

1112.

APPROVAL, DEFICIENCY BONDS OF CONNEAUT CITY SCHOOL DISTRICT IN AMOUNT OF \$49,000.

COLUMBUS, OHIO, March 29, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1113.

COUNTY BOARD OF EDUCATION—WHERE RURAL DISTRICT BECOMES VILLAGE DISTRICT—WHEN MEMBER OF COUNTY BOARD DISQUALIFIED BY REASON OF INCORPORATION OF VILLAGE.

Where two members of a county board of education are residents of village districts and another member of said board resides in and was elected from a rural district and said rural district becomes a village district by reason of the incorporation of a village within said rural district, the latter is disqualified as a member of the county board.

COLUMBUS, OHIO, April 1, 1920.

HON. F. B. PEARSON, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date requesting an opinion reads:

"I have just received a letter which contains the following recital of facts:

A was elected to the county board of education in 1918, from a rural district. B was elected in 1919 from a village district. C was elected in 1920 from a village district. The district in which A resides is about to incorporate as a village.

In view of these facts will it be legal for all three of these members to serve out their terms? If not, will the position of A, B or C be made vacant?"

The significance of your inquiry becomes apparent from a consideration of the provisions of sections 4728, 4681 and 4687 G. C., which provide:

"Section 4728. * * * At least one member of the county board of education shall be a resident of a village school district if such district is located in the county school district and at least three members of such board shall be residents of rural school districts, but not more than one member of the county board of education shall reside in any one village or rural school district within the county school district."

"Section 4681. Each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district."

"Section 4687. Upon the creation of a village, it shall thereby become a village school district, as herein provided, and, if the territory of such

village previous to its creation was included within the boundaries of a rural school district and such rural school district included more territory than is included within the village, such territory shall thereby be attached to such village school district for school purposes, provided such territory has an area of less than sixteen square miles."

It is evident that upon the creation of a village it *ipso facto* becomes a village school district, and the territory comprising the rural district of which said village was originally a part becomes attached to said village for school purposes, provided that said territory has an area of less than sixteen square miles and the newly created district has a total tax valuation of \$500,000.

In the absence of definite information, for the purpose of this opinion it will be assumed that the circumstances are such that the proposed incorporation will create a village district. In the event that the village is incorporated, A, who is now a member of the county board of education, will reside in a village school district. The statute is plain that not more than two members of the county board may reside in a village district and inasmuch as A was elected from a rural district it must be assumed that he was properly elected and has held his office by reason of his residential qualification, viz., a resident of a rural school district.

While section 4748 G. C. defines certain contingencies that shall constitute a vacancy in any board of education, this statute does not expressly cover a situation such as you present; nor does any other statute deal with such a condition. However, it is apparent that when the proposed village is incorporated then there will be three members of the county board of education who reside in village districts, which condition the statute expressly provides must not exist. Therefore there must be a vacancy of one of the village members who are residents of the village district. The logical conclusion seems to be that A, who was qualified at the time of his election because of his rural residence and who has held his office by reason of such qualification, will be disqualified when his residential status becomes changed by the incorporation of the village. He having claimed title to his office by reason of his status should not complain when his said status changes so as to disqualify him. A rule applicable to the situation has been given as follows:

"The loss of the qualification necessary to make one eligible for a public office will generally result in the forfeiture of the office."

29 Cyc., 1380.

In the case of state ex rel. vs. Orr, 61 O. S., 384, a similar question was considered with reference to a member of the city council who removed from the ward from which he was elected. The court in part said:

"Section 1680, Revised Statutes, provides that 'A member of the council or board of aldermen must be a resident of the corporation for which he is elected, and if the corporation is divided into wards or districts, then a resident of the ward or district for which he is elected.' This seems to mean that a member of council must be a resident of his ward, not only when elected, but also that he must remain such resident; and then the statute is supplemented by the ordinance of the city, which provides that a councilman who removes without his ward shall be deemed to have resigned his office. It being conceded in this case that Mr. Crow had removed out of his ward, it must follow that he thereby ceased to be a member of the council, the same as if he had resigned."

While it will be observed that the council had supplemented the statute re-

ferred to in the above opinion by the provision that upon the removal of a member of council from the ward in which he was elected, his position should be considered as vacant, it is believed that the opinion of said court indicates that the decision would have been the same had there been no such provision of the city council.

In view of the foregoing, it is the opinion of this department upon the state of facts as given by you that when the status of a member of the county board of education, who is elected from a rural district, changes so as to cause him to be a resident of a village district, he immediately becomes disqualified as a member of the county board. Under such circumstances the member becoming so disqualified should resign and his place should be filled as provided by statute, as such a proceeding would definitely end all controversies in reference to the matter.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1114.

COMMON PLEAS COURT—DEPUTY CLERK—SECTION 2871 G. C. GOVERNS APPOINTMENT—CERTIFICATE OF APPOINTMENT FILED WITH COUNTY AUDITOR.

The provisions of section 2871 govern the appointment of a deputy clerk of common pleas court and a certificate of such appointment must be filed with the county auditor.

COLUMBUS, OHIO, April 1, 1920.

HON. PHIL H. WIELAND, *Prosecuting Attorney, Mt. Gilead, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

"Please advise which section prevails for the appointment of deputies for the office of clerk of courts, namely sections 2871 or 2981 of the General Code of Ohio.

Is the approval of the court and journal entry required or may the clerk under section 2981 without such approval or entry certify a deputy appointment to the county auditor, so long as the monthly pay of deputy does not exceed the amount allowed by the county commissioners of 40 per cent on the first two thousand of the last preceding year's fees."

The source of your question is the apparent confusion and conflict between the sections which you quote.

Section 2871 is a part of chapter 8, entitled "clerk of common pleas court." This section is as follows:

"The clerk may appoint one or more deputies to be approved by the court of common pleas if in session, or by one of the judges thereof, if not in session. Such appointment shall be by certificate, signed by the clerk, which, with the approval of the court or judge, shall be entered on the journal."

At this point it may be noted that this chapter is special in that it relates not to county officers generally, but entirely to the clerk of the common pleas court.