

tive to the proper time and payment of water bills, and that payment for such publication may lawfully be made as an expense of conducting and managing the municipal waterworks.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

939.

COUNTY BOARD OF EDUCATION—TRANSFER OF TERRITORY—FROM ONE SCHOOL DISTRICT TO ANOTHER IN SAME COUNTY—TITLE VESTS IN BOARD OF EDUCATION TO WHICH TERRITORY TRANSFERRED—SALE OF SUCH PROPERTY, HOW CONDUCTED—SEE SECTION 4756 G. C.—TRANSFER OF TERRITORY UNDER SECTION 4692 G. C. REQUIRES NO WARRANTY DEED—TITLE AUTOMATICALLY PASSES UPON COMPLETION OF TRANSFER.

1. *Where the county board of education transfers territory from one school district to another school district in the same county school district, under the provisions of section 4692 G. C., title to school property situated in such transferred territory vests in the board of education to which such territory is transferred, upon the completion of such transfer.*

2. *Where a board of education receives title to school property located in territory which has been transferred by the county board of education under the provisions of section 4692 G. C., such property may thereafter be sold by the board of education of the school district to which such territory was transferred, but such real or personal property to be sold must be offered in the manner provided in section 4756 G. C.*

3. *Where a county board of education transfers territory from one school district to another school district in the county school district, under the provisions of section 4692 G. C., warranty deeds to real estate used for school purposes and belonging to the board of education from which such territory was transferred, need not be given to the board of education accepting such territory or school property, as title to real estate automatically passes upon the completion of the transfer.*

COLUMBUS, OHIO, January 15, 1920.

HON. FLOYD E. STINE, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR:—Acknowledgment is made of your request for an opinion of this department on the following statement of facts:

"Some time ago, a rural school district known as C. C. school district went into the L. village school district by petition.

The C. C. school district owned two (2) parcels of land which according to section 4692 of the General Code of Ohio, became vested in the board of education of the L. village school district. The L. village school district afterwards offered this land for sale at public sale, and the same was purchased for about eight hundred dollars (\$800.00).

Will you kindly advise me whether or not the L. village school board had a right to sell the same or if the price for which it sold would in any manner affect the sale thereof.

Under the section of the statute authorizing the transferring of one school district to an adjoining district, should deeds to the real estate be

given by the school board which is being transferred, or does title automatically pass?"

In reply to our letter for further information you submit the following additional facts:

"The transfer was made by the county board of education \* \* \*. The L. village school district is not an exempted school district, but is under control of the county board of education and the county superintendent. The date of transfer was August, 1918."

It is noted that you make the direct statement that the C. C. school district, that is, the board of education of such district, owned two parcels of land, from which it is to be inferred that the C. C. board of education had a clear title to the property in question which was later transferred to the L. village school district. You indicate that the L. village school district is not an exempted school district but is under the control of the county board of education and therefore any transfer of territory made from the C. C. school district to the L. village school district would be made under the provisions of section 4692 G. C., the statute which covers transfers of school territory where made in the same county school district. You indicate that the transfer was made in August, 1918, and that there is no question about the legality of the transfer of territory made by the county board of education at that time.

Bearing upon the question as to when such transfer would take effect and the question of legal title of the property in the territory transferred, section 4692 G. C. reads in part as follows:

"The county board of education may 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. Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred. \* \* \*. The legal title of the property of the board of education *shall become vested* in the board of education of the school district to which such territory is transferred. \* \* \*"

From the above section it will be noted that upon the proper map having been filed with the auditor of the county, the transfer of the territory in question would be complete, provided, of course, that the proper notices had been published or posted and that no remonstrance had been filed with the county board of education within thirty days after the filing of such map with the county auditor. In the case at hand you indicate that all of these things have been properly complied with and desire to know whether or not the L. village school board had a right to sell the property transferred to it from the C. C. school district by the county board of education, and if the price for which it sold would in any manner affect the sale thereof. The general powers of a board of education appear in the following sections of the General Code:

*Section 4749.* "The board of education of each school district, organized under the provisions of this title, shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district any grant or devise of land and any donation or bequest of money

or other personal property and of exercising such other powers and privileges as are conferred by this title and the laws relating to the public schools of this state."

*Section 4756.* "When a board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell such property at public auction after giving at least thirty days' notice thereof by publication in a newspaper of general circulation or by posting notices thereof in five of the most public places in the district in which such property is situated. When the board has twice offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at private sale, either as an entire tract or in parcels, as the board deems best. Provided, however, that in case the board of education decides to dispose of such real property, it may sell and convey the same to any municipality or board of trustees of the school district library in which such real estate is situated, upon such terms and conditions as may be agreed upon. The president and secretary of the board shall execute and deliver deeds necessary to complete the sale or transfer provided for by this section."

*Section 4757.* "Conveyances made by a board of education shall be executed by the president and clerk thereof \* \* \*. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board."

*Section 7620.* "The board of education of a district may \* \* \* make all other provisions necessary for the convenience and prosperity of the schools within the subdistrict."

*Section 7690.* "Each board of education shall have the management and control of all the public schools of whatever name or character in the district. \* \* \*"

The important part of section 4692 G. C. under which transfers of school territory, located in the same county, are made, as regards the question at hand, is this sentence:

"The legal title of the property of the board of education shall become vested in the board of education of the district to which such territory is transferred."

This language of the statute says that the legal title shall become vested, and to vest is "to give an immediate fixed right of present or future enjoyment." Bouviers Law Dictionary.

It would seem, therefore, that upon the completion of the necessary operations in the transfer, heretofore referred to, the legal title immediately vests in the district to which the territory was transferred, that is, in this case the L. village school district, and the board of education of the L. village school district would at that time become vested with all the title which the C. C. board of education had to the school territory in question. Under section 4756 G. C., heretofore quoted, a board of education has the clear right to dispose of the real and personal property in which it has title, but the method prescribed in such section must be carried out in order that such sales may be legal. The section says that where the property is valued at more than \$300.00, there shall be a public auction, after thirty days' notice thereof by publication in a newspaper, or by posting notices in five of the most public places in the district.

You indicate that the property sold by the L. village school district, and which property had been transferred from the C. C. school district, which had formerly

owned it, sold for about \$800.00, which, it will be noted, is in excess of the \$300.00 mentioned in section 4756 G. C. So the price for which sold has no bearing upon the right to sell and the legality of the sale could not be questioned if the manner of sale provided for in section 4756 had been carried out. In the case at hand the right to sell is conferred in section 4756 and the legal title to the transferred property is acquired under section 4692 G. C., and inasmuch as in the latter section it says that the legal title shall become vested when the territory is transferred, the title passes automatically and there is no necessity of a warranty deed being given by the C. C. board of education to the L. village board of education. The transfer was made by the county board of education, which is a higher authority than either of the two local boards, and the record of the transfer, as carried upon the minutes of the county board of education, and the proper filing made in the office of the county auditor, would constitute evidence of the transfer.

As to the discretion of a board of education to do the things which it is permitted to do under the law, attention is invited to the very recent decision in the case of Brannon et al. vs. County Board of Education of Crawford county, in the Tiro consolidated school district case, reported in 99 O. S. 369. A pertinent part of such decision reads as follows:

“A court has no authority to control the discretion vested in a board of education by the statutes of this state or to substitute its judgment for the judgment of such board upon any question it is authorized by law to determine. Nor will a court restrain such board of education from carrying into effect its determination of any question within its jurisdiction, except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority.”

It is true that a warranty deed from one board of education to another is provided for in section 4690 G. C., which reads as follows:

“When territory is annexed to a city or village such territory thereby becomes a part of the city or village school district, and the legal title to school property in such territory for school purposes shall remain vested in the board of education of the school district from which such territory was detached until such time as may be agreed upon by the several boards of education, when such property may be transferred by warranty deed.”

The above section means that there must be in the first instance an annexation of territory outside of a city or village to such city or village for municipal purposes. Then there follows that such territory automatically becomes a part of the city or village school district. Where this condition obtains, that is, that the territory is annexed to a city or village for municipal purposes, legal title to any school property situated in such territory shall remain vested in the board of education of the school district from which such territory was detached, until the time to be agreed upon, when the several boards of education transfers such school property by warranty deed. In the C. C. school district matter no territory was annexed to the village of L. for municipal purposes, hence the provisions of section 4690 do not apply; on the other hand, it was a simple transfer of territory without any municipal annexation features annexed to it and made under the provisions of section 4692, wherein title to such territory vests at the moment the transfer is completed.

Based upon the statement of facts submitted, and the statutes herein quoted, it is therefore the opinion of the attorney-general:

1. Where the county board of education transfers territory from one school

district to another school district in the same county school district, under the provisions of section 4692 G. C., title to school property situated in such transferred territory vests in the board of education to which such territory is transferred, upon the completion of such transfer.

2. Where a board of education receives title to school property located in territory which has been transferred by the county board of education under the provisions of section 4692 G. C., such property may thereafter be sold by the board of education of the school district to which such territory was transferred, but such real or personal property to be sold must be offered in the manner provided in section 4756 G. C.

3. Where a county board of education transfers territory from one school district to another school district in the county school district, under the provisions of section 4692 G. C., warranty deeds to real estate used for school purposes and belonging to the board of education from which such territory was transferred, need not be given to the board of education accepting such territory or school property, as title to real estate automatically passes upon the completion of the transfer.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

940.

HOSPITAL—PRIVATELY OWNED AND OPERATED NOT FOR PROFIT  
—RECEIVES CHARITY PATIENTS—ENTITLED TO FREE WATER  
FROM MUNICIPALITY.

*A privately owned hospital that charges some of its patients who are able to pay, but also receives charity patients, and is not operated for profit, is entitled under sections 3963 and 14769 to free water from the municipality.*

COLUMBUS, OHIO, January 15, 1920.

*The Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department, as follows:

“Under date of December 5, 1919, this department submitted to you for written opinion a number of questions relating to free water under sections 3963 and 14769 G. C.

May we ask you, please, in considering the questions involved, that we may also have answer to the following:

Under sections mentioned, is a privately owned hospital in a municipality that charges patients who are able to pay but receives some charity patients who are not able to pay, entitled to free water?

Is a hospital of this nature that receives pay from the city for the city poor received at such hospital, entitled to free water?”

Your attention is directed to the discussion of sections 3963 and 14769, in the opinion rendered on your request of December 5, 1919, referred to in your letter. Because of this recent expression of the views of this department in that opinion,