

Surety Company of New York appears as surety. Said bond is conditioned for the faithful performance of the duties of the principal as examiner for the Division of Building and Loan Associations in the Department of Commerce.

Finding said bond in proper legal form I have endorsed my approval thereon as to form and am returning the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1420.

BOND ISSUE—AUTHORIZED BY SCHOOL DISTRICT—UNAFFECTED BY
TRANSFER OF PORTION OF TERRITORY FROM DISTRICT—EXCEP-
TION.

SYLLABUS:

When, subsequent to the authorization of an issue of bonds by the electorate of a school district, a portion of the territory of the district is transferred out of the district, the right to issue the bonds as authorized by the vote is not affected, except as the reduction in the tax valuation of the property of the district may affect the amount of bonds that may be issued within the limitations of indebtedness fixed by law.

COLUMBUS, OHIO, January 15, 1930.

HON. G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

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

“On the 4th day of September, 1929, the Richland County Board of Education transferred to the Lexington Village School District, (a school district in Richland County) certain territory upon petitions containing 82% of the electors in the Washington Township School District, a contiguous territory. No remonstrance was filed in the thirty days, as provided by law. Lexington Village School District, thus constituted, on November 5th voted on the question of a one hundred ten thousand (\$110,000.00) dollar bond issue to construct and equip a school building in said district, which bond issue was carried. Immediately after the passage of this bond issue, a portion of the resident electors, formerly of Washington Township, presented a petition to the Richland County Board to be transferred from the Lexington Village School District, to which they had just been transferred, to Madison Township School District, which petition contained a sufficient number of electors' signatures and complied with the law in all other respects, as to transfer.

On November 9, 1929, the Richland County Board, without giving the Lexington Village School District's Board a notice of the hearing on said petition, transferred the territory described in the petition.

The transcript for the bond issue was completed and the bonds sold to the Teachers Retirement System on December 15, 1929.

The questions now raised by the Lexington Village School Board are whether or not the territory transferred to Madison Township on November 9, 1929, which was a part of the Lexington Village School District on the

date the bond issue was passed, is obligated to the payment of its proportion of the bond issue and whether or not said transfer is legal, admitting that the petition and transfer is in accordance with the law, barring the fact that no notice was given to the Lexington Village School Board of the hearing had by the Richland County board on said petitions on November 9th, when said transfer was made."

School districts are public corporations created by the Legislature in pursuance of the constitutional mandate charging the General Assembly with the duty of providing a thorough and efficient system of common schools throughout the State. The geographical limitations, as well as the organization and the fixing of the powers and duties of these corporations as agents of the sovereign come within the doctrine of absolute control by the Legislature. Possessing the power to create these agencies and fix their geographical limits in the first instance, the Legislature may exercise the lesser power of changing or altering their boundaries. The rights of the people within the district affected to consent to such change or alteration may be given as a matter of favor. Unless such favor is extended, the people within the districts have no voice in the matter and when it is extended, the people's control is strictly limited to the method provided by statute. Abbott on Municipal Securities, Section 17, et seq.

The Legislature is not limited in its control over the boundaries of school districts to direct action in the premises, but may, and usually does delegate the power to readjust the boundaries of school districts to subordinate officials or agencies.

The Legislature of Ohio has created county school districts made up of village and rural school districts. For the administration of the affairs of a county school district a county board of education is created, and to this board is delegated the power to transfer territory from one village or rural school district within the county district to another village or rural district within the same county district. Section 4692, General Code. Power is also delegated to county boards of education by Section 4736, General Code, to create new school districts by the consolidation of one or more village or rural districts within the county district, and of transferring territory from a village or rural district within the county district to a contiguous city, exempted village or other county school district. Section 4696, General Code. Transfers made by authority of Section 4696, General Code, may only be made if a petition therefor has been filed with the county board of education by the electors residing in the territory to be transferred.

Transfers made by authority of Section 4692, General Code, that is from one rural or village district to another rural or village district in the same county district may be made by the county board of education of a county school district in which the districts involved in the transfer are located, upon the initiative of the county board of education, and without a petition therefor, except transfers to or from a rural school district in which the schools have become centralized, in accordance with Section 4626, General Code, (See Section 4627, General Code), subject only to its action, in making such a transfer, being defeated by the filing of a remonstrance, as provided by the statute.

The filing of a petition for a transfer of this kind by a part or all of the residents of the territory to be affected by the proposed transfer adds nothing to the authority or duty of the county board in the premises, except when centralized districts are involved, as noted above.

The statutes make no other exception to this rule. The fact that projects for the improvement of the schools of a district are pending, and such projects would be somewhat affected by a loss of territory, does not preclude the county board from making any transfer it may see fit to make nor would that fact require it, before making a transfer, to grant a hearing to the local board or to the inhabitants of the

district affected. This is because the statute makes no provision for such a hearing. Of course no transfer is complete until an equitable division of funds and indebtedness is made between the districts involved, a map filed and proper notice given in accordance with Section 4692, General Code, nor will it take effect if a remonstrance is filed within thirty days, as provided by the statute.

In the case you mention, the Richland County Board of Education clearly had a right to make the transfer of territory from Lexington Village School District to Madison Township Rural School District, as made of November 9, 1929, providing the territory is contiguous, without first granting a hearing to the board of education of Lexington Village School District or to anyone else. The only way the transfer could be defeated was by the filing of a remonstrance within thirty days after November 9, 1929, by the electors residing in the territory transferred, in the manner provided by the statute. It appears that this was not done and therefore the transfer stands, assuming of course that a proper division of funds and indebtedness was made between the two districts, a map filed and notices posted, as provided by the statute. The county board had power to make this transfer, regardless of the petition that was filed therefor. The only effect such a petition has is a guide to the county board as to the wishes of the signers of the petition.

The fact that a bond issue had been authorized by the electors of the district on November 5, 1929, had no effect on the power of the county board of education to transfer territory from the district, and even had the bonds been issued, as authorized by the voters, territory still might have been transferred out of the district. In that case, however, if the bonds have been sold and delivered and a debt of the district thereby created, that debt would necessarily have to be taken into consideration in making an equitable distribution of the funds and indebtedness between the districts involved in the transfer.

A mere authorization of a board of education to issue bonds is not the issuing of the bonds. The board may or may not issue the bonds as authorized, and may issue a lesser amount than the amount authorized. The mere authorization to issue the bonds does not create an obligation on the district. The obligation or debt is not created until the bonds are issued, sold and delivered. Of course, if territory is transferred from a district and the actual valuation of the property within the district thereby reduced, the right to issue the full amount of the bonds authorized might be affected for the reason that an issue of bonds must be within the limitations of indebtedness imposed by statute, which limitations are based on the aggregate tax duplicate of the district. Section 2293-15, General Code. This fact would necessarily have to be taken into consideration, regardless of the size of the bond issue authorized.

I am advised that the transfer of territory from Lexington Village School District as made on November 9, 1929, did not have the effect of reducing the aggregate tax valuation of Lexington Village School District to the extent that bonds in the sum of \$110,000.00 could not be issued within the limitations imposed by the statute. I am further advised that the board of education of Lexington Village School District did on November 18, 1929, provide by resolution for the issuance of bonds in the sum of \$110,000.00, as authorized by the voters at the November election; that the said issuing of \$110,000.00 was within the limitations imposed for the issuance of voted bonds based on the tax duplicate of Lexington Village School District as it then existed, and that the bonds were later sold.

In the consideration of this subject it should be noted that when a portion of territory is transferred out of a school district or other public corporation, the corporation is not destroyed, that the corporate entity still exists and under circumstances such as we have here, the board of education of Lexington Village School District, having been authorized by the voters to issue bonds, still possessed that authority even after a portion of the district had been taken away and the aggregate tax valuation

of the district thereby reduced. Such action might have some effect on the marketability of a bond issue but not on the right to issue the bonds. It should also be noted that the mere authority to issue the bonds creates no obligation on the district. This obligation is not created until the bonds are actually issued, sold and delivered, and if a transfer of territory from the district is thereafter made, an adjustment of indebtedness must be made between the two districts so that the obligation of the bond holder's contract will not be impaired.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1421.

LEGAL COUNSEL—APPOINTED TO AID PROSECUTING ATTORNEY IN
 CRIMINAL TRIAL—COMPENSATION FOR PREPARING CASE
 AUTHORIZED.

SYLLABUS:

Under the provisions of Section 13562 of the General Code, an attorney appointed to assist a prosecuting attorney in the trial of a case, may be compensated for services rendered in the preparation of said case for trial.

COLUMBUS, OHIO, January 16, 1930.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

“Some months ago an attorney of our local bar was appointed by the court as special prosecutor to assist in the prosecution of five men who committed a robbery in this county.

Two of these men were apprehended and brought to this county, partially through the efforts of the special prosecutor, and both entered pleas of guilty and were sentenced without trial; and the special prosecutor was in attendance when the above sentences were imposed, and prepared the journal entries therefor.

Under the above circumstances, may this attorney be paid by virtue of Section 13562, General Code? If not under this section, then in what manner may he be paid?”

You do not state in your letter the exact nature of the services performed by the special prosecutor except that you say that partially through his efforts the defendants pleaded guilty and that he appeared when the defendants were sentenced and prepared the journal entries. However, I assume that you desire to know whether or not the language of Section 13562 of the General Code is broad enough to justify the payment for services rendered in the preparation of the trial of the case. Your attention is directed at this point to the fact that Section 13562 of the General Code was repealed by the 88th General Assembly but was re-enacted in substantially the same terms in the act to revise and codify the Code of Criminal Procedure, and it is now Section 13439-15 of the General Code. Section 13562 of the General Code provided as follows:

“The common pleas court or the court of appeals, whenever it is of the opinion that the public interest requires it, may appoint an attorney to assist the prosecuting attorney in the trial of a case pending in such court, and the