

1120.

BOARD OF EDUCATION—PETITION FOR CENTRALIZATION—ISSUANCE OF BONDS TO BUILD CENTRALIZED SCHOOL.—MAJORITY REQUIRED TO CARRY ELECTION.

SYLLABUS:

1. *If the board of education of a rural school district submits the question of centralization upon a petition signed by at least 25% of the qualified electors of such rural school district, and the petition states that centralization is to be in one place only, such a petition is not in accordance with the provisions of Section 4726, General Code, and it therefore is not mandatory upon the board of education of such rural school district to submit the question of centralization to the qualified electors of the rural school district. If such a petition, specifying the mode and manner of centralization is presented to such rural board of education, it is within the discretion of such board of education to determine whether it will refuse to act upon the petition and not submit the question of centralization to the qualified electors of the school district, on the ground that the petition presented is not in accordance with the provisions of Section 4726, General Code, or whether in accordance with the privilege it has under the provisions of Section 4726, supra, it will on its own action, submit the question of centralization to the qualified electors of the rural school district.*

2. *The question for the issuance of bonds to build a central school or schools cannot be submitted to the electors at the same time that the question of centralization is submitted. The question of centralization and the question for the issuance of bonds to build a school or schools may be submitted at a general election. If the bonds to be issued are for any of the purposes mentioned within the exception of Section 2293-22, General Code, the proposition for centralization and the proposition for the issuance of bonds for any of the purposes mentioned in said exception may both be submitted to the electors of the rural school district at a primary election or at a special election called for such purpose. The question of centralization and the question for the issuance of bonds to build a school or schools may be submitted at a special election also in a case where a building or buildings are to be established through participation in federal aid and the approval by the proper federal authorities has been obtained and also, consent has been obtained from the Tax Commission of Ohio, for such election.*

3. *The majority required to carry an election in favor of centralization of schools is a majority of the votes of those voting on the question of centralization.*

4. *If the question of centralization and the question for the issuance of bonds to build a school or schools are submitted at the same election, both questions or issues may be placed upon the same ballot.*

5. *The question submitted by the board of education of the rural school district to the qualified electors of such rural school district is whether or not the school or schools of such rural school district shall be centralized.*

6. *If the required majority of votes is cast on the question of centralization, at the election, a transfer of territory in the centralized rural school district cannot be made by the county board of education under authority of the provisions of Sections 4692 and 4696, General Code, except upon a petition being presented to the county board of education, signed by two-thirds of the qualified electors of the territory petitioning for the transfer; and then such transfer may be made by the county board of education only if, in its discretion, it deems it advisable.*

COLUMBUS, OHIO, September 10, 1937.

HON. NORTON C. ROSENRETER, *Prosecuting Attorney, Ottawa County, Port Clinton, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

"May I have your opinion concerning the following situation:

At a recent meeting of the Allen Township Board of Education in this Ottawa County, a petition containing the names of at least 25% of the electors in said district, requesting the Allen Township Board of Education to submit at a special election the question of centralizing the schools of Allen Township was submitted. The Allen Township School District is a rural school district under the classification of the several school districts of Ohio. Several questions have arisen with reference to this proposal which I have been requested to submit to you for your opinion.

First: If the question of centralization is submitted by a board of education of a rural school district, and if the petition asking for submitting the question states that the centralization is to be in one place only, may the board of education in its

discretion centralize in more than one place if the vote is favorable for centralization?

Second: May a proposition for a bond issue to build a central school or schools be submitted at the same time when the question of centralization is voted?

Third: What majority is required to carry an election in favor of centralization of schools?

Fourth: If both the proposition of centralization and a bond issue is submitted at the same time, may these issues be placed upon the same ballot, or would it require separate ballots?

Fifth: May the Board of Education submit the proposition whether to centralize in one place or several places in the district or is the issue stated simply as, 'shall the schools be centralized or shall they not be centralized', on the ballot?

Sixth: Can the proposition of issuing bonds for the erection of a school building if the centralization proposition carries, be submitted at a special election except under House Bill No. 544 passed by the Ohio Legislature, May 23, 1935.

Seventh: If the proposition for centralization of schools carries, what effect does it have on Sections 4692 and 4696 of the General Code with reference to transfer of territory?

Section 4726, General Code, which provides for a rural board of education submitting the question of centralization to the vote of the qualified electors of a rural school district, reads as follows:

"A rural board of education may submit the question of centralization, and, upon the petition of not less than one-fourth of the qualified electors of such rural district, or upon the order of the county board of education, must submit such question to the vote of the qualified electors of such rural district at a general election or a special election called for that purpose. If more votes are cast in favor of centralization than against it, at such election, such rural board of education shall proceed at once to the centralization of the schools of the rural district, and, if necessary, purchase a site or sites and erect a suitable building or buildings thereon. If, at such election, more votes are cast against the proposition of centralization than for it, the question shall not again be submitted to the electors of such rural district for a period of two years, except upon

the petition of at least forty per cent of the electors of such district.”

Section 4679, General Code, reads as follows:

“The school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts; rural school districts and county school districts.”

In 36 Ohio Jurisprudence, Section 58, page 95, it states: “ * * * the former township and special school districts were constituted by the statute into rural school districts.” The same principle of law is stated in *Thompson vs. State, ex rel. Clemens*, 92 O. S., 284; *Trumbull County Board of Education vs. State, ex rel. Van Wye*, 122 O. S., 247.

Therefore, the “Allen Township Board of Education,” so called, in your request, is a rural board of education, within the purview of Sections 4726 and 4679, supra.

It is to be observed from a reading of Section 4726, supra: that, if under the provisions of this section the proposition of centralization is voted upon, it includes centralization of all the schools in that particular rural school district; that, exclusive authority to determine whether or not the rural school or schools of a particular rural school district shall be centralized, is vested in the qualified electors of such rural school district; that, exclusive authority to submit the question of centralization is vested in the board of education of the rural school district; that, the statute provides the following three methods by which proceedings may be commenced to submit the question of centralization: (1) voluntarily, by the action of the board of education of the rural school district; mandatorily, either (2) upon the petition of 25% of the qualified electors of such rural school district, or, (3) upon the order of the county board of education; that, a petition of 25% of the qualified electors of such rural school district filed with the board of education of such rural school district serves no other purpose than being a means or method by which the rural board is required to submit the question of centralization; that, in fact, the question of centralization can be submitted without a petition, either through the action of the board of education of the rural school district, itself, or, upon order of the county board of education; that, there is not anything in the statute which makes any distinction in, or, gives any preference to, having the question of centralization submitted by reason of a petition having been filed with the board of education of the rural school district, than having it submitted by reason of the other two methods provided for; that, there is nothing in Section 4726, supra,

that can be construed or interpreted as giving the county board of education the authority to include in its order to the board of education of the rural school district the mode and manner in which centralization of such rural school district shall be made—that is, ordering it to be made in one place or more than one place. Therefore, it is only obvious that if the county board of education cannot specify the mode and manner of centralization in its order to the rural board of education for centralization, then the petition of 25% of the electors requiring submission cannot specify the mode and manner in which centralization must be made.

In order to show that the petition cannot specify that centralization is to be in one place or more than one place let us assume that 25% of the qualified electors of a rural school district filed with the board of education of the rural school district a petition which specified that centralization was to be in one place, and the rural board of education was limited to proceed with establishing the centralized school or schools in one place as specified in the petition. This would result in all the electors of the rural school district being compelled to vote on the proposition of centralization in the manner and mode as specified by 25% of the electors; it would make the petition the sole factor in determining the manner in which centralization was to be completed, when Section 4726, supra, makes the filing of a petition only a means by which the board of education of the rural school district is requested to submit the proposition of centralization.

In a case where a majority of votes were cast for centralization, it would result, in the qualified electors of such rural school district not only determining that there shall be centralization (a right given to them under Section 4726, supra), but also, the right to determine the mode and manner of centralization, a right which Section 4726, supra, does not provide for. It would result in giving the board of education of the rural school district no discretion, whatsoever, as to determining the mode and manner of centralization. This is inconsistent with the very language of Section 4726, supra, which provides merely that the board of education shall submit such question, and if on submission there is a majority vote, the board “shall proceed at once, to the centralization of the schools of the rural district.”

No other construction or interpretation can be gained from the plain and clear language contained in Section 4726, supra, than that, the electors of the rural school district are to determine whether or not there is to be centralization; that, if they so determine, then the board of education “shall proceed at once to centralization of the schools of the rural school district”; that, the authority “to proceed” with centralization carries with it the authority to proceed in such manner and mode as the board may in its discretion determine, to the extent that it may “if necessary,

purchase a site or sites and erect a suitable building or buildings thereon"; that, no imperative duty rests upon the board of education to purchase a site or sites and erect a building or buildings until after a determination by the board of a necessity therefor, and in my opinion, this alone is sufficient to give the board of education the authority to determine whether the centralized school or schools to be established in such rural school district shall be in one place or more than one place.

