

129.

BOARD OF EDUCATION—RURAL AND VILLAGE SCHOOL DISTRICTS—  
SUSPENSION OF SCHOOLS—SALE OF SCHOOL BUILDING AFTER  
FOUR YEARS—EXCEPTIONS.

SYLLABUS:

1. *Under the terms of Sections 7730 and 7730-1, General Code, the board of education of any rural or village school district which has theretofore suspended any or all schools in such rural or village school district, is required to re-establish such schools when a proper petition, as provided by the statute, is filed therefor. The building and real estate located in the territory of such suspended school, and in which property the board of education has legal title, shall not be sold by such board of education until after four years from the date of the suspension of such school, unless the building has been condemned for school use by the Director of Industrial Relations of Ohio.*

2. *The expression used in Section 7730-1, General Code, "provided however, that if a new building has been erected or is in process of erection to house the children of the territory affected, the building and grounds of such school so discontinued may be sold" will be construed to mean a new building in substantially the same location as the old, to the end that the residents of the territory affected will have substantially the same school privileges as before, so far as attending school is concerned, upon the erection of the new building.*

3. *The Director of Industrial Relations of Ohio is not authorized to condemn school buildings for school use merely for the purpose of enabling boards of education to dispose of the buildings. His authority in that respect extends only to condemning such buildings as by reason of their physical condition merit condemnation.*

COLUMBUS, OHIO, February 27, 1929.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion as follows:

"Some time past the Board of Education of Hardin County created the Ada Rural School District from the Ada Village School District and the Liberty Township School District under Section 4736 of the General Code.

The Board of Education of the Ada Rural School District are building a new school building of sufficient size and capacity to care for all the pupils in the school district.

It is their plan to abandon permanently six one-room school buildings and haul all the pupils in the rural districts to the new building. This change, however, will not take place until September, 1929.

There is need of additional funds for making permanent improvements and repairs about the buildings in grading and improving the grounds.

The question that we have in mind is whether under Sec. 7730-1 the Ada Rural Board of Education can advertise and sell these buildings at once, or whether they would be compelled to wait for a period of 4 years.

Should it be necessary for them to retain these buildings for a period of 4 years, could they not have them condemned by the Industrial Commission and sold?"

It appears that there has recently been created by the County Board of Education of Hardin County, acting under authority of Section 4736, General Code, a new school district by consolidation of what was formerly Ada Village School District and Liberty Township Rural School District. The new district is called Ada Rural School

District. Inasmuch as the new district includes the incorporated village of Ada, with a tax duplicate of more than \$500,000, Ada Rural School District is a misnomer, for the reason that a school district containing within its boundaries an incorporated village, with a tax duplicate of more than \$500,000, is a village school district, regardless of under what name it may be carried on the records of the county board of education. Section 4681, General Code, provides as follows:

“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.”

The only exception to this is where a village school district containing a population of less than 1500, votes to dissolve and join a contiguous rural school district, by authority of Section 4682-1, General Code. This has no application, however, to the specific case here under consideration.

The fact that the new district created by the consolidation of Ada Village District and Liberty Township Rural District is a village district rather than a rural district is significant in the present inquiry for the reason that in rural school districts centralization of schools may be effected by vote of the electors in the district under Section 4726, General Code, in which case the school buildings not utilized in the plan of centralization may be sold at once. See *Feasel vs. Board of Education*, 24 O. N. P. (N. S.) 329, Opinion No. 3099 of the Attorney General rendered under date of January 5, 1929, and addressed to the Prosecuting Attorney of Butler County. In said Opinion No. 3099 it was held:

“When centralization of schools has been authorized in a school district, all school houses and school lots owned by the board and not utilized in the plan of centralization adopted by the board may be sold at once, without waiting for the four year period spoken of in Section 7730, General Code, to elapse.”

There is no provision of law authorizing centralization of schools by vote of the people in village school districts, except as the same may be done by virtue of Section 4726-1, General Code, which provides for centralization of schools in the several school districts in a civil township, by vote of the people.

It appears from your inquiry, however, that action was not taken under said Section 4726-1, General Code, in this case. Practically the same result may be obtained, however, in any school district by so-called consolidation of schools in accordance with the terms of Section 7730, General Code. It appears from your inquiry that the local board of education in the newly formed Ada District now proposes to take action by authority of Section 7730, General Code, to suspend the several local schools in the district, and assign the pupils enrolled in said schools to a centrally located school building now in course of construction.

Section 7730, General Code, provides that the local board of education shall reopen any such school so closed, upon petition signed by the parents or guardians of twelve children between the ages of seven and fifteen years living in the district, and enrolled in the school, if there is a suitable building in the territory of such suspended school. Section 7730-1, General Code, provides that in order to protect the rights of the petitioners mentioned in Section 7730, General Code, the school building and real estate located in the territory of such suspended school shall not be sold by the board of education until after four years from the date of the suspension of the school, unless the school building has been condemned for school use by the Director of Industrial Relations of Ohio. It is provided, however, that if a new building has been

erected, or is in the process of erection, to house the children of the territory affected, the building and grounds of the school discontinued may be sold, and the money used for the payment of the new building, or for other purposes enumerated in the statute.

The purpose of the provisions of the statute giving to the patrons of the school the right to have the school reestablished, and requiring the board of education to hold the school buildings for a period of four years, for that purpose, is, as stated by the Supreme Court in *State ex rel. vs. Board of Education*, 95 O. S. 367, at page 375, to secure to the residents of the rural or village school district which has twelve or more pupils of lawful school age, the privilege of residents of other similar districts that have not been centralized, by the affirmative vote of the people, pursuant to the statute with reference to centralization; that is to say, that where the schools have not been centralized by the affirmative vote of the people, and the board of education takes it upon itself to consolidate the schools, and in the plan of consolidation suspends certain schools, the residents having not participated in a vote of centralization which would result in the suspension of their school, shall have saved to them the right, by way of petition, to have the school reopened and thus secure for them the same rights upon reestablishment of the school as do residents in other districts where the schools have not been suspended.

Keeping in mind the evident intent of the Legislature, as expressed by the Supreme Court, to the effect that the residents in the vicinity of a suspended school should have the right of reestablishing a school upon petition, it seems clear that the language of the provision in Section 7730-1, General Code, to the effect that school buildings may be sold at once if a new building to house the children of the territory affected has been erected, or is in the process of erection, would not grant that right under circumstances such as you relate, that is where the building for the housing of the pupils is being located at some central point in the district, but has reference only to where a new building is being erected or will be erected in substantially the same location as the old building so that the residents in the vicinity of the building may have substantially the same school privilege as before.

The language of Section 7730, General Code, wherein it provides that upon petition filed with the local board of education signed by the parents or guardians of twelve children the board of education shall reopen said school, is mandatory in its term, as are also the terms of Section 7730-1, General Code.

Of course if any of these buildings are condemned by the Director of Industrial Relations of Ohio, the buildings may be sold; however the Director of Industrial Relations is not authorized to condemn the buildings merely for the purpose of permitting their sale, and should not, and will not condemn the buildings unless their condition is such as to merit their condemnation.

I am therefore of the opinion, in specific answer to your question, that under the circumstances stated by you, the Board of Education of the newly created Ada School District, if certain schools are suspended and the pupils assigned to other schools, will have no authority to dispose of the school buildings and the lots upon which these buildings stand, until after a period of four years has elapsed from the date of such suspension.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*