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SCHOOL DISTRICT, LOCAL—TO BECOME EXEMPTED VILLAGE SCHOOL DISTRICT MUST CONTAIN VILLAGE OF THREE THOUSAND OR MORE, LAST FEDERAL CENSUS OR TWO THOUSAND OR MORE, LAST FEDERAL CENSUS AND SUFFICIENT POPULATION OUTSIDE THE VILLAGE BUT WITHIN SCHOOL DISTRICT, TO MAKE TOTAL POPULATION THREE THOUSAND OR MORE—SECTION 4830-7 G. C.

SYLLABUS:

A local school district, in order to become an exempted village school district pursuant to Section 4830-7, General Code, must contain either a village of three thousand or more according to the last federal census; or a village of two thousand or more according to the last federal census and sufficient population outside the village, but within the school district, to make a total population of three thousand or more.

Columbus, Ohio, July 14, 1949

Hon. Clyde Hissong, Superintendent of Public Instruction
Columbus, Ohio

Dear Sir:

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

"I should like to have your opinion relative to a situation that requires an interpretation of Section 4830-7 of the General Code.

"Under proviso (2) of the section above referred to a resolution declaring intent to become an exempted village school district may be adopted by a majority vote of the full membership of the board of education of any local school district which contains within its territorial boundaries 'all of the territory lying within the corporate limits of a village having a population of two thousand or more according to the last federal census and a population outside of the corporate limits of said village, as determined by a census taken by such board of education, sufficient to make the total population of such district three thousand or more.'

"I have received from the board of education of a local school district a copy of a resolution declaring the intent of the board of education to become exempt from county supervision. The resolution was accompanied by a statement from the Director of the Bureau of Census certifying that according to the returns of a special census taken December 27, 1948, the population of the incorporated village was 2180. The resolution was accompanied also by a census of residents residing in territory of school district outside of the corporate limits of the village, which census shows a total population of 861 residents in the school district territory that is outside of the corporate limits of the village. Section 4830-7 provides that such census shall be approved by the Superintendent of Public Instruction before the school district is deemed to have sufficient population to meet the requirements of an exempted village school district.

"The records of the county auditor show that the school district in question does not contain within its territorial boundaries all of the territory lying within the corporate limits of the village. In other words, there is a small area within the corporate limits of the village that is a part of a school district other than the school district that seeks to become an exempted village district. I should like your opinion as to whether under the exist-

ing conditions this local school districts meets the requirements of statute to become an exempted village school district.”

An act of the legislature in 1943, 120 O. L. 475, provided for recodification and revision of the laws of Ohio pertaining to the public schools and for the purposes of accomplishing same certain sections of the then existing laws were amended or repealed.

So far as I know, your question has never been passed upon officially by this office or by the courts, and the only guide we now have to the intention of the legislature in enacting Section 4830-7 is to be found in the language embodied therein, interpreted in the light of the circumstances under which same was enacted.

Sections 4830 to 4830-20, inclusive, of the General Code, provide for the establishment of school districts throughout the state. School districts are now styled as city, local, exempted village, county, joint high and joint vocational school districts.

The question presented involves a local school district and how it, as such, may become an exempted village school district.

Section 4830-2 of the General Code defines local school district as follows:

“Each school district other than a city school district, exempted village school district, county school district, joint high school district or joint vocational school district, in existence on the effective date of this act, shall be known and styled as a local school district and shall continue to be known and styled as a local school district until it has lost its identity as a separate school district or has acquired a different styling as provided by law. All school districts created after the effective date of this act, other than city school districts, exempted village school districts, county school districts or joint vocational school districts, shall be known and styled as local school districts.”

The above cited section creates the classification of “local school district.” This classification is made up of what was formerly known as rural and village school districts. The General Code did not define rural school districts. Village school districts were defined in former section 4681, 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.”

Exempted village school district is now defined in Section 4830-3, General Code, as follows:

“Each school district known and styled as an exempted village school district on the effective date of this act shall, after the effective date of this act, be known and styled as an exempted village school district and shall continue to be known and styled as an exempted village school district until it has lost its identity as a separate school district or has acquired a different styling as provided by law.”

An exempted village school district, as defined in former section 4688 of the General Code, read:

“The board of education of any village school district containing a village which according to the last census had a population of three thousand or more, may by a majority vote of the full membership thereof decide to be exempted from the supervision of the county board of education. Such village school district by notifying the county board of education of such decision before May first in any year, shall be exempt from the supervision of the county board of education for the following school year which begins September first thereafter. The village once so exempted shall be styled an exempted village school district and shall remain so until the board of education thereof by a majority vote of the full membership determines that it desires to be supervised by the county board of education and notifies the county board of education on or before May first in any year to that effect.”

It should be noted at this time that no provisions were made in the new school Code for a village school district.

Section 4830-6 of the General Code provides that:

“When a local or exempted village school district contains within its territorial boundaries the major portion of the territory lying within the corporate limits of an incorporated village advanced to a city, such school district shall become a city school district.

“In the event a minor portion of the territory lying within the corporate limits of an incorporated village advanced to a city is contained within the territorial boundaries of a local or exempted village school district other than the school district containing the major portion of the territory lying within the corporate limits of such village, such territory shall remain a part of such local or exempted village school district until transferred to another school district as provided by law.”

Former Section 4686 of the General Code provided that :

“When a village is advanced to a city, the village school district shall thereby become a city school district. When a city is reduced to a village, the city school district shall thereby become a village school district. The members of the board of education in village school districts that are advanced to city school districts, and in city school districts that are reduced to village school districts shall continue in office until succeeded by the members of the board of education of the new district, who shall be elected at the next succeeding annual election for school board members.”

In O. Jur. Vol. 36, at page 87, it reads :

“The general policy of the school laws looks to the formation of school districts without breaking over county or township lines. But although the policy of the law in Ohio in the past has been to make school districts coincide territorially with the political units within which they have been formed as township, village, and city districts, and to have them as they passed out of one status to merge into the next higher one, such exceptions to this rule as special and joint districts being allowed only upon considerations of public convenience and welfare, school districts are now made up of territory without reference to the political divisions of the state, and they are distinct corporations.”

It further reads in Vol. 36 O. Jur., supra, at page 87 :

“The legislature has the right to classify school districts as much as it has to classify municipalities, so long as it is not in conflict with the Constitution and is not unreasonable. Since an organization of village school districts should be radically different from that of the city school districts in the larger cities of the state, classification based on population is a proper one if it is not false, unnecessary, arbitrary, or evasive.”

Section 4830-7 of the General Code provides the method by which a local school district may acquire a different styling. Said section reads as follows :

“The board of education of any local school district which contains within its territorial boundaries: (1) all of the territory lying within the corporate limits of a village having a population of three thousand or more according to the *last federal census*; or, (2) all of the territory lying within the corporate limits of a village having a population of two thousand or more according to the *last federal census* and a population outside of the corporate

limits of said village, as determined by a census taken by such board of education, sufficient to make the total population of such district three thousand or more, may, by a majority vote of the full membership of such board of education, declare that such district be exempt from the supervision of the county board of education.

“When the board of education of a local school district notifies the county board of education, on or before May first in any year, that it has adopted, by a majority vote of its full membership, a declaration that such local school district shall be exempt from the supervision of the county board of education, such local school district shall be exempt from the supervision of the county board of education for the school year commencing July the first following the date of such notification and thereafter except as provided by law.

“The local school district so exempted from the supervision of the county board of education shall be known and styled an exempted village school district until its status as an exempted village school district has been changed as provided by law.

“A census taken by the board of education of a local school district, of territory outside the corporate limits of a village, shall be taken by persons appointed by such board of education. Each person so appointed shall take an oath or affirmation to take such a census accurately. He shall make his return under oath to the clerk of the board. The clerk of the board shall send certified copies of such census to the county auditor and to the superintendent of public instruction. Such census shall be approved by the superintendent of public instruction before the school district is deemed to have sufficient population to meet the requirements of an exempted village school district.” (Emphasis added.)

It is to be observed that one of the major prerequisites of any local school district, before becoming exempt from county supervision, is that it must contain within its territory all of a village. It apparently was the thought of the legislature when it repealed provisions for a village school district and enacted provisions for a local school district, that a village, by virtue of its population, could become exempt from county supervision pursuant to Section 4830-7. It is to be further observed that in Section 4830-7 the method of arriving at population was based upon the last federal census.

In Volume II C. J., at page 70, paragraph 2 reads:

“Under express provisions of the Constitution of the United States, a census of the United States is taken once in every ten years.”

Article XI, Section 1, of the Constitution of Ohio, reads:

“The apportionment of this State for members of the General Assembly, shall be made every ten years, after the year one thousand eight hundred and fifty-one, in the following manner: The whole population of the State, as ascertained by the federal census, or in such other mode as the General Assembly may direct, shall be divided by the number ‘One Hundred,’ and the quotient shall be the ratio of representation in the House of Representatives, for ten years next succeeding such apportionment.”

In the case of *Murray v. The State ex rel Nestor*, 91 O. S. 220, the third paragraph of the syllabus reads as follows:

“A municipal corporation which had a population of less than five thousand at the last federal census did not advance to a city when it was made to appear by an official census taken by the municipal corporation subsequently thereto that it had a population of more than five thousand.”

It is further said by the court in 91 O. S., *supra*, at page 230:

“There are then in the General Code these statutes which regulate the transition of municipalities from one class to the other. Applying them here, the municipal corporation of East Youngstown, according to the federal census of 1910, was a village. This will be its status until it appears from a federal census that it has a population of 5,000 or more and the result of such federal census has been officially made known by the secretary of state and such steps taken as are required by Section 3498, unless under the authority conferred upon it by the constitutional provision the general assembly sees fit to change the method of transition.”

The last federal census in the instant question can mean only the federal census taken as of the year 1940.

In view of the foregoing, it is therefore my opinion that a local school district, in order to become an exempted village school district pursuant to Section 4830-7, General Code, must contain either a village of three thousand or more according to the last federal census; or a village of two thousand or more according to the last federal census and sufficient population outside the village, but within the school district, to make a total population of three thousand or more.

Respectfully,

HERBERT S. DUFFY,
Attorney General.