Section 7690, General Code, provides that: "Each city, village or rural board of education shall have the management and control of all the public schools of whatever name or character." Section 7620, General Code, authorizes a board of education of a district to "build, enlarge, repair and furnish the necessary school houses" and "make all other provisions necessary for the convenience and prosperity of the schools within the sub-districts."

It was stated in an opinion rendered by a former Attorney General, Opinions of the Attorney General for 1920, Vol. II, at pages 885, 886:

"Under the broad grant of power found in the law in Section 7690, General Code, as to control and management and in Section 7620, as to building, repair and purchases, there can be no doubt that a central school building may be erected to house the elementary and high schools of a rural school district."

It therefore can as well be said that under the provisions of Sections 7690 and 7620, General Code, it is within the discretion of a board of education of a rural school district to determine whether all schools in the district shall be in one place, or in more than one place, or, the high school in one place and the elementary school in another place in the school district. There is nothing in Section 4726, supra, that restricts or takes away any of the powers or duties of a rural board of education upon centralization of the school district. When centralization becomes effective, it is only a centralization of the schools in that particular rural school district; the district still remains a rural school district and is still subject to the control and management of the board of education of that particular rural school district.

In the case of *State, ex rel. Haines vs. Chester Twp. Board of Education*, 15 O. C. D., 424, the question before the court was whether or not the board of education of the township was authorized to centralize the schools in two places within the township district, having previously determined to centralize in one place. The Court held:

"It is only when the board deems it necessary to purchase a site and erect a building thereon that the act requires them to do

so, and there is nothing in the act itself preventing the original board, before the building is erected or commenced, from reconsidering the action taken, and resolving to centralize the schools not in one but in two places. It may have made a mistake in the first instance, and the very discretion vested in it by the act carries with it the power and duty to correct that mistake * * *.

Such boards cannot legally refuse to centralize the schools because the law makes this duty imperative, but the mode and manner of performing it is discretionary, and if the duty is not performed by the old board such discretion is vested in its successor, * * * We are of the opinion, therefore, that the action of the present board in proceeding to centralize the schools in two places within the township district, whether wise or unwise, if done in good faith, cannot be prevented by mandamus."

The court, in that opinion held that the mode and manner of performing centralization was "discretionary" with the board. Therefore, the case of *State ex rel. vs. Chester Twp. Board of Education, supra*, can be said to be authority for the proposition that a board of education of a rural school district has authority to determine whether the centralized school or schools in a centralized rural school district shall be established in one place or in more than one place. Also, in an opinion rendered by a former Attorney General, Opinions of the Attorney General for 1917, Vol. III, page 2047, it was held:

"Where centralization of the schools has been carried at an election called for that purpose, the board of education may centralize the schools in more than one place. It is not necessary that all the schools be centralized 'under one roof'."

At page 2049, it is said:

So that, if as in your case the board of education determined that for the advanced pupils there should be one central school and for the elementary pupils there should be a sufficient number of buildings located elsewhere than at the central point, I am of the opinion that same is within the rule of centralization."

It therefore is my opinion: that, it is within the discretion of the board of education of the rural school district to determine whether the centralized school or schools shall be established in one place or more than one place in that particular rural school district; that since exclusive

authority is vested in the board of education of a rural school district to determine the manner in which the centralization of the school or schools shall be made, a petition presented to such rural board of education which specifies the manner in which centralization of the school or schools shall be made, is not a petition in accordance with the provisions of Section 4726, supra, and it therefore is not mandatory upon the board of education of the rural school district to submit the question of centralization to the qualified electors of the rural school district; that when such a petition is presented to the board of education, it is within the discretion of such board to determine whether it will refuse to act upon the petition and not submit the question of centralization to the qualified electors of the rural school district, on the ground that the petition presented is not in accordance with the provisions of Section 4726, supra, or whether in accordance with the privilege it has under the provisions of Section 4726, General Code, it will on its own action submit the question of centralization to the qualified electors of the rural school district.

I think it advisable to discuss at the same time, the second and sixth questions contained in the request.

The second question therein, is limited to submitting the question for a bond issue to build a central school or schools.

In an opinion rendered by a former Attorney General, Opinions of the Attorney General for 1915, Vol. I, page 67, it was held:

“A proposition for the centralization of schools under the provisions of Section 4726, General Code, and a proposition to issue bonds authorized by Section 7625, General Code, may both be submitted to the electors of a rural school district at one election.”

That opinion was rendered in 1915, before the enactment of the “Uniform Bond Act.”

Section 2293-19, General Code, provides, in part, as follows:

“The taxing authority of any subdivision may submit to the electors of such subdivision the question of issuing any bonds which such subdivision has power to issue. When it desires or is required by law to submit any bond issue to the electors, it shall pass a resolution, declaring the necessity of such bond issue and fixing the amount, purpose and approximate date, interest rate and maturity, and also the necessity of the levy of a tax outside of the limitation imposed by article twelve, section two of the constitution to pay the interest on and to retire the said bonds.”

It is to be observed: that Section 2293-19, *supra*, permits the taxing authority to submit to the electors the question of issuing any bonds which such subdivision has power to issue, that, therefore, the board of education has authority to pass a resolution declaring the necessity to issue bonds for the building of a school and submit the question to the electors, since the subdivision has power to issue bonds for the erection of a school building. However, in the case of the erection of a *central school building* there is a distinction. The subdivision does not have power to issue bonds for a central school building and there is no authority for the board of education to pass a resolution declaring the necessity of building a central school building until a majority of votes are cast in favor of centralization. It therefore would appear: that, a board of education has no authority to pass a resolution declaring the necessity of building a *central* school or schools and submit the question for building a central school or schools at the same time when the question of centralization is submitted; and that, the board of education may submit to the electors the question of issuing bonds for the building of a school or schools at the same time that the question of centralization is submitted.

Section 2293-22, General Code, provides as follows:

“The question of issuing bonds shall always be submitted to popular vote at a November election, except that, whenever it is necessary to rebuild or repair public property, wholly or partially destroyed by fire or other casualty or to build a new similar property in lieu of repairing or rebuilding such property, with the consent of the tax commission of Ohio the question of issuing such bonds may be submitted to popular vote at a primary election or at a special election called for that purpose. The tax commission shall consent to such submission only if they find that the submission of such question at a primary or special election is absolutely necessary to meet the requirements of the people of said subdivision.”

It is to be observed from a reading of the foregoing section that the question of issuing bonds must be submitted at the November election, unless the bonds to be issued are for any of the purposes mentioned in the exception contained in Section 2293-22, *supra*.

The only exception to Section 2293-22, *supra*, is House Bill No. 544, passed by the 91st General Assembly, May 23, 1935. The purpose of House Bill No. 544, *supra*, was to enable the political subdivisions of Ohio to participate in “federal aid.” Section 6, of House Bill No. 544, provides that if conditional approval by the proper federal authorities

shall have been obtained for the project the proposition for the issuance of bonds may be submitted to a popular vote at a primary election or a special election called for that purpose, providing the consent of the Tax Commission has been obtained to do so.

Section 4726, *supra*, permits the rural board of education to submit the question of centralization "at a general election or a special election called for such purpose."

There is nothing in the language of Section 4726, *supra*, that can be said to prohibit the proposition for a bond issue to build a school from being submitted at the same time as the question of centralization. It therefore can be said: that, the question for the issuance of bonds to build a *central school or schools* cannot be submitted to the electors at the same time that the question of centralization is submitted, but that the proposition for centralization and the proposition for the issuance of bonds to build a *school or schools* may both be submitted to the electors of the rural school district at a November election; that if the bonds to be issued are for any of the purposes mentioned in the exception of Section 2293-22, *supra*, the proposition for centralization and the proposition for the issuance of bonds for any of the purposes mentioned in said exception, may both be submitted to the electors of the rural school district at a primary election or at a special election called for such purpose; and that, in a case where the building or buildings are to be established through participation in "federal aid" the propositions for centralization and issuance of bonds to build a school or schools may both be submitted to the electors of the rural school district at a special election, providing however, that approval by the proper federal authorities has been obtained, as provided for in Section 6, of House Bill No. 544, *supra*, and consent has been obtained from the Tax Commission of Ohio, for such election.

The answer to your third question is contained in the following language of Section 4726, *supra*: "If more votes are cast in favor of centralization than against it." This language is plain and clear, in that it requires a majority of votes in favor of centralization of schools. In other words, if at an election the total number of votes cast for centralization exceeds the number of votes cast against centralization by one or more votes it represents a majority of votes in favor of centralization.

Section 4785-99, General Code, provides in part, as follows:

"At the general elections in each year there shall be separate ballots upon which shall be printed the names of all can-

didates for the offices to be filled and the issues to be voted upon at such election, as follows:

* * *

(c) The issues ballot on which shall be printed all issues to be submitted to the voters of the state and of the political subdivisions or taxing units thereof."

Section 4785-103, General Code, reads as follows:

"Questions and issues shall be arranged, in so far as practicable, on the ballot in the following order: Constitutional amendments, state issues, county issues, city, school and village issues; and they shall be printed in the form provided for herein. At the top shall be printed the words: 'Questions or issues'—above each such question or issue shall be printed a brief title, such as 'Proposed constitutional amendment' 'Proposed bond issue', 'Proposed annexation of territory', 'Proposed increase in tax rate', or such other brief title as will properly designate the question or issue. The order in which such questions or issues shall appear upon the ballot shall be determined, except as otherwise provided herein, by the secretary of state in the case of state questions or issues, and by the board in the county in case of issues in the county or one of its political subdivisions. The wording or ballot title of each question or issue shall be printed in a space defined by heavy ruled lines with two squares to the left thereof, the upper of which shall contain the word 'Yes' and the lower the word 'No'. There shall be two similar blank squares, one on the left of that containing the word 'Yes', and one to the left of that containing the word 'No'. Persons desiring to vote in favor of any such question or issue shall do so by making a cross in the blank square to the left of the word 'Yes'; and those desiring to vote against such question or issue shall do so by making a cross mark in the blank square to the left of the word 'No' of each such question or issue. Each such question or issue shall be stated separately from all other questions or issues on the ballot. This general form of submitting questions and issues on the ballot shall take the place of and shall supersede all other forms for questions and issues now provided by law."

Section 4785-104, General Code, provides as follows:

"If the board, by a unanimous vote of its members, shall find it impracticable to place the names of candidates for any

office of a minor political subdivision in the county, or the wording of any question or issue to be voted upon in such minor political subdivisions, on the ballots as herein provided, then such board may provide separate ballots therefor. * * *

It is to be observed that Section 4785-99, *supra*, provides for the various separate ballots; that paragraph (c) refers to the "issues ballot" upon which shall be printed all issues to be submitted; that it is to be noted that the issues ballot refers to a singular ballot and permits *all issues* to be printed thereupon. It is further to be observed: that, Section 4783-103, provides the manner in which "questions and issues shall be arranged in so far as practicable on the ballot"; that, each question or issue shall be stated separately from all other questions or issues on the ballot; that, it is to be noted that in this section also, a singular ballot is referred to and *questions* and *issues* shall be arranged in so far as practicable; and that, there is not anything in this section that prevents the question of centralization and issuance of bonds from being printed on the same ballot providing that the question on centralization and the issue on the issuance of bonds are stated separately on the same ballot.

Section 4783-103, General Code, provides that the county board of elections shall determine the order in which questions or issues shall appear on the ballot in cases of issues in one of the political subdivisions of the county. It is to be observed that the provisions of Section 4785-104, General Code, vest authority in the board of elections to provide separate ballots if they find it impracticable to place the wording of any question or issue to be voted upon in a minor political subdivision of the county on the "issues ballot" as provided for in Section 4785-99, *supra*.

It therefore is my opinion: that, if the proposition of centralization and the question of issuance of bonds are submitted at the same time, both issues may be placed upon the same ballot, unless the board of elections finds it impracticable to place the wording of either question or issue on the "issues ballot" and in that case it may provide separate ballots.

As stated hereinabove, Section 4726, *supra*, vests exclusive authority in the qualified electors of the rural school district to determine whether or not the school or schools of the rural school district shall be centralized, and exclusive authority in the board of education of the rural school district to submit the question to such electors. Therefore, it is obvious that the only issue or question on the ballot to be submitted to such electors is whether or not the school or schools of the rural school district shall be centralized.

There is no particular manner in which this question or issue must be stated or presented on the ballot. However, the following is a copy

of a form recommended by the board of elections, and most customarily used:

"PROPOSED QUESTION OF CENTRALIZATION
OF SCHOOLS
VOTE BALLOT WITH AN "X"

	Yes	Shall the schools of Allen Township Rural School District in Allen Township, Ottawa County, Ohio, be centralized?"
	No	

Sections 4692 and 4696, General Code, invest county boards of education with power to change the boundary lines of school districts.

Section 4692, *supra*, authorizes the county board of education to transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district, in conformance with the provisions contained in said statute.

Section 4696, *supra*, authorizes a county board of education to transfer a part or all of a school district of the county school district to an exempted village, city or county school district, upon a petition of a majority of the electors residing in the territory to be transferred, and makes such transfer mandatory upon petition of 75% of the electors.

Section 4727, General Code, in its pertinent part, provides as follows:

"When the schools of a rural school district have been centralized such centralization shall not be discontinued within three years, and then only by petition and election, as provided in Section 4726. * * * Nothing in this or the foregoing sections, namely, Sections 4726 and 4726-1, shall prevent a county board of education upon the petition of two-thirds of the qualified electors of the territory petitioning for transfer, from transferring territory to or from a centralized school district, the same as to or from a district not centralized.

It is to be observed from the provisions of Section 4727, *supra*, that, when the schools of a rural school district have been centralized such centralization shall not be discontinued within three years, and then, only by petition and election, as provided in Section 4726, *supra*; that, the county board of education, upon the petition of two-thirds

of the qualified electors of the territory petitioning for the transfer, may make such transfer; that, there is nothing mandatory in Section 4727, supra, that compels a county board of education to make the transfer even if a petition is filed with it, signed by two-thirds of the qualified electors, since the language of the section reads, that "nothing * * shall prevent" but does not say that such transfer shall be made. Therefore, it can be said that the effect of the provisions of Section 4727, supra, is:—that, when a petition is filed with a county board of education signed by 75% or more of the electors residing in a centralized rural school district of the county school district, requesting that the county board of education transfer all or a part of the territory of such centralized rural school district to an exempted village, city or county school district, the territory of which is contiguous thereto, the mandatory provisions of Section 4696, supra, making it mandatory for such county board of education to make the transfer are not applicable and that the county board may make such transfer only if in its discretion it deems it advisable; that the county board of education may not transfer a part or all of a centralized rural school district of the county school district to an adjoining district or districts of the county school district as provided for in Section 4692, supra, unless there is filed with the county board of education a petition signed by two-thirds of the qualified electors residing in the territory of the centralized rural school district petitioning for the transfer, and that, the authority vested in county boards of education to transfer territory under the provisions of Sections 4692 and 4696, General Code, in the case of a centralized rural school district can only be made upon a petition being presented to the county board of education, signed by two-thirds of the qualified electors of the territory of the centralized rural school district petitioning for the transfer.

Section 4727, supra, has been construed and interpreted by the Supreme Court of Ohio and in many opinions rendered by former Attorneys General. The leading case, wherein Section 4727, supra, was discussed, is *State, ex rel. Darby vs. Hadaway, et al.*, 113 O. S., 658, wherein the court held:

"1. The mandatory provisions of Section 4696, General Code, have no application to centralized school districts.

2. Under the provisions of Section 4696, General Code, and of Section 4727, General Code, as amended April 16, 1919 (108 O. L., Part 1, 235), a board of education of a county school district is authorized to transfer territory from a centralized school district to another district upon the petition of two-thirds of the qualified electors of the territory sought to be

transferred, but it is not required to make such transfer, though the petition therefor be signed by 75 % of such qualified electors.”

In the case of *Trumbull County Board of Education vs. State, ex rel. Van Wye*, 122 O. S., 247, the question presented was whether, after the adoption of a resolution by a rural board of education for centralization and before the question of centralization is submitted to the qualified electors, is the county board of education compelled to make a transfer of territory in accordance with the provisions of Section 4696, General Code. The court held:

“A rural board of education passed a resolution to hold an election under Section 4726, General Code, to submit to the voters the question of centralization of the schools within such rural school district and gave notice of such election under the statute. Subsequently to the adoption of the resolution by the rural board but before the holding of the election, a petition to transfer part of the territory of such rural school district to a county school district within the same county was filed with the county board of education signed by 75 % of the electors resident in the territory described in the petition. HELD: that mandamus will not issue to compel the county board of education to transfer the territory in accordance with the provisions of Section 4696, General Code.”

The foregoing case is responsive to the seventh question in your request. The fact that your question is in reference to where centralization has been voted upon and in the case of Trumbull County Board of Education, supra, centralization had not been voted upon presents a stronger argument for the principles of law enunciated in that case. Section 4692, supra, was not discussed in the case of Trumbull County Board of Education, supra. However, the same conclusion would be reached in regard to transfer of school territory under the provisions of Section 4692, supra, as was reached under the provisions of Section 4696, supra. In fact it has been so held in an opinion rendered by a former Attorney General, in Opinions of the Attorney General for the year 1929, Vol. II, page 1630, wherein it was held:

“The duty to transfer territory to or from a rural school district in which the schools are centralized by authority of Section 4726, General Code, is never mandatory. Such transfer may be made only after a petition signed by two-thirds of the electors residing in the territory to be transferred, has been filed

with the county board of education, whether the proposed transfer is to be made by authority of Section 4692, General Code, or by that of Section 4696, General Code.”

See also:

Summit County Board of Education et al., vs. State ex rel. Stipe, 115 O. S., 333; and

The following Opinions of Attorneys General:

- Year 1919 Vol. II, page 1195
- 1922 Vol. II, page 1027
- 1927 Vol. I, page 739
- 1927 Vol. II, page 1255
- 1928 Vol. II, page 995
- 1928 Vol. II, page 996
- 1936 Opinion No. 5908.

It is therefore my opinion that if a majority of votes are cast in favor of centralization at the election, that a transfer of territory in the centralized rural school district cannot be made by the county board of education under the authority of the provisions of Sections 4692 and 4696, *supra*, except upon a petition being presented signed by two-thirds of the qualified electors of the territory petitioning for the transfer; and that then such transfer may be made by the county board of education only if in its discretion it deems it advisable.

I am therefore of the opinion in specific answer to your questions:

1. If the board of education of a rural school district submits the question of centralization upon a petition signed by at least 25% of the qualified electors of such rural school district, and the petition states that centralization is to be in one place only, such a petition is not in accordance with the provisions of Section 4726, *supra*, and it therefore is not mandatory upon the board of education of such rural school district to submit the question of centralization to the qualified electors of the rural school district. If such a petition, specifying the mode and manner of centralization is presented to such rural board of education, it is within the discretion of such board of education to determine whether it will refuse to act upon the petition and not submit the question of centralization to the qualified electors of the school district, on the ground that the petition presented is not in accordance with the provisions of Section 4726, General Code, or whether in accordance with the privilege it has under the provisions of Section 4726, *supra*, it will on its own action, submit the question of centralization to the qualified electors of the rural school district.

2. The question for the issuance of bonds to build a *central school*

or schools cannot be submitted to the electors at the same time that the question of centralization is submitted. The question of centralization and the question for the issuance of bonds to build a school or schools may be submitted at a general election. If the bonds to be issued are for any of the purposes mentioned within the exception of Section 2293-22, General Code, the proposition for centralization and the proposition for the issuance of bonds for any of the purposes mentioned in said exception may both be submitted to the electors of the rural school district at a primary election or a special election called for such purpose. The question of centralization and the question for the issuance of bonds to build a school or schools may be submitted at a special election also in a case where a building or buildings are to be established through participation in federal aid and the approval by the proper federal authorities has been obtained and also, consent has been obtained from the Tax Commission of Ohio for such election.

3. The majority required to carry an election in favor of centralization of schools is a majority of the votes of those voting on the question of centralization.

4. If the question of centralization and the question for the issuance of bonds to build a school or schools are submitted at the same election, both questions or issues may be placed upon the same ballot.

5. The question submitted by the board of education of the rural school district to the qualified electors of such rural school district is whether or not the school or schools of such rural school district shall be centralized.

6. If a majority of votes is cast in favor of centralization, the question for the issuance of bonds for the erection of a school building can be submitted at a special election only under the provisions of House Bill No. 544, passed by the General Assembly of Ohio, May 23, 1935.

7. If the required majority of votes is cast on the question of centralization at the election, a transfer of territory in the centralized rural school district cannot be made by the county board of education under authority of the provisions of Sections 4692 and 4696, General Code, except upon a petition being presented to the county board of education signed by two-thirds of the qualified electors of the territory petitioning for the transfer; and then such transfer may be made by the county board of education only if, in its discretion it deems it advisable.

Respectfully,

HERBERT S. DUFFY,
Attorney General.