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TERRITORIAL ORGANIZATION—EFFECTIVE OCTOBER 12, 1945, MANDATORY DUTY OF BOARD OF EDUCATION OF COUNTY SCHOOL DISTRICT, WHERE THERE IS A LOCAL DISTRICT IN WHICH NO SCHOOLS ARE OPERATED, TO ADOPT NEW PLAN OF TERRITORIAL ORGANIZATION OF SCHOOL DISTRICTS AND TO MAKE PROVISION FOR DISSOLUTION OF SUCH LOCAL SCHOOL DISTRICT—PRIOR TO FIRST MONDAY IN FEBRUARY, 1946—SECTION 4831 G. C., AMENDED BY HOUSE BILL 63, 96 GENERAL ASSEMBLY.

SYLLABUS:

Under the provisions of Sections 4831 of the General Code as amended by House Bill No. 63, enacted by the 96th General Assembly and to become effective October 12, 1945, it will become the mandatory duty of the board of education of a county school district having a local district in which no schools are operated, to adopt, prior to the first Monday in February, 1946, a new plan of territorial organization of school districts and to make provision in such plan of organization for the dissolution of such local school district.

Columbus, Ohio, September 12, 1945

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

Dear Sir:

I have before me your communication requesting by opinion, and reading as follows:

“Pursuant to inquiries received from several county boards of education requesting an interpretation of Section 4831 of the

Ohio General Code as amended by House Bill No. 63, enacted in 1945, by the 96th General Assembly, we should like your formal opinion in answer to the following question:

Is it mandatory for the board of education of every county school district in which there exists a local district in which no schools are operated to adopt prior to the first Monday in February in 1946 a new plan of territorial organization of school districts and to make provision in such plan of organization for the dissolution of the school district not maintaining any schools?

It appears clear, under the provisions of Section 4831 as amended by House Bill 63, that in any county school district which does not contain a local district which operates no schools the adoption of a new plan of territorial organization of school districts becomes discretionary with the county board of education, and that if under such circumstances the county board of education does not desire to propose any changes in school district boundary lines, it is not necessary that the county board adopt a new plan of organization, assuming, of course, that the county board has not received a valid petition filed pursuant to the provisions of Section 4831-13 of the General Code.

Stated in another form our question is this:

Where, in a county school district in which there exists a local district in which no schools are operated, it is the opinion of the county board of education that there should not be any changes in the territorial boundary lines of the districts comprising the county school system and where, unless required to do so by the provisions of the amendment in Section 4831 after the semicolon following the words 'county school system', the county board would not adopt a new plan of organization in 1946, is it a mandatory duty for the county board to adopt a new plan of organization providing for the dissolution of the district not operating any schools, even if it is the judgment of the county board of education that the dissolution of such district would not be to the end of providing a more economical or efficient county school system?"

In the new school code, enacted by the 95th General Assembly, Chapter 2 of Title XIV (a) of the General Code, comprising Sections 4831 to 4831-14, General Code, was devoted to the subject of county planning and the transfer of territory between districts. The amendatory act to which you refer was passed June 28, 1945, and will become effective October 12, 1945. As originally enacted, Section 4831 *required* each county board of education, on or before the first Monday in March in

the year 1944, and on or before the first Monday in March in each even numbered year thereafter, to adopt a plan of territorial organization of the school districts under its supervision. It was further provided in the same words as in the amended section, that "such plan of organization shall prescribe such transfers of territory, elimination of local school districts and creation of new school districts which, in the opinion of the county board of education will provide a more economical and efficient county school system". Said section as amended reads as follows:

"On or before the first Monday in February in the year 1946 and on or before the first Monday in February in every even numbered year thereafter each county board of education *may*, by a majority vote of its full membership, adopt a new plan of territorial organization of the school districts under its supervision. Such plan of organization shall prescribe such transfers of territory, elimination of local school districts, and creation of new school districts which, in the opinion of the county board of education, will *provide a more economical or efficient county school system*; and *to this end*, the county board of education of each county in which there are one or more local school districts which operates no schools, *shall take immediate steps* for the dissolution of such school districts and for the attachment of the territories thereof to adjoining school districts which do operate schools. The distribution of the territories of such dissolved school districts shall be shown in the plan of district organization which such county boards of education *shall adopt in 1946.*"

(Emphasis added.)

It will be observed that by the provisions of the first sentence, it is no longer mandatory but merely permissive, that the board adopt such new plan in 1946 or in any even numbered year thereafter. However, it is still the express purpose of the law that if and when a new plan is adopted, it must be with the end and purpose in view of "providing a more economical or efficient county school system".

The next sentence, separated from the first by a semicolon, says "*and to this end*, the county board of education of each county in which there are one or more local school districts which operates no schools, *shall take immediate steps* for the dissolution of such school districts" etc. The form of this sentence is so imperative in its wording that it leaves no room for a construction that would give the board any discretion. It is said that the board "shall take immediate steps". The word

“shall” is here a word of command, and the words “immediate steps” appear to add force to the peremptory mandate of the General Assembly.

What are the steps which a county board must take in order to accomplish what it is commanded to do, viz., the “dissolution of such school districts”? We find the procedure outlined in the sections of the General Code to which I have made reference. They contemplate the adoption by the board of a new plan of territorial organization as set forth in Section 4831, *supra*, its submission to the state superintendent of public instruction, the consideration by said superintendent of objections or protests and the final approval or modification of the plan by the said superintendent. There is no other process provided by the law for the dissolution of a local school district and the distribution of its territory.

It follows, therefore, that while it is within the discretion of a county board to adopt or not to adopt a new plan in the year 1946, or biennially thereafter, yet when it does find a district which is operating no schools its discretion vanishes and it becomes its mandatory duty to adopt and submit to the superintendent of public instruction a new plan of territorial organization. This duty appears to be imperative even though the board should be of the opinion that that course would not be conducive *to a more economical and efficient* county school system. In this respect the General Assembly appears to have substituted its judgment for the discretion of the board.

I understand that there are in the state some thirty-one local school districts in which no schools are operated and in which the local board of education has deemed it most advantageous and economical to arrange with adjoining districts for the attendance of its pupils. It must be assumed that the General Assembly had knowledge of this situation and considered it inadvisable to permit such practice to continue, and therefore imposed upon the county board of education the duty, where they find such condition to exist, to proceed immediately with such steps as are required by the law to dissolve such districts and to transfer their territory to other districts. This would appear to be the inevitable effect of the new legislation under consideration.

The final sentence of said Section 4831 as amended appears to me to confirm my conclusion, that the General Assembly introduced this mandatory provision in view of the condition which I have mentioned, to wit,

the total absence of operating schools in a number of districts, and in order to emphasize its mandate that *immediate* steps should be taken, provided that the dissolution and distribution of such districts should be shown "on the plan of district organization which such county boards of education *shall adopt in 1946.*" That result would obviously have followed without the addition of the final sentence, but it was apparently added by way of emphasis.

Respectfully,

HUGH S. JENKINS

Attorney General