

take into consideration changed conditions and the modern development of street and highway construction and traffic conditions before a proper answer can be reached. For example, the use of curbing in rural highway construction was practically unheard of until comparatively recent times. Similarly, the use of safety fences which, in the past, was a rarity, is now not only common practice but a virtual necessity by reason of the danger incident to the congestion and speed of modern traffic. For these reasons I am of the opinion that safety fences must now be regarded as a legitimate part of street and highway construction and accordingly the use of the funds in question for the maintenance and repair of such fences is proper.

The foregoing discussion is equally applicable to the repair of so-called loading platforms constructed in streets for the use of street car passengers. Here again is a direct and necessary result of changing traffic conditions. The safety of pedestrians in legitimate uses of the highways must be conceded to be a proper consideration in highway construction. Construction of these platforms is, in my opinion, the construction of a portion of the streets and constitutes an improvement thereof so as to authorize the expenditure of the funds in question in the maintenance and repair of such structures."

Certainly, if the cost of loading platform be a legitimate expense from these funds, the cost of metal disks for the designation of safety zones which accomplish substantially the same purpose may also properly be paid from these funds.

In view of the foregoing, I am of the opinion that the cost of metal disks inserted in municipal streets to mark safety zones may properly be paid from the receipts of the gasoline and motor vehicle license taxes.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1897.

COUNTY BOARD OF EDUCATION—UNAUTHORIZED TO ELECT ASSISTANT SUPERINTENDENTS OF SCHOOLS TO PERFORM DUTIES OF LOCAL PRINCIPALS.

SYLLABUS:

It is unlawful for a county board of education to elect assistant county superintendents of schools for the purpose of requiring of those assistant county superintendents of schools the performance of duties in connection with the administration of high schools and consolidated schools within the county school district, which administrative duties should be performed by a principal of schools designated as such from among the teachers employed by the several local boards.

COLUMBUS, OHIO, May 23, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion with reference to the following:

"In a county in which there are ten village and rural districts, each having a high school, and each of which hires a principal for the high school, may the county board of education elect ten assistant county superintendents,

one for each high school in the several districts, these assistant county superintendents to perform the duties now being performed by the several high school principals, and also to act as assistant county superintendents? Of course, assistant county superintendents, when properly employed, receive part of their compensation from the state."

Upon the adoption of the school code of 1914, county school districts were created (104 O. L. 133), each to be under the control and supervision of a county board of education composed of five members to be elected by the presidents of the various village and rural boards of education within the county school district.

Each county board of education so elected was charged with the duty of appointing a county superintendent of schools and of dividing the county school district into supervision districts, each to contain one or more village or rural school districts. It was provided by Section 4739, General Code, as then enacted (104 O. L. 140), that each such supervision district should be under the direction of a district superintendent to be elected by the presidents of the village and rural boards of education within the supervision district, or by the boards of education of such school districts in joint session when the supervision district contained three or less village or rural districts.

Prior to 1914, each school district was authorized to provide for the supervision of its schools by the appointment of a local superintendent, and assistant superintendents when necessary, with power to exercise such supervision of the schools within such district as might be necessary. As early as 1873 the General Assembly of Ohio provided in Section 53 of an act providing for the reorganization and maintenance of schools, as follows:

"The board of education of each school district shall have the management and control of the public schools of the district, which are or may be established under the authority of this act, with full power in such board to appoint a superintendent and assistant superintendent of the schools."
(70 O. L. 209.)

The above provision of law has been in force in substantially the same form since 1873. It now appears in Section 7690, General Code, although so far as it may authorize village and rural boards of education to provide for the supervision of schools under their jurisdiction it is superseded by the school code of 1914, and amendments thereto, providing for county supervision of schools. Opinions of the Attorney General for 1921, page 684. In said opinion it is held:

"A rural board of education is without authority to elect a superintendent of schools under the general language of Section 7690, General Code, since the General Assembly has provided for county supervision of schools by a county superintendent and such assistant county superintendents as may be elected by the county board of education."

The same rule would apply to village boards of education.

In 1921 the law relating to the supervision of village, rural and county school districts was materially changed (109 O. L. 242). It was provided at that time that county boards of education should be elected by popular vote. Supervision districts were done away with and the county school district was made the unit of supervision of the schools within the county district, that is, the schools in rural and village school districts. This supervision was to be conducted by the county superintendent of schools and one or more assistant county superintendents of schools, as might be determined by the county board of education, such county superintendent and assistant county superintendents to be elected by the county board of education. The duties

of county and assistant county superintendents of schools are set forth in Section 7706, General Code, which section reads as follows:

"The county superintendent and each assistant county superintendent shall visit the schools in the county school district, direct and assist teachers in the performance of their duties, and classify and control the promotion of pupils. The county superintendent shall spend not less than one-half of his working time, and the assistant county superintendents shall spend such portion of their time as the county superintendent may designate in actual class room supervision. Such time as is not spent in actual supervision shall be used for organization and administrative purposes, and in the instruction of teachers. At the request of the county board of education the county superintendent and the assistant county superintendents shall teach in teacher's training courses which may be organized in the county school district."

