

Your inquiry resolves itself to a determination of what is meant by "special cases" as used in Section 7248-2 of the General Code. The legislature of the State of Ohio, by the enactment of Sections 7246 to 7251-1 of the General Code, has adopted a definite policy of limiting weight, width, height, length and speed and of prescribing size of different types of tires on vehicles on the public highways, with the object of preservation and protection of highways and streets and to prevent, as far as possible, the use of vehicles on the highways which tend to interfere with the convenience and safety of traffic.

With this in mind such a construction must be placed upon the words "special cases" as will consistently carry out the object of this legislation. It was not the intention of the legislature to grant to certain officers the power to substitute their judgment for that of the legislature in determining which vehicles should be operated generally upon the highways to promote safety and economy, so that when the legislature granted authority to these officers in "special cases" it intended to limit their authority to some peculiar or extraordinary event or occurrence which might arise that the legislature could not contemplate in advance. Such a construction is consistent with the general policy of the legislature to reduce to a minimum the operation of large types of vehicles upon the highways to promote safety and economy. Any other construction would not only be inconsistent with the general policy of the legislature but would have a tendency to give certain officers the power to nullify the express restrictions as to vehicles provided by the legislature.

It is to be presumed that the legislature acted with full knowledge of all facts and conditions essential to valid legislation when it adopted regulations in the exercise of its police power and therefore it must be presumed that it took into consideration all types of vehicles of a greater length than thirty (30) feet and it cannot be said that the legislature did not contemplate the restriction of the use of the vehicle described in your letter.

In view of the discussion herein, I am of the opinion that the case presented by you in your letter is not a special case within the meaning of the provisions of Section 7248-2 of the General Code and therefore the Director of Highways does not have the authority to grant a permit for the operation of the vehicles in question, upon the highways.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2057.

BOARD OF EDUCATION—VILLAGE SCHOOL DISTRICT—NOTIFICATION TO COUNTY BOARD OF INTENTION TO BECOME EXEMPTED DISTRICT ENDS AUTHORITY OF SAID COUNTY BOARD OVER TERRITORY—EXEMPTION OF VILLAGE DISTRICT BASED ON CENSUS TAKEN MORE THAN REASONABLE TIME BEFOREHAND UNAUTHORIZED.

SYLLABUS:

1. *After the board of education of a village school district having a population of 3,000 or more, as shown by a proper census, or containing a village which at the last Federal census had a population of 3,000 or more, takes the necessary steps in accordance with Sections 4688 and 4688-1 of the General Code, to become an exempted village school district, and notifies the county board of education to that effect, the said county board of education is precluded from exercising any authority over the territory com-*

prising the said district by way of changing its boundaries, until the said village board of education rescinds its action in becoming an exempted village school district or decides to again come under the supervision of the county board of education.

2. *A resolution of a village board of education deciding to be exempted from the supervision of the county board of education, cannot lawfully be predicated on a census taken as provided by Section 4688-1 of the General Code, which census was taken four years before the said resolution was adopted.*

COLUMBUS, OHIO, July 7, 1930.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

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

“In Holmes County we have the county board of education, and then under that, we have the Millersburg Hardy Township School Board, a district which is composed of all of the village of Millersburg, a village of about two thousand population and the territory surrounding the village in Hardy Township.

The Millersburg Hardy Board was not an exempted board, but was under the jurisdiction of the county board at the time these matters took place.

On April 12, 1926, the Millersburg Hardy Board passed a resolution asking for exemption from the county supervision, under G. C. 4688, which resolution was properly certified by the county board census taken and all acts performed as required of Section 4688, General Code.

On April 21, 1926, the county board passed a resolution creating two districts out of the Millersburg Hardy District, namely, the Millersburg School District and the Hardy Township School District. The said resolution was passed and the Millersburg Hardy Board notified, and the same was certified to them but no two boards were created to take care of the two districts created by the county board. The same board of education continued, that is, the Millersburg Hardy Board continued to act just as if the districts were not divided or created, and acted as if it were all in one district—the Millersburg Hardy District.

On April 30, 1926, the Millersburg Hardy Board of Education passed a resolution asking that the exemption from the county board be postponed, and their resolution of April 12th be rescinded for one year. On May 1, 1926, the Millersburg Hardy Board of Education passed a third resolution asking that the resolution of April 12th be vacated and held for naught.

Since passing these resolutions, up to and including the present time, there has been but one board—namely, the Millersburg Hardy Board, which has recognized itself as under the supervision of the county board, and recognized itself as being a part of the County School District.

On April 29, 1930, the Millersburg Hardy Board passed a resolution asking for exemption of the county superintendent and creating an exempted village district under Section 4688, General Code. All acts necessary to be done under Section 4688, General Code, to create an exempted village district by the Millersburg Hardy Township Board have been done by said board.

QUESTION

What is the status of the Millersburg Hardy Board at the present time, that is, is it an exempted village school district by action of its board, April

29, 1930, or does the action of the county board of April 21, 1926, take precedence over everything in creating the two new districts, leaving us a Millersburg-Hardy Board and a Hardy Township School District?

If the action of the Millersburg Hardy Board of April 30th and May 1st rescinded their action of April 12th, creating an exempted village school district and the action of the county board of April 21st is valid, then there must be two school districts,—Millersburg School District and Hardy Township School District, and in that event, there would not be sufficient population in the Millersburg School District, that is, three thousand, to create an exempted village school district by action of the Millersburg Hardy Board of April 29, 1930.

Enclosed find copy of the resolutions as above mentioned, for your convenience. Please advise the status of our territory in Millersburg and Hardy Township, whether we have two districts, or an exempted village district, or one district and the county school district."

By the terms of Section 4681, General Code, a school district in which there is an incorporated village having therein a tax duplicate of not less than \$500,000, is a village school district. I am informed that the Millersburg-Hardy School District with which your inquiry is concerned, is such a district and was a village school district as defined by the statute in April, 1926.

Inasmuch as the said district was at all the times mentioned, a village school district, it was at all such times authorized to become an exempted village district if it possessed the requisite requirements as to population and took the steps required by law. The transition from a village district to an exempted village district is controlled by Sections 4688 and 4688-1, General Code, which read as follows:

Sec. 4688. "The board of education of any village school district containing a village which according to the last census had a population of three thousand or more, may by a majority vote of the full membership thereof decide to be exempted from the supervision of the county board of education. Such village school district by notifying the county board of education of such decision before May first in any year, shall be exempt from the supervision of the county board of education for the following school year which begins September first thereafter. The village once so exempted shall be styled an exempted village school district and shall remain so until the board of education thereof by a majority vote of the full membership determines that it desires to be supervised by the county board of education and notifies the county board of education on or before May first in any year to that effect."

Sec. 4688-1. "The board of education of a village school district shall, upon the petition of one hundred or more electors of such district, or upon its own motion, duly passed by a majority vote of the entire board, order a census to be taken of the population of such district. One or more persons may be appointed by the board to take such census. Each person so appointed shall take an oath or affirmation to take such census accurately. He shall make his return under oath to the clerk of the board, and certified copies of such return shall be sent to the county, auditor and superintendent of public instruction. If the census shows a population of three thousand or more in the village school district, and such census is approved by the superintendent of public instruction, such district shall be exempted from the supervision of the county board of education after due notice is given as is provided in Section 4688."

Inasmuch as the village of Millersburg did not have a population of 3,000, as shown by the 1920 Federal census, the Millersburg-Hardy District could not, by force of Section 4688, General Code, become an exempted village school district in 1926, or at any other time prior to the official certification of the 1930 census. If, however, the Millersburg-Hardy District following the procedure outlined in Section 4688-1, General Code, had a census taken, by authority of said statute showing that the district had a population of 3,000 or more, it was then empowered to become an exempted village school district by so declaring and notifying the county board of education to that effect.

As stated in your inquiry, the necessary steps to become an exempted village school district were taken by the said Millersburg-Hardy Board of Education on April 12, 1926, and I am informed due notice thereof was given to the county board of education on April 13, 1926. By force of the action so taken had that action not been rescinded the said school district would have been exempted from county supervision from the beginning of the school year following said April 13, 1926.

Although the said district did not immediately, following the action of its board of education taken on April 12, 1926, and the due certification thereof made on April 13, 1926, become an exempted village school district and would not become such until the beginning of the next school year, I am of the opinion that the action of the board, taken at that time, served to withdraw the territory comprised in the district from the jurisdiction of the county board of education to the extent of precluding said county board from the exercise of any authority over said territory by way of transferring territory to or from the district or including any part of the territory of the district in a new district sought to be created by authority of Section 4736, General Code.

In an opinion rendered by me on June 5, 1930, being Opinion No. 1947, it is held as stated in the first branch of the syllabus:

“When power is given under the statutes to two different governmental agencies to act with reference to the same subject matter, exclusive authority to act with reference thereto is vested in the agency first acting under the power.”

The doctrine of the aforesaid opinion, and the conclusions reached therein, are based upon the holding of the Supreme Court of Ohio in the recent case of *Trumbull County Board of Education vs. The State ex rel. Van Wye*, 122 O. S., 247, O. L. B. and Rep., issue of May 19, 1930, Ohio Bar, issue of May 13, 1930, and the authorities therein cited.

In the instant case, the statutes give power over the same territory to two governmental boards, one the local board of education of the village school district, which district meets certain requirements with reference to population, which board may, by a majority vote, decide to be exempted from the supervision of the county board of education, and the other the county board of education of the county school district of which such local village district is a part, which county board of education may transfer a part or all of the territory embraced within the village school district to a contiguous school district of the same county school district by authority of Section 4692, General Code, or subdivide the territory of the village school district and make two districts thereof by authority of Section 4736, General Code, as the county board apparently attempted to do with the Millersburg-Hardy District on April 21, 1926.

The local board of education of the Millersburg-Hardy District having exercised its power to exempt said district from the supervision of the county board of education on April 12, 1926, even though such exemption did not become effective until the beginning of the next school year, the said board of education of Holmes County

School District did not possess the power on April 21, 1926 to subdivide said school district and make two districts thereof, the action of the local board in exempting the district having been taken prior to that time.

The action of the county board of education taken on April 21, 1926, to subdivide the Millersburg-Hardy School District into two districts was, in my opinion, null and void, for the reason that at that time the county board did not possess the power to make such division.

This condition existed with the Millersburg-Hardy School District from April 13th, when the county board was served with notice of the local board's intention to become an exempted village school district until April 30, 1926, when the board of education of Millersburg-Hardy School District rescinded its former action, as it no doubt had a right to do.

By reason of the action of the board on April 30, 1926, rescinding its action taken on April 12, 1926, the district again became a part of the Holmes County School District for all purposes, and the jurisdiction of the county board of education over the territory of said district was completely restored.

Even if the county board had possessed the power on April 21, 1926, to subdivide the territory of the Millersburg-Hardy District and make of said district two districts, and had then passed a resolution to that effect, the fact that separate boards of education were not then appointed by the county board, nor within a reasonable time thereafter, and the district continued to function as one district with the same board of education which it formerly had, would cause the action of the county board, in my opinion, to be construed as not having been completed, and therefore as never having become effective.

While it is necessary for a county board of education when creating a new school district under and by force of Section 4736, General Code, to appoint a board of education for such district it is not necessary, in my opinion, that such board be appointed immediately, and the failure to appoint such board at the time of the creation of the district does not nullify the action so taken. The new board may be appointed later. I do think, however, that in order to make the action of the board effective, the new board of education for the newly created district should be appointed within a reasonable time, and if this is not done and the county board acquiesces in the functioning of the old board of education and of the territory in its relation to other school districts, as it had functioned before the board attempted to create the new district and this condition continues for a period of four years, it would be held that the action of the board in creating the new district or districts had no force and effect.

In my opinion, the Millersburg-Hardy District continued as a single village district under the supervision of the county board of education during all the time since April 12, 1926, up to and including the present time.

On April 29, 1930, the Millersburg-Hardy Board passed a resolution asking for exemption from county supervision and sought thereby to become an exempted village school district under and by authority, as you state, of Section 4688, General Code. The said district could not become a village school district except by authority of Section 4688-1, General Code, for the reasons stated above. A census had been taken, as provided by the statute, in 1926, and it was thereby shown that the said district had a population of 3267, and said census was approved, I am informed, by the State Superintendent of Public Instruction under date of March 27, 1926. The question arises whether or not by virtue of the said census taken in 1926, the district could, on April 29, 1930, become an exempted village school district, by authority of Section 4688-1, General Code.

There is little, if anything, in the wording of the statute upon which to base a conclusion with respect to this question. It does not seem reasonable to suppose that

the Legislature could have intended that upon taking a census such as is provided for in Section 4688-1, General Code, there could be predicated an intention to become an exempted village school district, which intention was not formed until four years after the taking of the census. Many changes with respect to the number of inhabitants of any territory may occur in a four-year period. It was apparently the intention of the Legislature that no district should become an exempted village school district unless it actually had a population of 3,000, and that fact was definitely shown by the taking of the census such as is described in the statute, and the approval of that census by the Director of Education. Action to become exempted following the census should, in my opinion, be taken within a reasonable time, so as to preclude, in so far as possible, the possibility of such a change in population as to render the number of inhabitants in the district less than 3,000. Four years, in my opinion, is sufficiently long to render it possible, at least, for the territory to have lost enough inhabitants to cause the population to be less than 3,000.

I do not find from your statement or from the copies of proceedings submitted that a census of the Millersburg-Hardy District was taken as provided by Section 4688-1, General Code, after the one taken in 1926, or that a petition was filed therefor.

I am therefore of the opinion that the action of the Millersburg-Hardy Board of Education, of April 29, 1930, deciding to become exempted from county supervision without the taking of a census, as provided for by Section 4688-1, General Code, within a reasonably short time prior thereto upon which the action of the board is based, is unauthorized and of no effect, and that the Millersburg-Hardy School District, in accordance with the facts submitted to me, is now a village school district of the Holmes County School District, subject to the supervision of the Holmes County Board of Education.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2058.

STATE HIGHWAY IMPROVEMENT—FORM OF ADVERTISEMENT FOR BIDS RECEIVED.

SYLLABUS:

Proposed form of advertisement under the requirements of Section 1206 of the General Code, discussed.

COLUMBUS, OHIO, July 7, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“I am submitting herewith for your consideration copy of legal advertisement as formerly published by this department; also copy of legal advertisement now in use by this department.

You will note we have cut the information to interested parties to a minimum.

Your opinion on this matter will be very much appreciated.”

The copy of the advertisement which relates to Project No. 105 apparently is the one formerly used by your department and reads as follows: