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TRANSFERS, SCHOOL TERRITORY — COUNTY BOARD OF EDUCATION MAY TRANSFER, SECTION 4692 G. C., WITHOUT REGARD TO “PLAN OF ORGANIZATION” OR MODIFICATION FOR COUNTY SCHOOL DISTRICT IN 1938 OR AT ANY TIME — “ORGANIZATION YEAR 1938-1939” — SCHOOL FOUNDATION LAW—135 O. S. 383—SEE OPINIONS ATTORNEY GENERAL, 1939, PAGE 1999.

SYLLABUS:

After the close of the “organization year 1938-1939,” as the expression is used by the Supreme Court of Ohio in relation to plans of organization of school district territory adopted in pursuance of the School Foundation Law, in the case of State ex rel. Adsmund vs. Board of Education of Williams County, 135 O. S. 383, a county board of education may lawfully transfer school territory under and in pursuance of Section 4692, General Code, without regard to any so-called “plan of organization” or modification thereof that may have been adopted for its county school district in 1938 or at any time.

Columbus, Ohio, July 20, 1940.

Hon. Ward C. Cross, Prosecuting Attorney,
Jefferson, Ohio.

Dear Sir:

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

"The Ashtabula County Board of Education is considering several transfers of territory under Section 4692 G. C. During the years 1935, 1936, 1937 and 1938, a county plan of organization was adopted in pursuance of the provisions of Sec. 7600-1 to Sec. 7600-8 G. C. On June 5, 1939, the plan adopted in 1938 was modified. This was approved by the State Director of Education. All of the present boundaries of the school districts in the county conform to this modified plan.

Is it necessary for the County Board of Education to make a modification of the present plan of organization in order to transfer territory from one school district to another under Section 4692 G. C.?"

In 1935, the Legislature of Ohio adopted the School Foundation Law, of which Sections 7600-1 to 7600-9, both inclusive, of the General Code of Ohio are a part.

By the terms of the above mentioned statutes it is provided that,

"On or before the first day of September, 1935, and on or before the first days of April, 1936, 1937 and 1938 * * *."

each county board of education is charged with the duty of preparing a diagram or map of its county school district, showing the location of local districts therein and of school buildings and highways, school transportation routes, and streams and natural barriers, together with a statement of the size and condition of the school buildings, and the number and ages of children attending school in the said buildings. In addition thereto, a statement is to be prepared by the county board of education showing the proposed changes in school district territory by attachment to or detachment from adjoining county, city or exempted village districts, of school territory, which in the opinion of the board would make for economy, efficiency and convenience in the administration of the schools of the district.

Upon completion of each of the surveys mentioned in 1935, 1936, 1937 and 1938, each such said county board of education is directed to prepare a new diagram or map of the school districts in its county district, prescribing the transfers of territory, elimination of school districts or creation of new districts as would in its opinion provide a more economical and efficient system of county schools. On June 1st annually this new map or diagram is to be adopted as the plan of school district organization for the said county school district.

In Section 7600-3, General Code, it is provided that before adopting the annual plan of organization as provided for above, a public hearing, after due notice thereof has been given by advertisement as provided by the statute, should be held for the purpose of securing the advice and suggestions of interested persons and boards of education. Section 7600-4, General Code, provides as follows:

“In case the county board of education deems it necessary to modify or change the adopted plan, the board shall provide for a public hearing before any change therein shall be made.”

Sections 7600-7 and 7600-8, General Code, provide as follows:

Sec. 7600-7. “On or before the 15th day of October, 1935, and on or before the first day of July, 1936, 1937 and 1938, the county board of education shall transmit such adopted plan of organization to the director, who shall approve the same, with such modifications and additions thereto, as he deems desirable, and shall certify his approval to the county board of education: Provided, however, that the director shall grant one or more hearings to the county board of education, to any affected board of education and to any interested persons affected, with reference to any such modification or additions. Upon approval of the director, such plan of organization within any county shall take effect upon a date to be fixed by the director, and thereafter no school district or parts thereof shall be transferred or the boundary lines thereof changed unless such transfer or change of boundary lines is in accordance with such adopted plan of organization. Nothing in this act shall be construed as a delegation of authority to the county board of education or the director to create a debt in any school district for any purposes.”

Sec. 7600-8. “A county plan of organization may be modified and changed, at any time after adoption, by a county board of education, or by the director, in the same manner as provided for the adoption of such plan.”

Section 4692, General Code, which has been in existence for a number of years and was reenacted with some immaterial amendments so far as our present inquiry is concerned, in 1935, at the same session of the Legislature wherein the School Foundation Law was adopted, provides in substance that a county board of education may in its discretion, and upon its own initiative, transfer school territory from one district within its county district to another district in the same county school district. Of course, in cases where territory included within a local district in which the schools have been centralized by vote of the people in pursuance of Section 4726, General Code, is involved, a county board of education can not act under

Section 4692, General Code, unless and until a petition signed by 66- $\frac{2}{3}$ % of the electors residing on territory sought to be transferred, requesting the transfer, is filed with it as provided by Section 4727, General Code. The only limitation on the power of a county school board to transfer territory in pursuance of Section 4692, General Code, other than that mentioned with respect to centralized territory is the power of remonstrances reserved to the electors in the territory transferred.

All the statutes hereinbefore referred to deal with the subject of transfer and reorganization of school district territory. They are therefore in *pari materia* and must be construed together and harmonized if possible. Other statutes dealing with the same subject matter although not directly involved in your inquiry are Sections 4696 and 4736, General Code. Section 4736, General Code, grants to the county board of education the power to create new districts from all or parts of existing districts. This power is limited somewhat by the right of the electors residing in territory affected, to file remonstrances when new districts are created.

A county board of education has no jurisdiction over the city and exempted village school districts and can not initiate the transfer of any part of its territory to city or exempted village districts or to an adjoining county school district. The making of this class of transfers is provided for by Section 4696, General Code. Among other provisions this statute grants to a county board of education the power to transfer territory from a district of its county school district to a contiguous city, exempted village or other county school district upon the filing with it of a petition signed by 50% of the electors residing in territory sought to be transferred and if such petition is signed by 75% or more of such electors, the duty of the county board to make the transfer as requested is mandatory.

Reference is herein made to Section 4696, General Code, and the mandatory provisions thereof, because the application of the provisions of law contained in the statute in relation to the School Foundation Law and particularly that part of the School Foundation Law relating to the adoption of annual plans of organizations and modifications of such plans was directly involved in the case of *State ex rel. Adsmond vs. Board of Education of Williams County*, 135 O. S., 383 and several other cases decided by the Supreme Court of Ohio on the same day and reported in the same volume immediately following the report of the *Adsmond* case. It appeared in the

Adsmond case that a petition to transfer certain school territory lying in the Williams County School District and contiguous to the Bryan Exempted Village School District to the Bryan District, which petition met all legal requirements and was signed by 75% or more of the electors residing in the territory sought to be transferred, was filed with the Williams County Board of Education on May 16, 1938, the day upon which the said county board of education was holding a public meeting for the consideration of its proposed 1938 plan of organization as directed by law, and the question presented was whether or not the filing of the said petition imposed upon the county board of education the mandatory duty of making the transfer as requested by the petition even though the transfer if made would not be in conformity with the plan of organization then in force. The court answered the question in the affirmative, and said:

“Such county board of education is not warranted in refusing such transfer because of any inhibitions in Section 7600-7, General Code, wherein it is provided that ‘such plan of organization within any county shall take effect upon a date to be fixed by the director, and thereafter no school district or parts thereof shall be transferred or the boundary lines changed unless such transfer or change of boundary lines is in accordance with such adopted plan of organization.’”

As stated above, the petition for the transfer involved in the Adsmond case was filed with the county board of education on May 16, 1938. The county board refused to make the transfer and an action in mandamus was instituted in the Court of Appeals to compel the board to act favorably on the said petition on July 8, 1938. On January 13, 1939, a peremptory writ of mandamus was issued by the Court of Appeals commanding the county board of education to make the transfer as prayed for at the expiration of one year after the adoption of the plan of organization adopted in 1938.

Judge Hart, of the Supreme Court, in affirming the action of the Court of Appeals, after noting the provisions of the School Foundation Law, and of Section 4696, General Code in their relation to the facts involved, made the following comment:

“The petition for transfer may reasonably be construed to contemplate the transfer upon the turn of the organization year, and not necessarily as of the date when the petition is filed.” The Court of Appeals took this view and accordingly entered its decree to the effect that the transfer be made as of the *close of the year* 1938-1939. The court sees no objection to this procedure.

The rule suggested does not violate the letter of these statutes and it certainly falls within the spirit of them when construed together. On any other theory Section 4696, General Code, could never have operation, and yet no one appearing before this court has been so bold as to claim that Section 4696, General Code, has been repealed by implication by Section 7600-7, General Code.”
(Underscoring the writer’s.)

The language used by the court as quoted above, clearly shows that in the mind of the court there came a time when the organization year 1938-1939 came to an end and when that time came transfers could and should be made as provided by law without reference to any plan of organization. It should be noted that the decree of the Court of Appeals which the Supreme Court affirmed in the above case did not require that a formal modification of an existing plan of organization be made before making the transfer as petitioned for and ordered.

