

1464.

APPROVAL, BONDS OF FRANKLIN COUNTY, OHIO, IN AMOUNT OF \$97,000 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, July 24, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1465.

BOARD OF EDUCATION—WHERE DEPOSITORY PROVIDED, BOARD IS REQUIRED TO DISPENSE WITH TREASURER OF SCHOOL MONEYS—SEE SECTION 4782 G. C.—WHO PERFORMS DUTIES OF TREASURER—CLERK OF BOARD OF EDUCATION.

1. *Under the provisions of section 4782 G. C. the board of education is required to dispense with the treasurer of the school moneys where a depository for such moneys has been provided by the board of education, and upon the establishment of such depository the clerk of the board of education of such school district shall perform all the services and duties of such treasurer.*

2. *The express repeal of a section of the statutes providing for the appointment of a treasurer of the board of education cannot be held to work an implied repeal of the various sections conferring power upon and assigning duties to the clerk of the board of education, in view of the express provisions enacted at the same time whereby such clerk of the board of education succeeded to those very powers and duties. These provisions are thus specifically kept in force and effect, and in assigning the duties of the treasurer of a board of education to the clerk of such board of education, no repealed statute was revived or attempted to be revived as were the facts involved in the case of Godfrey vs. O'Brien, 95 O. S. 166.*

COLUMBUS, OHIO, July 29, 1920.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your request for an opinion upon the following two questions:

- “1. What action is necessary on the part of the school board to dispense with the treasurer of the school funds?
2. Does the opinion of the attorney-general, appearing on page 72 of the 1915 Annual Report still govern?”

In submitting these two questions you also attach a brief from the city solicitor of the city of B., who desired the opinion of this department upon the question as to who was the treasurer of the board of education of the B. city school district in the light of the decision of the supreme court in the case of State ex rel vs. O'Brien, Treasurer, 95 O. S., 167, which decision was rendered by the supreme court on January 9, 1917, and after the issuing of the opinion of the attorney-general upon this question in 1915.

Delay in answering your request has been due to the fact that one of the leading points involved was then pending in the courts of the state in the case of Samuel A.

Kinsinger vs. Board of Education of the Degraff Village School District, et al, which was decided in the supreme court in May, 1920. In the briefs submitted by the city solicitor, the statement is made that:

"The attempt to define the duties, powers and liabilities of one officer by referring to the duties, powers and liabilities of another officer was in violation of section 16 of article 2 of the constitution of Ohio, providing that no law shall be revived or amended unless the new act contains the entire act revived or the section, or sections amended, is mandatory, and that the inclusion by reference of the provisions of a repealed statute is in violation of this provision of the constitution of Ohio and void."

This was the very point that was involved in the Kinsinger case to which reference has heretofore been made.

Section 7604 G. C., as amended in 108 O. L., Part 1, reads as follows:

"That within thirty days after the first Monday of January, 1916, and every two years thereafter, the board of education of *any school district* by resolution shall provide for the deposit of any or all moneys coming into the hands of its treasurer. But no bank shall receive a deposit larger than the amount of its paid in capital stock, and in no event to exceed one million dollars."

Section 4782 G. C., as amended in 108 O. L., part 1, reads as follows:

"When a depository has been provided for the school moneys of a district, as authorized by law, the board of education of the district shall dispense with the treasurer of the school moneys belonging to such school district. The clerk of the board of education of such district shall perform all the services, discharge all the duties and be subject to all the obligations required by law of the treasurer of such school district."

Section 4783 of the General Code reads as follows:

"When the treasurer is so dispensed with, all the duties and obligations required by law of the county auditor, county treasurer or other officer or person relating to the school moneys of the district shall be complied with by dealing with the clerk of the board of education thereof. Before entering upon such duties, the clerk shall give an additional bond equal in amount and in the same manner prescribed by law for the treasurer of the school district."

Answering your first question as to what action is necessary on the part of the school board to dispense with the treasurer of the school funds, the provisions of the law, as above cited, are very clear and no particular action is necessary on the part of the school board to dispense with the treasurer, for that official ceases to act after the depository is established as required by law. However, a resolution properly spread upon the minutes and treating upon that particular question would show the date from which the clerk would be charged with the duties of treasurer of the board.

