

"9. For filing any miscellaneous certificate or paper not required to be recorded, the sum of five dollars."

In my opinion, this section would authorize you to charge the \$5.00 fee aside from any question as to the repeal of Section 11977 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1240.

BOND ISSUE—VALID WHEN MINUTES OF BOARD OF EDUCATION MEETING RELATING TO PROPOSED BOND ISSUE, NOT PROPERLY RECORDED, ARE CORRECTED.

SYLLABUS:

1. *If the minutes of the meetings of a board of education in respect of proceedings relating to a proposed bond issue are not properly recorded, as required by Section 4754, General Code, the same should be corrected to conform to the facts.*

2. *If, when so corrected, said minutes show the proceedings to have been in all respects in compliance with law, bonds issued in accordance therewith will be valid obligations of the school district.*

COLUMBUS, OHIO, November 5, 1927.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads as follows:

"Your opinion is desired in regard to the following situation:

The Board of Education of the Lawrence Township Rural School District, in Stark County, desiring to submit the question of a bond issue for the erection and equipment of a fire-proof school building, have passed the resolutions shown in the transcript which accompanies this letter. The bond issue was not submitted to this office.

The various resolutions were furnished the board in typewritten form and were read and adopted at each of the meetings, as indicated in the transcript. The typewritten resolutions were then 'stuffed' into the minute book but were not physically attached thereto, but were always kept in the minute book, which is an old style bound volume. At the meeting following the passage of each of the resolutions shown in the transcript, the same was read by the clerk, and was approved as a part of the minutes of the foregoing meeting, although as stated above none of these resolutions were actually spread upon the minutes for the meeting at which it was passed, nor was it kept in that particular place in the minute book.

The following notations appear upon the minutes under the dates noted, which dates correspond with the dates of the various resolutions as shown by the accompanying transcript, viz.:

July 7, 1926. Regular meeting. Moved by Lindsay, seconded by Farmer that the amount of bond issue be \$41,000 for a new school building including

fireproof four-room and equipment. Vote: Lindsay, Lawrence, Farmer, Eschleman, and Myers. YES.

Moved by Eschleman, seconded by Lindsay that the resolution requesting the clerk to certify the estimate life of the proposed improvement and the maximum maturity of bonds proposed to be issued. Vote: Lindsay, Farmer, Lawrence, Eschleman, Myers. YES.

Moved by Lindsay, seconded by Lawrence, that the board adopt resolution declaring necessity of bond issue and to submit the question of such issue to the electors. Vote: Lindsay, Farmer, Lawrence, Eschleman and Myers. YES.

August 1st, 1926. Regular meeting. Moved by Oliver Farmer, seconded by Lent Lawrence that the resolution to submit the question of bond issue to the electors and certifying same to the Deputy State Supervisors of Elections. Vote: Lawrence, Eschleman, Lindsay, Farmer, Myers. YES.

November 15th, 1926, a special meeting was called for the purpose of canvassing the vote of the bond issue voted on November 2nd, 1926, and the following appears on the record:

Special meeting called for purpose of canvassing the votes of bond issue voted on Nov. 2, 1926. After careful canvass the vote was as follows: For, 242 votes. Against, 113 votes. Moved by Farmer, seconded by Lindsay, that its adoption be recorded. A vote was taken as follows: Myers, Lawrence, Farmer, Lindsay, Eschleman. Yes.

Certificate as to the weighted average of the clerk, and certificate of county auditor as to average levy were not attached to the record, but were 'stuffed' into them, and kept there in the same manner as the resolutions above mentioned.

Under the above circumstances may valid bonds be issued by the board? Will you kindly return the transcript enclosed to me at the time you render your opinion?"

Accompanying the above communication you have submitted what purports to be a partial transcript of the proceedings of the Board of Education of Lawrence Township Rural School District, Stark County, relating to an issue of bonds in the sum of forty-four thousand (\$44,000.00) dollars for the erection and equipment of a fireproof school building, which issue of bonds was authorized by a favorable vote of the electors of the district at the November, 1926, election.

The transcript covers the proceedings of the board from July 7, 1926, to November 15, 1926, the date when the results of the election were canvassed by the board.

Inasmuch as the transcript is incomplete, that is to say, it does not contain the bond resolution or the proceedings relating to the award of contracts, borrowing money and issuing notes and the sale of bonds, and inasmuch as your question does not go to the sufficiency of the transcript but rather to the sufficiency of the journal or minute book, I have made only a cursory examination of the transcript and am not rendering an opinion on the same at the present time.

Your specific question seems to be as to whether or not the journal or minute book of a board of education bears the same relation to the board of education, in so far as its actions are concerned, as the journal of a court does to the court. In other words, does the board of education speak and act through its journal in the same manner as a court of law?

It is a familiar rule that a court speaks through its journal and when it is desired to ascertain the action of the court resort is had to the journal. Until an order of the court has been journalized, the court has not acted. (*Industrial Commission vs. Musselli*, 102 O. S. 1, 15.)

Section 4754, General Code, provided :

"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 above section provides that the clerk of the board of education shall record the proceedings of each meeting in a book to be provided for that purpose, which shall be a public record. It further provides for the reading of the record of each meeting at the succeeding meeting, the correction of the record, if necessary, and its approval, which shall be noted upon the record and signed by the president and attested by the clerk.

