauthorized and illegal.

Section 7694 G. C. provides that a city board of education may elect a director of schools for a term of two years unless earlier removed, and section 7698 G. C. provides for such removal. Sections 7695 and 7696 G. C. prescribe the duties of the director of schools. As stated, these sections relate only to city school districts, leaving the creating of a director to the discretion of the board of education of such districts. Section 7695 G. C. reads:

“As director of school, he shall execute for the board of education, in the name of the school district, its contracts and obligations, except that bonds issued must be signed by the president of the board, and attested by the clerk. He shall see that all contracts made by or with such board are fully and faithfully performed. Except teachers, assistant teachers, supervisors, principals, superintendents of instruction, clerk of the board of education, such director shall have the appointment subject to the approval and confirmation of the board of all employes and may discharge them; provided that if the board has adopted an annual appropriation resolution as provided by section 4752-1 of this act, the board may, by general resolution, provide that such appointment shall not be required to be approved or confirmed by the board if provision therefore (therefor) has been made in such annual appropriation resolution. He shall have the care and custody of all property of the school district, real and personal, except moneys, oversee the construction of buildings, in the process of erection, and the repairs thereof, and advertise for bids, and purchase all supplies and equipment authorized by the board.”

It will be noticed that the director executes contracts and obligations of the board, except bonds; has the care and custody of all property of the district, personal and real, except moneys, advertises for bids, and purchases all supplies and equipment authorized by the board.

Section 7696 G. C. provides the further duties of the director, among which are the following: he must issue all warrants for the payment of money from the school fund, but no warrant shall be issued for the payment of any claim until it has been approved by the board; “provided that if the board has adopted an annual appropriation resolution as provided by section 4752-1 of this act, the board may, by general resolution, provide that such warrant need not be approved by the board but shall be approved by the auditor of the board, if the expenditure for which such warrant is issued is provided for in such annual appropriation resolution.” It will be seen that it is thus provided under certain circumstances that the auditor may approve warrants on the school fund of a city district. The auditor cannot approve warrants for claims against school funds that are not such claims as the board itself could approve and pay. A board of education cannot delegate to an officer or employe duties that are not within the statute for such officer or employe to perform.

In *State vs. Griffith*, 74 O. S. 80, the opinion at page 93, construing section 3985 Revised Statutes, which is now section 4750 G. C., says:

“The statute gives to the board the power to make rules and regulations for the government of itself, its appointees and pupils; that is, rules for

their management, control and direction, merely disciplinary regulations. It could not for a moment be assumed that section 3985 confers upon the board the power to legislate, so as to confer upon itself and its appointees powers and duties which are not found in the acts of the general assembly; \* \* \*"

Except section 7696 G. C. no school statute mentions such an official of a board of education as auditor, nor are his duties elsewhere mentioned or described. This section is quite meager in stating just what shall be the duty of the auditor, and so far as the statement goes he may approve claims under the conditions laid down in the section. The chief accountant concerning whom you inquire probably may have certain duties that an auditor, under the usual acceptance of such term, may be required to perform, but such accountant is not the auditor, at least your statement does not so consider him. While the auditor could approve certain claims under the conditions stated in the law, unless he and the chief accountant are one and the same the chief accountant cannot do so. Further, the auditor is not authorized to approve a claim that might not be approved by the board of education. Unless the petty cash account is one provided for in the annual resolution in the section above quoted, and unless a further resolution has been passed authorizing the auditor to approve certain claims, all claims against the board of education must be approved by the board before a warrant may be issued for their payment. And even though the board of education has done the acts required by the law hereinbefore stated, the placing of three thousand dollars, or any other sum, in the hands of any person who is an employe of the board out of which to pay claims that have not been approved by the board or by the auditor of the board is not authorized by law and therefore illegal. In *State vs. Griffith*, supra, the court says: "Indeed, we fail to find any authority in the statutes for the clerk of the board of education to receive or disburse any money whatever, \* \* \* keeping and disbursing funds seems to be exclusively imposed upon the treasurer of the district."

The clerk and treasurer may be one and the same person, but the clerk is not the treasurer; that is, the clerk does not execute the office of treasurer, although both offices are in one individual. When that individual acts as clerk and when he acts as treasurer, he acts under the burdens and restraints imposed by law on the particular office functioning at the time and is governed by the law covered by that office, and the law as to the clerk is still as stated in the above quotation from *State vs. Griffith*.

The director, where a city board has created one, issues the warrants for the payment of claims that the board or its auditor has approved, but neither he nor any other officer or employe of the board has any authority to have cash belonging to the board in his possession out of which to pay claims. Let it be predicated that from such a cash account bills are paid which, when presented to the board or its auditor, are refused approval. In such a case does the officer or employe having charge of the cash reimburse the fund, or, in failure of voluntary reimbursement, must a suit be had to collect the same? Or again, should some claim be paid before the board or auditor has approved the same, but does later do so, who is it who really approves the claim, employe or board? Approval after payment is simply ratification of the judgment of the person paying the claim and is not approval in the meaning of the law. The treasurer legally keeps the funds against which the warrants of the board are issued for payment of all valid approved claims. Sections 4763 and 4768 G. C.

Under sections 7695 and 7696 G. C. the director takes over many of the duties which the clerk had before the creation of such office. The director's duties, except

as stated in these sections, may be enlarged or curtailed at the discretion of the board of education, but the board cannot clothe the director with powers not given it by the statutes or included in the duties of said director.

From all the reasons stated it is concluded that a petty cash account in the hands of an employe or officer of a city board of education is not authorized by law and payment of claims from such fund is illegal.

The answer to your fifth question requires a review of the duties of the clerk as set out in the statutes. As before stated, where a director is selected by a city board he performs much of the work given to the clerk, yet the clerk is still a necessary official for he is required to sign bonds and conveyances executed by the board and keep a record of the proceedings of the board.

Section 4747 G. C. is a general statute and provides that each city, village and rural board of education shall elect a person, who may or may not be a member of such board, as clerk, whose term of office shall not exceed two years. Section 4751 G. C. provides that the clerk may call special meetings of the board. Section 4752 G. C. provides that the clerk shall call the roll on the adoption of certain resolutions and record the "aye" and "no" votes of the members of the board. It provides for a pay roll for teachers, etc., excepting from the operation of the law clerks of township boards of education under an old plan now changed, when townships had sub-district directors upon whose certificates the clerk issued a voucher for the sub-district teachers' monthly pay. Section 4752-1 G. C. provides for the preparation and submission of an estimate of the expense of conducting the affairs of the board for the following year. This duty may become, under certain circumstances, one for the clerk to perform. Section 4753 G. C. provides for a pro tempore clerk in case of the absence of the clerk from a meeting. Section 4754 provides that the clerk shall record the proceedings of each meeting of the board in a book provided for that purpose, which record at the next succeeding meeting shall be read and approved, signed by the president, and attested by the clerk. Section 4756 G. C. provides for the sale of property, personal or real, by the board of education and provides that the president and secretary of the board shall execute and deliver deeds necessary to complete the sale and transfer, and section 4757 provides that conveyances made by the board shall be executed by the president and clerk thereof, while the next section has a similar provision. Section 4760 G. C. provides that process in all suits against the board shall be by summons served upon the clerk or president. Section 4768 G. C. provides how the treasurer shall disburse and receive the funds of the board. Here the clerk's duty is to countersign all orders on the treasurer for money paid out, and the treasurer of the board can receive no money except from the county treasurer and upon the order of the clerk. Section 4769 G. C. is the only statute that specifically names the liability of the clerk and his sureties in the payment of money, and is, that in allowing the treasurer to receive more money than the amount of said treasurer's bond, the clerk and his surety shall be liable for the loss of the excess thereof. Section 7699 G. C. requires the clerk to give prompt notice to all persons appointed to any position by the board of education.

In *State vs. Griffith*, supra, the syllabus reads:

"A public officer is personally, and may be criminally, liable for malfeasance in office; but the sureties on his official bond are answerable only within the letter of their contract for the unfaithful performance of his official duties and not for dereliction outside of the limits of his official duties."

So in the discussion as to the duties of the clerk and his liability it is believed

that such duties are clerical or ministerial, and until he becomes clerk-treasurer, assuming the duties of the treasurer under sections 4782 et seq. G. C., his function is to issue his warrant for the payment of claims approved by the board. But in a city district the clerk, under section 4763 G. C., prior to and since amendment in 109 O. L. 552, does not become the treasurer of the school district or assume such treasurer's duties, as he does in other districts when the board selects a depository for the school fund. And thus it is believed that in any city district the clerk is responsible only for the faithful performance of official duties, one of which is, in the absence of a director of schools, to issue warrants for the payment of claims approved by the board of education. The issuing of warrants for claims that have been approved in a city school district is specifically stated to be the duty of the director of schools where such official has been selected.

If the clerk referred to in your fifth question is a mere employe of the director of schools and as such the director is authorized to dismiss him, such clerk must perform the work required of him or be dismissed. He has no discretion as to the issuance of warrants for the payment of claims. It is also believed that a clerk of the board of education has no discretion in the issuance of warrants for the payment of claims that have been properly approved by the board of education.

Specifically answering your question, it is the opinion of this department, for the reasons stated, that:

The board of education of a city school district, prior to the amendment of section 7704 G. C. (109 O. L. 589), could not legally pay the expenses of the chief architect made in attending the National Educational Association meetings from the service fund or other fund of the board. Since amendment said expenses may be paid from said service fund. This same statement applies also to that part of your second question relating to the expenses of the superintendent of schools in attending National Educational Association meetings.

Expenditure of public funds of the school district of the city of Cleveland in entertaining the National Educational Association is not authorized by the school statutes and therefore illegal.

Where an appropriation resolution has been passed pursuant to section 4752-1 G. C., together with a resolution authorizing the auditor of the board to approve warrants, when the expenditure has been from a fund provided for in said appropriation resolution, proper claims against the board may be paid from an account such as you call "petty cash fund," but the money of the school district is properly in the custody of the treasurer and cannot be placed in the care and possession of the chief accountant, auditor or other officer or appointee of the board, and such disposition of the funds of the board is unauthorized and illegal.

The clerk of the board of education in a city school district having a director of schools does not issue warrants for claims against the board, and a clerk in the employ of the director has no discretion in issuing warrants for claims approved by the board. In city districts where there is no director, the clerk issues warrants for the payment of claims approved by the board, and such duty is one required by statute for him to perform and he has no right to refuse such performance.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*