From the foregoing, it is apparent that the intent of the law is that the work of supervision of the schools in rural and village school districts is to be in county and assistant county superintendents elected by the county board of education, the Legislature having taken away the power formerly possessed by such local boards of education to employ superintendents and having made the county school district the unit of supervision. Such local districts are also relieved to some extent of the cost of such supervision by the provision that a portion of the salaries paid to county superintendents and assistant county superintendents is to be paid by the state. Sections 4743 and 4744-1, General Code.

At the same time, however, the General Assembly charged the board of education of each village and rural school district with the duty of providing for a principal of schools in all high schools and consolidated schools. The language of the statute with reference to this matter is mandatory in terms. Section 7705, General Code, after providing that each village and rural school district shall employ the teachers of the public schools of the district, says:

"In all high schools and consolidated schools one of the teachers shall be designated by the board as principal and shall be the administrative head of such school."

While it may be somewhat difficult to definitely draw the line between the duties of a school principal and a superintendent of schools; the General Assembly apparently recognized that the duties of these two classes of school functionaries were different and provided as to the one that he should be employed and paid locally as one of the teachers of the school, while the other is to be employed by the authority in charge of the county supervision unit and paid in part by the state.

Anyone familiar with the administration of the public school system will appreciate the distinction between the work of a principal of schools and that of a superintendent, and although in some respects the work to be performed by a principal of schools and that to be performed by a superintendent of schools may overlap to some extent, and border-line duties may exist which properly may be performed by either a principal or a superintendent, there is a clear and recognized line of duty to be performed by each which should not be expected of or imposed on the other.

Although the Legislature has not limited county boards of education with respect to the number of assistant county superintendents that may be elected in a county school district, except "as may be determined by the county board of education," and has to some extent left to the determination of the county board of education and the county superintendent of schools the extent of school organization and school administrative duties to be performed by assistant county superintendents of schools,

it would in my opinion be a gross abuse of discretion and a misapplication of public funds for a county board of education and a county superintendent of schools to require of the assistant county superintendents the taking over of the work of local administration in the several high schools and consolidated schools of the county school district, which work should be performed by a principal of schools, and thus relieve the local districts of the necessity of employing administrative heads of the schools, or principals, in each high school and consolidated school which the law in mandatory terms directs the local boards of education to do.

I am therefore of the opinion, in specific answer to your question, that it is unlawful for a county board of education to elect assistant county superintendents of schools for the purpose of requiring of those assistant county superintendents of schools the performance of duties in connection with the administration of high schools and consolidated schools within the county school district, which administrative duties should be performed by a principal of schools designated as such from among the teachers employed by the several local boards.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1898.

ABANDONED CANAL LANDS—HIGHWAY DIRECTOR MAY ONLY USE SUCH LANDS IN LUCAS COUNTY FOR PARK PURPOSES AS ARE INCIDENTAL TO A HIGHWAY—LEASE OF SUCH LANDS TO PARK DISTRICT NOW UNAUTHORIZED.

SYLLABUS:

Under the act of the 87th General Assembly passed May 11th, 1927, (112 O. L. 360), providing for the abandonment for canal and hydraulic purposes of that portion of the Miami & Erie Canal in Lucas County, Ohio, between the Maumee side cut at Maumee, Ohio, and the point where said canal joins the Maumee River in Providence township, in said county, the only use that the State Highway Director may make of the canal lands abandoned by said act for park purposes is such only as will be incidental to a highway constructed by such officer in and upon said lands.

Neither said Highway Director nor any other officer of the state has at this time any authority to lease any part of said canal lands to the Lucas County park district or to any other person or persons.

COLUMBUS, OHIO, May 23, 1930.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication over the signature of Harry S. Commager, Assistant Prosecuting Attorney, which reads as follows:

“Under Section 2976-1 et seq. G. C., a District Park Commission was created for a district co-extensive with the boundary lines of Lucas County. The members of this commission are desirous of utilizing for park purposes parts of the abandoned Miami and Erie Canal, the old bed of which is on the banks of the Maumee River, in Providence Township, Lucas County, Ohio.

Under Section 14178 et seq. G. C., the supervision and control of these lands have been placed with the State Highway Director.

Under Section 464, G. C., the Superintendent of Public Works is vested