In your communication you state that none of the resolutions adopted by the board or the certificate of the clerk as to maximum maturity or that of the auditor as to average annual levy were spread upon the minutes, but were laid or "stuffed" into the minute book, unattached, and apparently not in the place where the notations of the minutes of the meetings at which such resolutions were adopted appear. You do say, however, that at each meeting the resolutions, etc., adopted at the preceding meeting were read and approved as a part of the minutes of such meeting.

In the case of *Dixon vs. Sub-district Number 5, Liberty Township, Ross County, Ohio*, 3 O. C. C. 517, decided by the Circuit Court of Ross County at the December term, 1888, it is said in the headnotes :

"1. Two of the directors of a sub-school district being a majority of the board, are constituted by the statute a quorum to do business at all meetings of the directors.

2. When two of such directors have met at the usual place of holding meetings, at a regular called meeting, and they, acting officially, agree, with a qualified teacher to hire him to teach the school of said sub-district for a certain time at an agreed compensation; but neither the clerk of the board or said directors make any entry in the records of said sub-district of their proceedings, such teacher ought not and cannot be prejudiced by the omission or ministerial nonfeasance of the directors or their clerk. He may prove, if he can do so, by competent parol testimony, such official action of said board."

At the time the above case was decided, Section 3984 of the Revised Statutes, which became Section 4754, General Code, in the codification of 1910, contained virtually the same provisions as said Section 4754 does at the present time.

Section 3984, Revised Statutes, provides :

"The clerk of the board 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 meeting, corrected if necessary, and approved, and the approval shall be noted in the proceedings; and after such approval the president shall sign the record, and the clerk shall attest the same."

The case of *Village of Vinton vs. James*, 108 O. S. 220, was an injunction proceeding involving the question of the effect of the failure of the clerk of council

properly to record the legislative action upon the resolutions and ordinances pertaining to a sidewalk improvement. It appeared that the journal did not show the suspension of the rules, as required in Section 4224, General Code. The court states the questions to be:

“First. Does the failure of a ministerial officer to perform a duty enjoined upon him by law, namely, properly to record the action of the municipal council, render null and void the proceedings of such council, when as a matter of fact it was found by the court that all of the provisions of the statute in relation to the proceedings had been literally complied with by the council? Second. In case all of the proceedings of council in the passage of a resolution and ordinance providing for the building of sidewalks in the village have been literally complied with, will injunction issue to restrain the assessments of the cost of the sidewalk upon the ground of the invalidity of the ordinance and resolution, before council has an opportunity to make a record showing that the statute was complied with?”

On page 231, it is said:

“Upon all questions of facts, and upon all questions excepting that relating to the validity of the passage of the sidewalk ordinance and resolution, both lower courts held against the plaintiff. This being so, even considering the question in the aspect most favorable to plaintiff, it would be a denial of justice to permit him to have his property improved at public expense without consideration, simply because a ministerial officer failed to perform a duty clearly enjoined upon him by law.

It is in accord with the spirit of the law to permit the amendment of errors in records after the proper time for the making of the record has passed. *Nunc pro tunc* entries are authorized in courts when the proof is that the written memorial does not accurately reflect the facts, 15 Corpus Juris, p. 975, et seq.

Records of administrative and legislative bodies are allowed to be changed, after the time when they should have been made, in order to conform with the actual truth.

The court has specifically found that the record, if amended to present the real facts, would show that the council acted in accordance with law. What objection then can be urged to permitting the clerk of council to amend the record to show that Section 4224, General Code, was in fact complied with by council in the passage of the ordinance and resolution?

The court holds that where the fact is established, as in this case, that council has complied with the requirements of Section 4224 as to suspension of the vote, as to the roll call, and as to all other requirements contained in the section, but the clerk has failed properly to record the action of council, upon application for injunction by a resident of a municipality the injunction should not issue until the council has had an opportunity to make the record conform to the facts. This opportunity was not given below.”

The principle involved in the above cases is the same as that involved in your question, and in view of what has been said above it is my opinion that if after the journal or minute book of the board of education has been corrected so as to show the facts, the same shows the proceedings to have been in all respects in compliance with law, a valid bond issue may be had.

I am returning herewith the transcript submitted in connection with the above matter.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1241.

APPROVAL, BONDS OF THE VILLAGE OF SEVILLE, MEDINA COUNTY,
OHIO—\$6,900.00.

COLUMBUS, OHIO, November 5, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1242.

APPROVAL, BONDS OF THE VILLAGE OF MADEIRA, HAMILTON COUNTY,
\$3,845.84.

COLUMBUS, OHIO, November 7, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1243.

APPROVAL, LEASES TO MIAMI AND ERIE CANAL, OHIO CANAL, HOCKING CANAL, PORTAGE LAKES, LAKE ST. MARYS, LAKE LORAMIE, INDIAN LAKE AND BUCKEYE LAKE LANDS.

COLUMBUS, OHIO, November 7, 1927.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your letter dated November 3, 1927, in which you enclose the following leases, in triplicate, for my approval: