

788.

SCHOOL DISTRICT—UNAUTHORIZED TO PROVIDE FOR SUPERVISION OF SCHOOLS INDEPENDENT OF COUNTY SUPERVISION—EXCEPTION—4740 DISTRICTS DISCUSSED.

SYLLABUS:

1. *Since the adoption of the School Code in 1914, no rural or village school district, or union of districts has been at any time authorized to provide for the supervision of its schools independent of county school district supervision, except such districts as did, at the time of the adoption of said School Code employ a superintendent of schools and officially certify to the clerk of its board of education on or before July 20, 1914, that it would employ a superintendent of schools, in accordance with Section 4740, General Code, as then enacted.*

2. *Subsequent amendments to Section 4740, General Code, as enacted in 1914, at no time authorized a school district which did not bring itself within the terms of the statute on or before July 20, 1914, to become a so-called 4740 district.*

COLUMBUS, OHIO, August 24, 1929.

HON. DON ISHAM, *Prosecuting Attorney, Akron, Ohio.*

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

“The school district of Hudson Township comes within the classification of, and is, a rural school district. Prior to June 1, 1928, this district was operating in conjunction with other schools of the Summit County School District, and its supervision was furnished by the county superintendent and his assistants. On May 31, 1928, the Hudson Township Rural School District requested permission from the county board to operate under Section 4740. July 5, 1929, the Summit County Board of Education passed the following resolution:

“Whereas, The Hudson Township Board of Education filed, on the 30th day of May, 1929, a resolution notifying this the Summit County Board of Education that the said Hudson Township Board of Education intends to operate the schools of Hudson Township under Section 4740 of the General Code of the State of Ohio, during the next school year, and

Whereas, Section 4740 of the General Code was made inoperative and void by a decision of the Court of Athens County in April, 1925, as cited in 25 O. N. P.—N. S.—431, and

Whereas, Section 4740 was repealed by the Eighty-eighth General Assembly of the State of Ohio, therefore be it

Resolved by this, the Summit County Board of Education, that the status of the schools of Hudson Township is, was, and will be the same as that of all other schools within the County School District, and that the Summit County Board of Education hereby appoints A. L. Gantz, the assistant county superintendent, in charge of the aforesaid Hudson Township School District.

A short time prior to the passage of this resolution, the Hudson Board entered into a contract for the employment of its own superintendent for a period of three years.

Question:

FIRST: Has the Board of Education of Hudson Township Rural

School District any authority to warrant its action in the employment of its own superintendent?

SECOND: Is the County Board within its authority to continue its supervision over the schools of Hudson Township Rural School District?"

It appears, from your communication, that the Hudson Township Rural School District had at no time prior to May 31, 1928, employed a superintendent of schools, by authority of Section 4740, General Code, and at all times since the adoption of the School Code of 1914, in which county supervision of schools was provided for, its schools have been supervised by the county board of education. The question therefore arises whether or not, under those circumstances, any authority existed for it to employ a superintendent as it assumed to do on or about May 31, 1928, and thus withdraw from the supervision of the county board.

The history of Section 4740, General Code, is complicated, and has led to a somewhat perplexing situation as to just what the effect of it is. Its construction and meaning has received consideration in a number of prior opinions of this office. Opinion No. 690, rendered under date of July 21, 1929, a copy of which is enclosed herewith, contains a sketch of the history of this legislation, and reference is made therein to other opinions and decisions of courts where attempts have been made to set forth the meaning and effect of the statute.

When first enacted in 1914, Section 4740, General Code, provided in part as follows:

"Any village or rural district or union of school districts for supervision purposes which already employs a superintendent and which officially certifies by the clerk or clerks of the board of education on or before July 20, 1914, that it will employ a superintendent who gives at least one-half of his time in supervision, shall, upon application to the county board of education, be continued as a separate supervision district so long as the superintendent receives a salary of at least \$1,000, and continues to give one-half of his time to supervision work. \* \* \*

With reference to said statute, the court, in the case of *Board of Education vs. Thompson*, 25 N. P. (N. S.), 431, 436, said:

"The effect of this section was to carry forward into the plan of county supervision, as district supervision units, this district and union of districts which had previously taken such interest in their schools as to provide supervision when the same had not been required, and had continued to do so up to the date of this enactment."

It will be observed by the terms of the statute as enacted in 1914, that the authority to employ a superintendent is given to such districts only, as already employed a superintendent, and which officially certified by the clerk of its board of education on or before July 20, 1914, that it would employ a superintendent. All other districts were to be supervised by the county superintendent and district superintendents.

Although the statute has been amended several times since its enactment in 1914, at no time has it authorized a school district, which had not prior to 1914 employed a superintendent and officially certified at that time by the clerk of its board of education that it would continue to employ a superintendent, as provided by the terms of the statute then in force, to withdraw from the supervision of the county board of education and employ its own superintendent of schools. In fact, the tendency of the later amendments has become more and more to subordinate the local superintendent employed by authority of the statute to the county superintendent of schools.

Unless a district became a so-called 4740 district in 1914 and had continued as such since that time there has never been any authority for it, by any provisions, to become such a district, and provide for the supervision of its schools by a superintendent of its own hiring. For that reason, the action of the Hudson Township Rural School District in employing a superintendent, on or about May 31, 1928, was unauthorized and illegal, and the district has at all times, and is now, subject to the supervision of the county board of education.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

789.

BOND SALE—BID APPEARING HIGHEST AND BASED ON LOWEST INTEREST RATE NOT INVALIDATED BECAUSE ACCOMPANIED WITH OFFER TO FURNISH BLANK BONDS.

**SYLLABUS:**

*When a bid is submitted for bonds advertised pursuant to the provisions of Section 2293-28, General Code, which bid appears to be the highest bid passed upon the lowest rate of interest, as provided in Section 2293-29, General Code, such bid is not invalidated on account of the fact that there is included therewith an offer to furnish blank bonds.*

COLUMBUS, OHIO, August 24, 1929.

HON. FORREST E. ELY, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—This is to acknowledge your letter of recent date, containing the following request for my opinion:

"I am writing you for your opinion on the sale of Clermont County bonds for \$25,925.99, offered for sale Friday, July 19, 1929. These bonds were tentatively awarded to the 'A' Company at their bid of \$228.14 premium and accrued interest to the date of delivery for bonds bearing the rate of 5½%.

'B' Company of Cincinnati has protested this sale on the grounds that they were the lowest and best bidders. Their bid was par and accrued interest to the date of delivery for bonds bearing the rate of 5¼% interest, and they also agreed to furnish blank bonds. Inasmuch as no mention was made concerning furnishing bonds we consider the bid of 'B' very indeterminate and that the bid of the 'A' company being specific in its statements was the best bid.

However, we have decided to ask your opinion and award the bonds accordingly."

Copy of the publication of the notice of sale of the above bonds discloses that the bonds are to mature serially over a period of nine years, that they are to bear five per cent interest, but that anyone desiring to do so may present a bid or bids based upon their bearing a different rate of interest than specified, provided that where a fractional rate is bid, such fraction shall be one-fourth of one per cent or multiple thereof.

Section 2293-29, General Code, provides in part as follows: