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SCHOOL DISTRICT—TERRITORY WITHIN—PROPOSED TO BE TRANSFERRED TO ADJOINING SCHOOL DISTRICT—SUCH DISTRICT IS “ADJOINING DISTRICT” NOTWITHSTANDING ONLY CORNER OF TERRITORY PROPOSED TO BE TRANSFERRED IS IN CONTACT WITH BOUNDARY OF SUCH OTHER DISTRICT—SECTION 4831-13 G. C.—OPINIONS ATTORNEY GENERAL, 1917, OPINION 84, PAGE 194, OVERRULED.

SYLLABUS:

Where territory within a school district is proposed to be transferred to an adjoining school district under the provisions of Section 4831-13, General Code, such district is an “adjoining district” notwithstanding only a corner of the territory proposed to be transferred is in contact with the boundary of such other district. Opinions Attorney General 1917, Opinion 84, page 194, overruled.

Columbus, Ohio, March 1, 1948

Hon. Richard E. Hole, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“The Darke County Board of Education has received a petition filed pursuant to the provisions of Section 4831-13 of the General Code of Ohio, requesting the transfer of territory within

the Darke County School District to an adjoining county school district. For the purpose of the question herein raised, we will assume that said petition is properly signed by 75% of the qualified electors residing in the territory which the petition seeks to have transferred voting in the last general election, as that question was determined in your Opinion No. 2673, under date of January 30, 1948.

“The territory for which the petitioners request a transfer only touches the adjoining district at one corner.

“The County Superintendent of Schools is of the opinion that your office rendered an opinion holding that in such an event, the territory would not be considered adjoining and consequently no transfer could be made.

“An informal opinion covering this question will be greatly appreciated as we would like to have the answer before the county board has its March meeting.”

Section 4831-13, General Code, to which you refer, provides that a county board of education if it deems it advisable, may transfer territory from a local school district within the county school district to an “adjoining county school district or to an *adjoining* city or exempted village school district”. The same section provides that the county board of education may accept a transfer of territory from another county school district or from a city or exempted village school district and annex such territory to a “*contiguous* local school district of the county school district”. This same section proceeds with the following provision :

“If there is filed with a county board of education prior to the first day of February in any even numbered year a petition requesting the transfer of territory from a local school district of the county school district to an adjoining county school district or to an adjoining city or exempted village school district, and such petition is signed by 75% of the qualified electors residing in the territory which the petition seeks to have transferred voting at the last general election, such county board of education shall, prior to the first day of April next following the filing of such petition with the county board of education, either adopt a resolution transferring the territory as requested by such petition or adopt a resolution objecting to the requested transfer.”

Your inquiry raises the single question whether such transfer of territory may be made in response to a petition where the territory sought to be transferred only touches the adjoining district at one corner. In

other words, is such territory to be considered as "adjoining", within the meaning of the statute. We note that in the statute above referred to, the words "adjoining" and "contiguous" are used. The connection in which they are used leads to the conclusion that the General Assembly regarded them as being interchangeable in meaning. That assumption is borne out to a great extent by reference to dictionaries both legal and general, although the same authorities point out some slight differences in common usage. While the words "contiguous" and "adjacent" are given by Webster as synonyms of "adjoining" yet he points out slight distinctions as follows: It is pointed out that lands are adjacent when they lie close; adjoining when they meet at some *line or point*; contiguous when they touch upon a considerable part or the whole of one side.

It may be helpful to note that in the statutes relating to annexation of territory to a municipal corporation, the words "adjacent" and "contiguous" are generally used. Thus Section 3548, General Code, provides that the inhabitants residing in territory "adjacent" to a municipality, may petition for the annexation of such territory. Section 3558, General Code, provides that when the inhabitants of a municipality desire to annex "contiguous territory", it shall be done in a prescribed manner. Likewise, in Section 3566, General Code, relating to the annexation of one municipality to another the territory of the two is referred to as "contiguous".

It appears to me that there would be strong reason in the case of annexation of territory to a municipality to hold that such territory must do more than merely touch corners. The idea of municipal boundaries contemplates a degree of physical unity such as would produce a homogeneous municipality, not merely from the standpoint of its government, but from the viewpoint of its physical use and improvement. This idea is expressed by McQuillan on Municipal Corporations, Section 294, where it is stated:

"Laws usually require in express terms, that, to authorize annexation the territory must be contiguous or adjacent to the municipal corporation that desires to include it. Contiguous lands are such as are not separated from the corporation by outside land; such as are so situated with reference to the corporation that it may reasonably be expected that after annexation they will unite with the corporation in making a homogeneous city, which will afford to its several parts the ordinary benefits of local government. But however near they are to the petitioning corporaion, if the circumstances are such that it could not rea-

sonably be expected that the parts would amalgamate and form a municipal unit which would afford to each the ordinary benefits of local government it would not be proper to annex them. 'When actual unity is impracticable, legal unity should not be attempted.' Several tracts may be annexed as being contiguous if one tract is contiguous to the municipality and the other tracts are contiguous to each other. *Tracts of land are not contiguous where the only place they join each other is at a point at the corner of the two.*" (Emphasis added.)

However, the conditions that might apply to annexation of territory to a municipality do not appear to me to be pertinent when we come to consider the purpose of annexation or transfer of school territory. The control by boards of education of school territory does not involve in any degree the improvement of the physical surface, such as the building of connecting streets and other improvements or the installation of public utilities, but consists strictly in the maintenance and government of the schools, with the primary purpose in view of the better education of the children, and for such purpose the physical shape of the district is of no particular importance. In my opinion the only purpose the General Assembly could have had in mind in specifying adjoining districts was to prevent the union of territories which were isolated from one another.

I find a number of cases wherein courts have touched upon the interpretation of the words "adjoining" and "contiguous" when used with reference to land. In the case of *Matthews vs. Kimball*, 70 Ark., 451, it was said that the word "adjoining" carried with it the meaning of "nearness and not "immediate proximity". In the case of *Hermac Corporation vs. Sun Oil Company*, 244 N. Y. S., 51, it was said that the words "abutting, adjoining, and contiguous" do not require properties to touch, but merely to be separated by no other property which can be put to private use. A similar statement is found in *People vs. Young*, 399 Ill., 27. A case involving the precise situation which you present, namely whether two territories which simply touch each other at the corners, are "adjoining", is found in *Holmes vs. Carley*, 31 N. Y., 289, the syllabus of which is as follows:

"Where a justice of the peace of another town in the same county, next adjoining the residence of plaintiff or defendant, has jurisdiction to try the action, *held* that two towns contiguous at either of the corners thereof are adjoining towns within the meaning of the statute."

The court, in discussing the proposition that a justice of the peace in the town of Virgil was authorized to try a case involving residents of the town of Marathon, said:

“To pass diagonally from Marathon to Virgil, from the northwest corner of the former to the southeast corner of the latter, the towns are next to each other and at the corners they actually touch each other, and we have no legal definition to show what distance the junction between the two towns must continue, in order to adjoin. A person standing at the nearest point of proximity of Marathon and Virgil could step, and without an effort at a stride, stand with one foot in Marathon, where both parties reside, and the other in Virgil where the justice resides.”

One of my predecessors in opinion No. 84, found in 1917 Opinions of the Attorney General, page 194, held:

“Territory which simply touches at the extreme corners as the apex of a triangle and the corner of a rectangle is not contiguous territory as contemplated in G. C. 4685 and 4738.”

Section 4685 then in force provided, as does Section 4830-5, General Code, at present that the territory included in any school district shall be contiguous, except where a natural island forms an integral part of the district.

An examination of the opinion which is very brief, shows that particular reliance was placed on the case of *Wild vs. People ex rel. Stephens*, 227 Ill., 556, in which the court used the following language:

“Neither two tracts which merely corner on each other, nor two tracts with a strip fifty feet wide included merely for the purpose of connecting them, constitute ‘contiguous’ territory, * * * authorizing the incorporation into a village of contiguous territory.”

An examination of that case shows that it related to annexation to a municipal corporation, and further that it was based upon facts so extreme as to render any other conclusion highly absurd. It was sought to enlarge the corporate limits of a village by extending from its boundary and at a right angle thereto, a strip 310 feet wide and one-half mile long, connecting at a corner with another strip extending in the same direction 200 feet wide and also one-half mile long. Also there was sought to be annexed another strip of ground extending at a right angle to the corporation line

370 feet wide and one mile long, turning at right angles into a 50 foot strip one-half mile long to a tract of ground which was 550 feet by 1,000 feet in dimension. Manifestly, this was an extreme perversion of the law which, like the law of Ohio, limited annexation to contiguous territory. The case, in my opinion, throws no light whatever on the proposition of transferring territory of a school district. Therefore, I have no hesitancy in overruling the opinion referred to. There appears to me to be no doubt that in the case you present the territory referred to does, within the definitions cited, *adjoin* the district to which it is proposed to be annexed.

Accordingly, in specific answer to your question it is my opinion that where territory within a school district is proposed to be transferred to an adjoining school district under the provisions of Section 4831-13, General Code, such district is an "adjoining district" notwithstanding only a corner of the territory proposed to be transferred is in contact with the boundary of such other district.

Respectfully,

HUGH S. JENKINS,
Attorney General.