As no power is extended by the statutes to formulate and adopt a plan of organization after the one adopted in 1938, the only plan that could be in existence at the close of the year 1938-1939 if any plan is then or thereafter in existence, would be the plan adopted in 1938. The definite holding of the Supreme Court in the Adsmond case is that the transfer there involved should be made at that time without reference to any plan.

In a former opinion rendered by me under date of July 28, 1939, and reported in the published Opinions of the Attorney General for 1939, page 1363, where a question somewhat similar to the one in the present inquiry was under discussion, I said; after noting the language of the Supreme Court in the Adsmond case which is quoted above:

“So far as the express provisions of Sections 7600-1 to 7600-8, both inclusive, standing alone, are concerned, it is difficult to gather that the plan adopted in 1938 expires in 1939, at the close of the organization year 1938-1939, yet from the decree of the court upon consideration of these statutes with those in *pari materia*, and the language used by the court in expressing its conclusion, it is apparent that in the minds of the court such is the case. As it is clear from the terms of these statutes that no mandatory duty is imposed upon, nor is any authority extended to county boards of education to adopt plans of organization in the year 1939 or after June 1, 1938, it must be concluded in the light of the language used by the Supreme Court in the case mentioned above, that at the close of the organization year 1938-1939, plans of organization expire, and thereafter no further plans of organization in the sense that the term is used in these statutes, can be adopted.”

Action of a county board of education in pursuance of the power extended to it by Section 4692, General Code, is purely discretionary and may be defeated only by the filing of proper remonstrances. If, in its discretion, the county board of education determines that the making of readjustments of county school district territory by transfers from one district to another, of the same county school district by authority of Section 4692, General Code, or by creating new districts by authority of Section 4736, General Code, will provide a more economical and efficient system of county schools and decides to make such transfers or create new districts, it would be an idle ceremony to go through the form of giving notice and holding hearings to modify a present existing plan of organization, if in fact such a plan is in existence after the end of the organization year 1938-1939 as spoken of by the Supreme Court so as to conform to a transfer that it had previously determined to make. If it must go through this form and secure the approval of a modified plan by the Director of Education before acting under Section 4692, General Code, the Director might by refusing to consent to a modification of an existing "plan" render the provisions of Section 4692, General Code, inoperative, and yet, as the Supreme Court said about Section 4696, General Code, no one has been so bold as to claim that Section 4692, General Code, has been repealed by implication by Section 7600-7, General Code, or any other section.

There is no more reason for saying that Section 4692, General Code, has been repealed or rendered inoperative than that Section 4696, General Code, has been. And the Supreme Court definitely held that the latter section is in force, and "after the close of the year 1938-1939" transfers of territory may be made under and in pursuance of Section 4696, General Code, regardless of any plan of organization that may have been previously adopted, and without formally modifying such a plan, and as no authority exists for adoption of a new plan after the end of that year, the effect of the holding of the Supreme Court is that transfers as provided by Section 4696, General Code, should be made without regard to any "plan of organization" the same as though no such law had ever been in existence. In effect, this holding is that the law relating to plans of organization of school district territory as provided by Section 7600-1 to Section 7600-9, both inclusive, of the General Code, expires by its own limitations.

The question here under consideration, was involved in a former opinion

rendered by me under date of October 25, 1939, Opinions of the Attorney General for 1939, page 1999, wherein it was held as stated in the sixth branch of the syllabus as follows:

“When, at any time after the expiration of the ‘organization year’ of 1938, otherwise spoken of as ‘the close of the year 1938-1939’ as the expressions are used in the case of *State ex rel. Adsmund v. Board of Education of Williams County*, 135 O. S., 383, at pages 389 and 390, it is proposed to transfer school territory either in pursuance of Section 4692 or 4696, General Code, or to create a new school district in pursuance of Section 4736, General Code, it is not necessary to follow the procedural steps laid down by Sections 7600-1 et seq., of the General Code, of Ohio.”

I am therefore of the opinion, in specific answer to your question that, after the close of the organization year 1938-1939, as the expression is used by the Supreme Court of Ohio, in relation to plans of organization of school district territory adopted in pursuance of the School Foundation Law, in the case of *State ex rel. Adsmund vs. Board of Education of Williams County*, 135 O. S., 383, a county board of education may lawfully transfer school territory under and in pursuance of Section 4692, General Code, without regard to any so-called “plan of organization” or modification thereof that may have been adopted for its county school district in 1938 or at any time.

Respectfully,

THOMAS J. HERBERT,
Attorney General.