Your second question is whether the opinion of the Attorney-General, on page 72 of the 1915 annual report, still governs. The syllabus in such opinion reads as follows:

"When a depository has been provided by a city board of education for its school funds, as authorized by law, the board of education of the district must dispense with the treasurer, and the clerk of the board of the city school district performs all the services and duties of such treasurer."

In view of the fact that the present general assembly (108 O. L.) has re-enacted the provisions of section 4782 G. C. without any material change, providing that the clerk of the board of education shall perform all the services, discharge all the duties and be subject to all the obligations required by law of the treasurer of such school district, it must be held that the view of the former Attorney-General is correct and opinion No. 45, appearing at page 72, Vol. 1, Opinions of the Attorney-General for 1915, is herewith affirmed.

An examination of the brief of the city solicitor submitted to you shows that the city treasurer of the city of B. was, on January 24, 1918 elected treasurer of the board of education after such board had established a depository for the school funds of such city school district on January 16, 1918. This was possibly done because of the provisions of section 4763 G. C., which has not been repealed and which reads as follows:

"In each city school district the treasurer of the city funds shall be the treasurer of the school funds. In all village and rural school districts which do not provide legal depositories as provided in sections 7604 to 7608 inclusive, the county treasurer shall be the treasurer of the school funds of such districts." (104 O. L., 158.)

It is noted that section 4763, providing that the treasurer of the city fund shall be the treasurer of the school funds, was passed in 104 O. L., while section 7604 G. C., providing that within thirty days after the first Monday in January, 1916, the board of education of "any school district," by resolution, shall provide for the deposit of any or all moneys coming into the hands of its treasurer" was a later enactment, being passed in 106 O. L., 328.

Section 7604 provides that the board of education of any school district, that is all school districts, must provide for a depository, and being a later enactment than the language appearing in section 4763, must be held to nullify the provisions of the latter section.

Speaking of the original language of section 4782, in the light of section 4763, the Attorney-General, in opinion 1141, Reports of the Attorney-General for 1914, said:

"Section 4782, General Code, as amended, 104 O. L., 159, provides for creating a depository for the school moneys of the school district, in which event the board of education, by resolution adopted by a vote of a majority of its members, shall dispense with the treasurer of the school moneys belonging to such school district. Said section carries the provision that upon the establishment of such depository, and the dispensation of the treasury on the part of the board of education, there upon the clerk of the board of education of such district shall perform all the services, discharge all the duties and be subject to all the obligations required by law of the treasurer of such school district.

"Upon consideration of sections 4763 to 4784, General Code, the clerk of the board of education can receive extra compensation for performing the duties of treasurer of such board, and the board of education has the legal right to fix the compensation of such clerk, when he is required to perform the added duties of treasurer of the board of education, because of the dispensation of said treasurer under section 4782, General Code."

"Section 7604 of the General Code makes it mandatory upon the board of education of a school district to establish a depository and when it fails so to do legal proceedings may invoke to compel the same." (Opinions of the Attorney-General, page 329, Vol. 1, 1912.)

Your attention is also invited to the following portion of the syllabus of opinion 1059, issued on November 30, 1915, to the bureau of inspection and supervision of public offices, appearing at page 2309, Vol. 3, Opinions of the Attorney-General for 1915, to wit:

"Where the board of education of a city school district has provided a depository for the funds of such district and has dispensed with the position of treasurer of said funds under authority of said section 4782, G. C., the clerk of said board *having succeeded to the duties of treasurer of said funds*, under provision of the latter part of said section 4782, G. C., is treasurer of the library fund of said district."

The question raised in the statement of facts from the city treasurer of the city of B., as submitted by you, that the duties of treasurer of the city school board would not devolve upon the clerk of the board of education of such city district, is fully answered in a very recent decision of the Ohio supreme court in the case of Samuel A. Kinsinger, etc., vs. Board of Education of the Degraff village school district, reference to which has heretofore been made. The case of the clerk of the board of education assuming the duties of treasurer of the board of education under direction of the statutes, as amended, is analogous to the Kinsinger case, wherein the same contention was made that the chief inspector of workshops, and factories could not condemn school buildings because the law creating the department of workshops and factories had been expressly repealed and the duties formerly performed by that department were placed within the industrial commission. The court establishes in the Kinsinger case that while there had been a change in name in the agency upon whom devolved the carrying out of the duties, yet none of the sections specifying these duties and giving authority legally therefor had been repealed, and in this respect lies the distinction between the case of Godfrey vs. O'Brien, 95 O. S., 166, and the Kinsinger case, or the statement of facts considered in this opinion. None of the sections creating the duties and obligations of treasurer of a board of education have been repealed; all that has been done is that while such duties and obligations remain the same as before, they have been assigned to the clerk of the board of education under section 4782 G. C.

