

4104

1. SCHOOL DISTRICT, NEW — WHEN CREATED BY COUNTY BOARD OF EDUCATION — CONSISTS OF OR EMBRACES PART OF TERRITORY OF EXISTING SCHOOL DISTRICT — PORTION, REMAINING DISTRICT IS OLD DISTRICT, WHICH EXISTS AND FUNCTIONS.
2. NO VESTED LEGAL POWER IN COUNTY BOARD OF EDUCATION TO CREATE NEW SCHOOL DISTRICT, DISSOLVE EXISTING DISTRICT AND ABOLISH ITS BOARD.
3. NO AUTHORITY, SECTION 4736 G.C., OR ANY OTHER PROVISION OF LAW TO DISSOLVE SCHOOL DISTRICT AND ABOLISH BOARD BY CHANGING NAME AND THUS ASSUME TO CREATE NEW SCHOOL DISTRICT.
4. DUTY COUNTY BOARD OF EDUCATION TO APPOINT BOARD FOR NEW DISTRICT — ELECTION OF MEMBERS — TERMS OF OFFICE.

## SYLLABUS:

1. *When a new school district consisting of or embracing a part of the territory of an existing district is created by a county board of education by authority of Section 4736, General Code, the portion of the district remaining constitutes the old district which with its board of education continues to exist and function as before.* L

2. *No power is vested by law in a county board of education to create a new school district and appoint a board of education therefor from the territory alone of an existing district and thereby dissolve the existing district and abolish its board of education.*

3. *A county board of education is not empowered by authority of Section 4736, General Code, or any other provision of law to dissolve a school district and abolish its board of education and by simply changing its name assume to create from its territory a new school district.*

*4. When a new school district is created by a county board of education by authority of Section 4736, General Code, it is the duty of the county board of education to appoint a board of education for such new district, the members of which shall hold their offices until the first election for members of a board of education held in such district after such appointment, at which said first election two members shall be elected for two years and three members shall be elected for four years.*

Columbus, Ohio, August 23, 1941

Hon. Glenn L. Fortune, Prosecuting Attorney,  
Carrollton, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

“My office is confronted with the following proposition of law upon which I would appreciate your opinion at as early a date as you can conveniently render same. The facts involved in this legal proposition are as follows:

#### STATEMENT OF FACTS

The minutes of the Carroll County Board of Education of May 7, 1940, show that by virtue of General Code Section 4736, they recreated the New Harrisburg Rural School District by taking that part of the civil Township of Harrisburg, which was on May 1, 1940, a part of the Brown-Harris Rural School District and declared it a separate school district, such school district being called the New Harrisburg Rural School District, such action being subject to the approval of the State Department of Education. Motion carried.

The June 13, 1940, meeting of the Carroll County Board of Education shows the appointment of members of the Board of Education for the New Harrisburg Rural School District.

The July 5, 1940, meeting of the Carroll County Board of Education shows that the remaining territory of the Brown-Harris Rural School District is now and shall be known hereafter as the Brown-Rural School District. Motion carried.

The July 5, 1940, meeting also shows a motion naming four members of the Brown-Harris District to succeed themselves, and another member to fill the place of the fifth member who had resigned previous to this meeting, all to serve until the next election for members of the Board of Education.

## QUESTIONS

(1) Does a County Board of Education have the authority to strike off a small section of a large school district, set up a school board there, and then name a Board of Education for the larger remaining portion of the School District?

In the district which was struck off, there was no Board of Education member at the time it was so struck off.

(2) Under the above circumstances has the County Board of Education the authority to order a general school board election for members of the Board of Education to be held at the first election after this action was taken?

P.S. Enclosed herewith is a copy of the minutes which will assist in explaining the matters above set forth."

After the receipt of the above request I received from you a second communication posing the following two questions relative to the same matter, to wit:

"(1) When a small section is struck off from a large school district, a new school board named and created in the small section which has been struck off, and when the members of the board of education from the large school district, before said small section was struck off, were elected by the voters of the entire large school district, does the fact of the striking off of the small section from the entire large school district create both a new small district which was struck off, and also a new remaining portion of said large school district which requires the appointment of a new board of education until the next general election, or does the striking off of the small section of territory merely leave remaining the same old school district so that it would be unnecessary to have an election of all the board members at the succeeding general election?

(2) In the copy of the minutes of the Carroll County Board of Education which I enclosed in my former request of April 1, 1941, page 3 under date of July 5, 1940, entitled 'Adjourned Session naming of Brown-Rural School District', and the succeeding paragraph entitled 'Appointment of Brown-Rural Board' under my request of paragraph I herein, could said proceedings regarding appointment be rescinded under the theory that the remaining large school district was unchanged by the striking off of a small newly created district therefrom?"

With your inquiry you have submitted a transcript of the pertinent portions of the minutes of the meetings of the Board of Education of the Carroll County District held on April 4, 1940, May 2, 1940, May 7, 1940, June 13, 1940, July 5, 1940, August 1, 1940 and August 20, 1940, reference to which will hereinafter be made.

Section 4736, General Code, by authority of which county boards of education may create new school districts and appoint boards of education for such districts, provides:

“The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall make an equitable division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it. Members of the board of education of the newly created district shall be appointed by the county board of education and shall hold their office until the first election for members of a board of education held in such district after such appointment, at which said first election two members shall be elected for two years and three members shall be elected for four years, and thereafter their successors shall be elected in the same manner and for the term as is provided by Section 4712 of the General Code. The board so appointed by the county board of education shall organize on the second Monday after their appointment.”

It appears from the minutes of the meetings of the Carroll County Board of Education held on April 4, 1940, that a group of residents of the Brown-Harris Rural School District, a local district within the Carroll County District appeared before the county board on that date and urged that the said local district remain intact as it had existed during the school year 1939-1940.

It seems that a part of the Brown-Harris District which at that time lay in the civil township of Harrison had at some time in the past constituted a separate district known as the Harrison Rural School District and it appears that on May 2, 1940 a number of residents residing on this territory appeared before the Carroll County Board of Education and presented a petition asking that the “Carroll County Board of Education recreate the Harrison Rural School District by taking that part of Harrison Township which is now a part of The Brown-Harris Rural School District and making it a new school district.” At this meeting it was reported that the Director of Education had recommended that “the present Brown-Harris District be held intact as at present.”

On May 7, 1940, at an adjourned session of the meeting of May 2nd some consideration was given to the matter of the creation of a new district from the territory then within the Brown-Harris District and the following proceedings as shown by the minutes of the meeting took place:

“It was moved by.....and seconded by..... that the Carroll County Board of Education pursuant to General Code Section 4736 recreate the New Harrisburg Rural School District by taking that part of the civil township of Harrison which is on May 1, 1940 a part of the Brown-Harris Rural School District and declare it a separate school district, such school district to be known as the New Harrisburg Rural School District. Such action being subject to the approval of the State Department of Education. Roll Call: \* \* \*

The president declared the motion, ‘Carried’.”

At the meeting of the County Board of Education held on June 13, 1940, upon motion duly seconded, five persons were appointed to serve as members of the board of education for the newly created New Harrisburg Rural School District in Carroll County until the next election for members of boards of education. According to the minutes the following further proceedings were had at this meeting:

“It was moved by.....and seconded by..... that the plan of district organization for Carroll County as required by Section 7600-2 of the General Code, be as follows; and the county superintendent be authorized to submit the required data concerning same to the Director of Education.

That part of the civil township of Harrison which was on May 1, 1940 a part of the Brown-Harris Rural School District in Carroll County was on May 7th declared by the Carroll County Board of Education to be a separate school district, such district to be known as the New Harrisburg Rural School District.”

All members of the Carroll County Board of Education voted “yea” on the motion.

At an adjourned session of this meeting held July 5, 1940, it was duly resolved “that all of the territory in the Brown-Harris Rural School District on May 1, 1940 excepting that portion which was declared by the Carroll County Board of Education on May 7, 1940 to be the New Harrisburg Rural School District is now and shall be known hereafter

as the Brown Rural School District. This action is authorized by General Code Section 4736.”

The above resolution was adopted by the affirmative vote of all five members of the board.

It also appears that at this adjourned meeting of July 5, 1940, proceedings were had purporting to appoint a board of education for the Brown Rural School District which, as shown by the resolution quoted above, the county board had assumed to create at this meeting. Following this action the minutes show that upon motions duly made and seconded and unanimously approved, a resolution was adopted to the effect that,

“an equitable division of funds and indebtedness between the newly created New Harrisburg Rural School District and the Brown Rural School District be made in accord with General Code Section 4736.”

Later, at an adjourned session of the regular meeting on August 20, 1940, as recited in the minutes:

“It was moved by.....and seconded by..... that pursuant to General Code Section 4736 the Carroll County Board of Education make an equitable division of the funds and indebtedness as of June 7, 1940. The effective date of the action of the Carroll County Board of Education creating the Brown Rural and New Harrisburg Rural School Districts, the Carroll County Board of Education directs the following division of balances, etc.”

It appears from the above excerpts from the minutes of the several meetings of the County Board of Education of the Carroll County School District held between April 4, 1940, and August 20, 1940, that the county board attempted to create two new districts from the territory which had, prior to May 7, 1940, constituted one district known as the Brown-Harris District, and to appoint an entire new board of education for each such district.

While there is considerable doubt as to whether or not power exists in a county board of education to create two new districts from the territory of one district, it is not necessary for our present purpose to determine that question. If the action of the county board of education in creating the New Harrisburg District and the Brown Rural School

District had been contemporaneous acts, the question would squarely be presented whether two new districts may by authority of Section 4736, General Code, be created from territory of one district, thus abolishing the old district and its board of education and necessitating the appointment of an entirely new board of education for each of such new districts. That was not done here. When the board passed its resolution on May 7, 1940, creating the new Harrisburg District, the creation of that district was complete, except as the board's action in so doing might have been defeated by the filing of a remonstrance in accordance with the statute, which was not done. Immediately after the creation of the New Harrisburg district, there remained a portion of the old district which was a complete district and for which the original board of education of the Brown-Harris District existed. It was then a complete district and should have been continued as such. No power existed for the county board thereafter to dissolve it and abolish its board of education by simply changing its name and declaring it to be a new district, as no such power was ever extended by the Legislature to a county board of education. The action of the county board of education taken on July 5, 1940, at a later meeting than the one in which the new Harrisburg District was created, when it was resolved that all the territory in the Brown-Harris District excepting that portion which was declared by the county board on May 7, 1940, to be the new Harrisburg Rural School District should thereafter be known as the Brown Rural School District and the appointment of a board of education for such purported district was, in my opinion, beyond the power of the county board of education, unauthorized and void.

Having taken this view of the matter, it is not necessary to discuss separately the questions submitted by you in your inquiry.

I am therefore of the opinion that the board of education of the Brown-Harris District in the Carroll County School District, as it existed prior to the creation of the new Harrisburg District on May 7, 1940, continued to be the board of education for the district consisting of the remaining territory of the Brown-Harris District after the territory constituting the new Harrisburg District had been taken therefrom, and will continue to constitute such board of education until the terms of said members expire and their successors are elected in accordance with law.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.