meaning of the word "removal" in the year 1804, when the original statute employing it was enacted, and in such inquiry it is of no aid to know that in 1858, a half century later, the legislature did provide a method of removing the township treasurer for misconduct in office.

In view of the fact that at the time the legislature first enacted what we now call section 3261 G. C. there was no statutory method whereby the township treasurer could be removed from office for misfeasance, malfeasance or nonfeasance, it is the view of this department that the legislature could not have had in mind that meaning of the word "removal." Consequently, we give the word its other possible meaning, which is, removal of the person from the territorial jurisdiction of the township.

Holding, as we do that the case you put falls within the operation of an express statute (to-wit section 3261 G. C.), we at once distinguish the case from the case of Salamanca Township vs. Wilson, 109 U. S. 627.

It is also proper to say that we think the word "removal", as found in section 3261 G. C., means *permanent,* as distinguished from mere *temporary* removal. No necessity arises, however, to discuss this distinction as your letter makes it clear that the removal you have in mind is a permanent one.

It may also be added that the view herein expressed as to the meaning of the word "removal" in section 3261 G. C., is in agreement with the view taken by a former opinion of this department, found in Opinions of the Attorney-General for 1917, Vol. I, p. 527, although in said opinion the construction herein given was assumed to be the correct one without discussion.

By way of direct answer to your question you are, therefore, advised that the permanent removal from the township of the township treasurer creates a vacancy in the office of township treasurer, which vacancy it is the duty of the township trustees, pursuant to the provisions of section 3261 G. C., to fill.

Respectfully,
JOHN G. PRICE,
*Attorney-General.*

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1868.

SCHOOLS—CITY BOARD OF EDUCATION OF SEVEN MEMBERS ELECTED AT LARGE—WHERE CENSUS SHOWS INCREASE IN POPULATION OF CITY—STATUS OF BOARD NOT CHANGED—CITY OF DAYTON.

*A City board of education consisting of seven members elected at large, in pursuance to the provisions of sections* 4698 *et seq. G. C., as amended in* 1919, *constitutes a legal board for a city school district, the population of which is more than fifty thousand and less than one hundred fifty thousand. Such a board also conforms to the provisions of said sections relative to a board required for a city school district containing a population of more than one hundred fifty thousand. In the event that the district containing the lesser population passes the one hundred fifty thousand mark in population, this fact will not change the status of such a board, and members so elected will have a legal tenure of office, notwithstanding the change in population.*

COLUMBUS, OHIO, February 21, 1921.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—In your recent communication you requested an opinion upon the following:

"Prior to January 1, 1920, the board of education of the school district of the city of Dayton was composed of fourteen members of whom two were elected at large and twelve from sub-districts. During the session of the legislature in the early part of the year 1919, a law was passed amending section 4698 G. C., etc., in which provision was made for the elimination of the boards of education of city school districts as described in the above said section. In the November election, there was elected a new board of education consisting of seven members elected at large in full compliance with the terms of the amended section 4698, etc. Was this board chosen at the November election of 1919 legally elected and do its members at this time have a legal tenure of office?"

In a personal interview with you it has been learned that the question presented is a restatement of an inquiry directed to you, and that the real question involved is whether or not the fact that the Dayton city school district had a population of less than one hundred fifty thousand in 1919, at the time the election you refer to was held, and later passed into the class beyond the one hundred fifty thousand mark, would affect the status of the board so elected in 1919, and this opinion will proceed considering such information as a part of the statement of facts.

Section 4698 G. C., as amended in 1919, provides:

"In city school districts containing according to the last federal census a population of less than 50,000 persons, the board of education shall consist of not less than three members nor more than five members elected at large by the qualified electors of such district.

In city school districts containing according to the last federal census a population of 50,000 persons or more, but less than 150,000 persons, the board of education shall consist of not less than two members nor more than seven members elected at large or not less than two members nor more than seven members elected at large and not more than two members elected from subdistricts by the qualified electors of their respective subdistricts. The office of subdistrict member in boards of education in all such city school districts having more than two subdistrict members is hereby abolished and the terms of members elected from such subdistricts shall terminate on the day preceding the first Monday in January, 1920.

In city school districts containing according to the last federal census a population of 150,000 persons or more the board of education shall consist of not less than five nor more than seven members elected at large by the qualified electors of such district; the office of subdistrict member in boards of education in all such city school districts is hereby abolished and the terms of members elected from subdistricts shall terminate on the day preceding the first Monday in January, 1920."

Your attention is invited to Opinion No. 1510, issued by this department to you on August 23, 1920, which contains a rather comprehensive discussion relative to the interpretation that should be placed upon the provisions of section 4698 and other sections in *pari materia* relative to the action to be taken in the event a city school district contains or reaches a population of one hundred fifty thousand. The syllabus of said opinion is in part as follows:

"In passing from one class or kind of city school district to a different one, when, after the official announcement of the census of the district, it becomes known that a change of status of the district has been

produced by a change in population, city boards of education must conform to and apply the law found in sections 4698, 4699, 4701 and 4702 G. C."

Upon the statement of facts it will be assumed that the board of education as now constituted was duly provided for in the election of 1919 in compliance with the provisions of section 4698 and the related sections; and that said board is now composed of seven members duly elected at large.

It will be observed that under the provisions of section 4698, in a city school district, the population of which is more than fifty thousand and less than one hundred fifty thousand, the board of education must have not less than two members elected at large and not more than seven so elected. Such a board may have not more than two members elected from subdistricts, in the event that the board of education elects to do this by proper resolution, but the law does not necessarily require that a board of this character have members elected from subdistricts. Under the terms of this section the office of subdistrict members in boards of education which contain more than two subdistrict members is abolished, and the terms of said members expired on the day preceding the first Monday in January, 1920. It is apparent that if there were to be subdistrict members on such boards in the future, the board of education must provide for the same in the action to be taken under the provisions of section 4699 G. C. From the statement of facts it is assumed that no provision was made for subdistrict members and, as heretofore indicated, no such requirement is imposed.

In view of the foregoing, it must be concluded that the action taken in electing seven members at large was in conformity to the provisions of law. In other words, it would seem that a board composed of seven members elected at large fully complied with the requirements of the act relative to the provisions designating the character of a board of education in city school districts containing a population of more than fifty thousand and less than one hundred fifty thousand.

In further considering the provisions of section 4698 relative to cities having a population of more than one hundred fifty thousand, it will be observed that a board composed of seven members properly elected at large complies with this requirement. In view of this situation it is believed that the board so established fully complies with the requirements of the law, whether the district contains a population of one hundred fifty thousand or a lesser number. This view is further sustained by the provisions of section 4699 G. C., which requires boards of education to take action by resolution, etc., in those cases "in which the number of members does not conform to the provisions of section 4698."

In the case under consideration, the board you describe as it now exists, notwithstanding the fact that the city school district has a population of more than one hundred fifty thousand, if such is the case, conforms to the requirements of section 4698. The board of education only being required to take action when the board does not conform to the provisions of said section, it follows that such a board will continue as the legally constituted board.

You are therefore advised that upon the facts presented and assumed the members of the board you describe should be regarded as having a legal tenure of office.

Respectfully,
JOHN G. PRICE,
*Attorney-General.*