

tion in the absence of a petition being filed, signed by fifty-one percent of the property owners as set forth in Section 3298-3, General Code.

It would appear from Section 3298-2, and related sections, that the filing of a proper petition, signed by at least fifty-one per cent of the land or lot owners, is a jurisdictional step that must be taken preceding the action of the township trustees in viewing the road and determining to improve it where such action is taken by a majority of the board only.

In the case you present, while it would seem there is nothing to prevent additional names being added to the petition, said petition would be of no effect, in so far as any actions that have been taken by the trustees prior to its being supplied with a sufficient number of names. In other words, new names might be added to the petition, but it would be necessary to have the board of township trustees take action thereon as if it were an original petition.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion:

First, where only a majority of a board of township trustees act upon a petition to improve a road, if said petition does not contain at least fifty-one percent of the land or lot owners who are to be especially taxed or assessed for said improvement the action of said trustees is void.

Second, under such circumstances, if the board of trustees has acted by a unanimous vote, the lack of sufficient signatures on the petition would have no effect.

Third, under such circumstances, additional names might be added to the petition, but if action is to be taken by only a majority of the members of the board of trustees in order to make the action valid, it will be necessary for them to re-enact all of the procedure the same as if an original petition had been filed.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3844.

BOARD OF EDUCATION—WHERE NECESSARY MAY ESTABLISH
SCHOOLS CONSISTING OF LESS THAN EIGHT GRADES.

SYLLABUS:

If, in the opinion of a board of education, it will best serve the interests of education in the district, it may establish schools where one or several school grades are taught, and may, by force of Section 7684, General Code, assign the youth of the district to the schools so established.

COLUMBUS, OHIO, December 11, 1931.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

“I am informed that in several cases where the elementary schools

are over-crowded, boards of education have established schools known as auxiliary schools in which are housed pupils of the first four grades.

Attached hereto is a letter giving detailed information concerning these schools.

The question has arisen as to whether the boards of education in such cases can assign pupils to these auxiliary schools and still be fulfilling the requirements of Sections 7644, 7648 and 7684."

From the letter referred to in your inquiry, I gather that this question has arisen by reason of the fact that in a certain school district there have been established schools in which instruction is given in the first four grades, only.

Some doubt has arisen in the mind of the county superintendent of schools for the county school district in which this district is located, with reference to the right of the board of education to assign pupils to this school, inasmuch as the school does not measure up strictly to the definition of an elementary school as defined by statute.

Section 7684 of the General Code, authorizes boards of education to "make such assignments of the youth of their respective districts to the schools established by them as in their opinion will best promote the interests of education in their districts."

The power granted to a board of education in the statute referred to above, is not limited so far as the class of schools to which an assignment of pupils may be made is concerned.

The only question is whether or not a board of education is authorized to establish a school such as you mention.

Section 7644, General Code, provides that each board of education shall establish a sufficient number of elementary schools to provide for the free education of all the youth of school age in the district. Section 7648, General Code, defines an elementary school as one where instruction is given in certain branches of learning therein named "primarily to students of the first to eighth school years."

I find nothing in the provisions of these statutes which requires a board of education to establish an elementary school for the entire eight grades in one building or under one roof.

Boards of education have wide discretion in the establishment of schools and, in my opinion, may, in carrying out the provisions of Section 7644, General Code, providing for the establishment of such elementary schools as may be necessary, establish schools wherein one or more of the several grades are housed.

I am of the opinion that if, in the opinion of a board of education, it will best serve the interests of education in the district, it may establish schools where one or several school grades are taught, and may, by force of Section 7684, General Code, assign the youth of the district to the schools so established.

Respectfully,

GILBERT BETTMAN,
Attorney General.