"* * * The express repeal of the section providing for the appointment of the chief inspector of workshops and factories cannot be held to work an implied repeal of the various sections conferring powers upon and assigning duties to the chief inspector of workshops and factories, in view of the express provisions enacted at the same time whereby the industrial commission succeeds to those very powers and duties. These provisions are thus specifically kept in force and effect. No repealed statute was revived or attempted to be revived as in the case of Godfrey vs. O'Brien, 95 O. S., 166. * * *." (Kinsinger vs. Degraff, decided May 11, 1920.)

It may be said that exactly this same condition applies to the case at hand where the duties and obligations of the treasurer of the board of education have been placed upon and assigned to the clerk of such board of education, and the rule announced by the supreme court in the case of Kinsinger vs. Board of Education of Degraff Village School District settles the point which has been raised that the reassigning of such duties might be unconstitutional.

Based upon the statement of facts given and the law and decision herein cited, it is therefore the opinion of the attorney-general that:

1. Under the provisions of section 4782, the board of education is required to dispense with the treasurer of the school moneys where a depository for such moneys

has been provided by the board of education, and the action necessary in the premises can be had by a resolution spread upon the minutes of such board of education and passed by a majority vote, and thereupon the clerk of the board of education of such school district shall perform all the services and duties of such treasurer.

2. The express repeal of a section of the statutes providing for the appointment of a treasurer of the board of education cannot be held to work an implied repeal of the various sections conferring power upon and assigning duties to the clerk of the board of education, in view of the express provisions enacted at the same time whereby such clerk of the board of education succeeded to those very powers and duties. These provisions are thus specifically kept in force and effect, and in assigning the duties of the treasurer of a board of education to the clerk of such board of education, no repealed statute was revived or attempted to be revived as were the facts involved in the case of *Godfrey vs. O'Brien*, 95 O. S., 166.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1466.

COUNTY BOARD OF EDUCATION—COUNTY SCHOOL DISTRICT REDISTRICTED—DATE EFFECTIVE—WHEN PRESIDENTS OF BOARDS OF EDUCATION MAY ELECT DISTRICT SUPERINTENDENT IN NEW DISTRICT—WHEN DISTRICT SUPERINTENDENT NOT QUALIFIED—WHEN MAJORITY OF PRESIDENTS OF BOARDS OF EDUCATION MAY CALL MEETINGS.

1. *Where a county board of education has redistricted the county school district into new supervision districts, such division is effective as of the following September 1st, but there is no prohibition in the law against the presidents of the boards of education in such supervision district electing the district superintendent in the new district soon after such new district has been created by the county board of education. The contemplation of the law is that this duty should be performed by the electing body in the new supervision district and the county board of education shall perform such duty only where such electing body has failed to elect a district superintendent before the first day of September.*

2. *Where a person has been elected as a district superintendent by the electing body provided for in section 4739 G. C., and such person is thereafter found not qualified for such position as required by the statutes (4744-5 G. C.), it is the duty of such electing body prior to the beginning of the school year on September 1st to elect a new district superintendent, who is qualified, and a meeting for this purpose should be called in the manner provided for in section 4742 G. C.*

3. *Where the president of the board of education in a village or rural district having the largest number of teachers in a supervision district, refuses to issue a call for the meeting of the presidents of the boards of education in such supervision district as provided for in section 4742 G. C., then a majority of the personnel in such electing body in such district can call themselves together for the purpose of performing the duties placed upon them by the statutes.*

COLUMBUS, OHIO, July 29, 1920.

HON. CARROLL A. STUBBS, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of July 12th, requesting the opinion of this department upon the following: