

690.

SCHOOL DISTRICT—EMPLOYING SUPERINTENDENT UNDER SECTION 4740, GENERAL CODE—HOW EFFECTED BY REPEAL OF SUCH SECTION.

SYLLABUS:

1. *After the effective date of House Bill No. 362, of the 88th General Assembly, which repeals Section 4740, General Code, school districts which had formerly employed superintendents of schools by authority of Section 4740, General Code, will come under the direct supervision of the county superintendents and assistant county superintendents of schools except as that supervision may be controlled by existing contracts with the district superintendents of schools.*

2. *A contract of employment made with a district superintendent of schools, by authority of Section 4740, General Code, prior to the effective date of the repeal of said Section 4740, General Code, is a valid and binding contract, and should be performed according to its tenor.*

COLUMBUS, OHIO, July 29, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“Section 4740 was repealed by the last Legislature. However, the repeal bill provides that any rights assumed under the sections repealed as they formerly existed shall continue.

In view of this, are those districts which are now 4740 districts to continue to have the same relationship to the county school system which they had before?

If the answer to this is negative, does the changed relationship take effect for the school year 1929-30, or not until the following year?”

Legislation looking to the supervision of the public schools outside of cities has behind it a long and involved history. Township and village school districts and township and village boards of education were provided for as early as the School Code of May 1st, 1873 (70 O. L., 195 et seq.). In that act, on page 209, is Section 52, a part of which is 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 respect to such schools to appoint a superintendent \* \* \* and fix their salaries.”

This law became Section 4017, of the Revised Statutes of 1880. It was amended a number of times between 1880 and 1910, but none of the changes made by those amendments took away the right of a school district to provide for the supervision of its schools by the selection of a superintendent of schools. It was codified in 1910 as Section 7690, General Code, and has since been amended twice—in 1917, (107 O. L., 47) and in 1921, (109 O. L., 377).

The present statute, Section 7690, General Code, in terms, still extends to each city, village or rural board of education authority to employ a superintendent of schools. In 1904 there was enacted Section 4017a, Revised Statutes, (97 O. L. 362), which read as follows:

"The board of education of each village township or special school district may appoint a suitable person to act as superintendent, and to employ teachers of the public schools of the district, \* \* \* but nothing herein shall be construed as preventing two or more districts uniting and appointing the same person as superintendent."

The above section was never amended. It was carried into the Code as Section 7705, General Code.

Upon the adoption of the School Code of 1914, Section 7705, General Code, was repealed. The terms of Section 7690, General Code, then in force, authorizing each school district to appoint a superintendent were not changed at that time, but a comprehensive plan for the supervision of the schools, outside of city school districts (village and rural school districts), was adopted. Such supervision, it was provided, should be accomplished by the election of a county board of education and the employment by such county board of education of a county superintendent of schools, and such district superintendents as might be necessary for the supervision of the schools of the village and rural school districts in the county school district.

Although the terms of Section 7690, General Code, then in force, were not changed upon the adoption of the School Code of 1914, the effect of providing therein for county supervision of schools was to repeal by implication that part of Section 7690, General Code, which authorized each board of education in village and rural school districts to appoint a superintendent of schools. Provision was made, however, at that time for local school authorities, under certain circumstances, to provide for the local supervision of schools, independent of county supervision. This provision was contained in Section 4740, General Code, which, as enacted in 1914, read 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. \* \* \* "

As stated by the court, in the case of *Board of Education vs. Thompson*, 25 N. P. (N. S.), 431, 436:

"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."

For a more detailed history of Sections 4740, 7705 and 7690, General Code, and discussions of the somewhat confusing result of the legislation affecting these sections, both before, and since the adoption of the School Code in 1914 your attention is directed to the cases of *State ex rel Board of Education vs. Riley, Auditor*, 97 O. S., 319, and *Board of Education vs. Thompson*, 25 N. P. (N. S.), 431, and the Opinion of the Attorney General for 1921, at page 684. In the latter opinion it is held, as stated in the syllabus:

"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."

Section 4740, General Code, has been amended several times since 1914, with the result that each time it has been amended, a confusing situation became more confused, until administrative officers were at a loss to know just what Section 4740, General Code, did mean. My immediate predecessor, in an opinion found in Opinions of the Attorney General for 1928, at page 627, said:

"Without reviewing the history of Section 4740, General Code, it is sufficient to say, for the purposes of this opinion, that the only difference, under the present law, between a so-called 4740 district and any other village or wholly centralized school district is that the so-called 4740 district is supervised by a superintendent employed by its own board of education, which superintendent is under the supervision of the county superintendent and performs the same duties with respect to his district as does an assistant county superintendent for other districts, and may be required to teach a part of the time while the other districts are supervised by an assistant county superintendent elected by the county board of education."

In any event, no matter what the effect of Section 4740, General Code, is, at last amended, it has been since 1914 the only authority for a village or rural school district to employ a superintendent, and thus provide for local supervision of its schools, independent of the county board of education and county superintendent and assistant county superintendents of schools. Upon its repeal, no authority will exist for such local supervision or for the employment by a village or rural school district of a superintendent of schools.

By the terms of House Bill No. 362, of the 88th General Assembly, Section 13767-4, General Code, Section 4740, General Code is repealed. In the same act, Section 13767-5, General Code, it is provided:

"This act shall not be construed to affect any rights which might exist under and by virtue of the sections hereby repealed at the date this act goes into effect."

Irrespective of the saving clause above quoted, any contracts entered into by virtue of, and by authority of Section 4740, General Code, while the same was in force, would not be affected by the repeal of the statutes. It therefore follows that any contract made for the employment of a superintendent, by authority of Section 4740, General Code, before the effective date of the repeal of the statute, would be a valid and binding contract, and must be carried out.

I am therefore of the opinion, in specific answer to your question, that inasmuch as Section 4740, General Code, has been repealed, such repeal to become effective August 26th, 1929, school districts which had theretofore functioned by authority of said section, will not thereafter bear the same relationship to the county school system as they had before, except as that relationship may be affected by existing contracts with district superintendents of schools. After the termination of said contracts, said districts will come under the direct supervision of the county superintendents and assistant county superintendents of schools.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*