

2617.

BOARD OF EDUCATION—COUNTY—TRANSFER OF SCHOOL TERRITORY EXACTLY AS PETITIONED BY REQUIRED ELECTORS—MANDATORY—PROCEDURE—JURISDICTION DISCUSSED.

SYLLABUS:

1. A county board of education, in making transfers of school territory to a city, exempted village or other county school district, is not authorized to transfer any territory other than the exact territory described in the petition filed therefor.

2. When a county board of education becomes charged with the mandatory duty of transferring school territory to a city, exempted village or other county school district, by the filing with it of a petition signed by three-fourths of the electors residing in the territory which it is sought to have transferred, that mandatory duty can only be abrogated by the withdrawal of a sufficient number of signatures from said petition before official action is taken thereon so as to reduce the number of signers to less than seventy-five percent of the total number of electors residing in the territory to be transferred, or by compliance with the petition, and refusal on the part of the city, exempted village or other county school district to accept the transfer so made.

3. The record of the minutes of a meeting of a county board of education should show the proceedings of the meeting exactly as they occurred, whether the action taken at the meeting was legal and valid or otherwise, and if, after the record is made up, it is found that the proceedings have not been correctly reported, the record should be corrected to conform to the facts before being approved at the next meeting.

4. Invalid, ineffective or illegal resolutions adopted by a board of education cannot be validated or rendered effectual or legal by changing the wording of the resolutions at the next meeting under the guise of correcting the minutes of the previous meeting and approving them as corrected.

COLUMBUS, OHIO, September 24, 1928.

HON. G. C. SHEFFLER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

“I am enclosing you a series of eight questions regarding transfer of territory under Section 4696 General Code.”

The questions submitted and the state of facts on which they are based, follows:

“In August the County Board of Education of Sandusky County received a petition from Ballville Township Rural School District signed by eighty per cent of the electors asking a transfer of all of Ballville Township Rural School District to the City of Fremont. This petition had been on file in the office of the County Board for probably two weeks. On August 18th, the date of the regular meeting of the County Board, another petition signed by almost all of the electors of the Meyers School District who were of the twenty per cent of those who had failed to sign the original petition was filed requesting a transfer of their portion of the Township to the adjacent territory of Seneca County. On that date the County Board of Education transferred more than the amount of territory requesting transfer in this last petition to Seneca County. The Seneca County Board of Education has failed to accept or later will reject the transfer. At the same meeting the Sandusky County Board of Education transferred the remainder of Ballville Rural School District to the City of Fremont and at our request

the City Board of Education has not as yet accepted the transfer, hence these questions:

First, Since eighty per cent of all of Ballville Township Rural School District requested transfer of all of Ballville Township to the Fremont City School District (Section 4696) would a petition from among the remaining twenty per cent have any effect in law even though asking for a transfer to an adjacent territory in Seneca County?

Second, Would the County Board of Education have any right to exceed the boundary line designated in the petition for transfer to Seneca County even though it were not opposed by any property holders in the territory concerned?

Third, Which petition takes preference, the first one signed by eighty percent of all the property holders of Ballville Township Rural School District requesting the transfer of all of Ballville Township Rural School District to the City of Fremont or the latter petition containing almost all of the electors requesting attachment to Seneca County which were among the twenty per cent who had refused to sign the original petition or, in other words, has this second petition any force in the eyes of the law since it would be contradictory to the original petition?

Fourth, Could not the County Board of Education use its discretion in honoring this second petition as far as the authority of the Sandusky County Board of Education under 4696 is concerned?

Fifth, Should the Fremont City Board of Education accept its portion of Ballville and the Seneca County Board of Education reject its portion of transfer, what would be the status of that small portion of the township remaining which would be then neither a portion of Seneca County nor a portion of the City District and wherein no member of the former Ballville Board of Education resided?

Sixth, Would this territory which would then be the remainder of Ballville Township be known as Ballville Township Rural School District and would the County Board of Education be required to appoint a Board of Education therefor?

Seventh, Would it be a legal and acceptable method of procedure since the Seneca County Board of Education has rejected its transfer to request the City Board of Education to also reject its transfer and then would the County Board of Education be at liberty and bound by the original petition requesting transfer to re-transfer all of the Township embracing both territories formerly described in these questions to the City School District subject to the provisions of Section 4696 of the General Code?

Eighth, Growing out of the following resolutions:

Mr. L. presented the following resolution and moved its adoption: Be it resolved that portions of Sections 29, 28 and 27 still remaining in the Ballville Township Rural School District and the South one-half of Sections 20 and 21 and the West one-half of the South West one-quarter of Section 22 and 50 acres indicated on the Wismar Map as owned by H. H. P. and 38.5 acres indicated on the Wismar Map as owned by E. L. situated in the North one-half of Section 30 be, and the same is, hereby transferred to Seneca County Rural School District of Ohio, subject to the Provisions of Section 4696 of the General Code. Mr. R. seconded the motion. Aye and Nay vote being ordered resulted as follows: B. Aye, L. Aye, R. Aye, Y. Aye, S. Aye. Motion was declared carried.

Mr. R. then offered the following resolution and moved its adoption: Whereas 80% of the qualified electors of Ballville Township Rural School District, Sandusky County, Ohio, have requested attachment to the Fremont City School District of Fremont, Ohio, therefore, be it resolved that the remainder of Ballville Township Rural School District, Sandusky County, Ohio, be, and the same is, hereby transferred to the Fremont City School District of Fremont, Ohio, subject to the provisions of Section 4696 of the General Code. Mr. L. seconded the motion. Aye and Nay vote being ordered resulted as follows: B. Aye, R. Aye, L. Aye, Y. Aye, S. Aye. Motion declared carried.

Is it possible, since Seneca County has or will reject the transfer of the Meyers School District, that the second resolution quoted before might be interpreted to include all of Ballville Township Rural School District in its transfer to the City of Fremont even including the Meyers District and that portion which we attempted to transfer to Seneca County?

Of course, you understand, we have filed maps with the City Clerk, the County Auditor of both counties and should you rule in the affirmative in this question would it be necessary for us to pass a resolution correcting aforesaid transfer?"

Since the receipt of your communication, and after talking to your County Superintendent of Schools, I am in receipt of a letter from the County Superintendent which was written under date of September 17, 1928, and apparently with your approval, which reads as follows:

"Referring to the eight questions which I have brought you regarding the transfer of Ballville Township Rural School District to Fremont City School District of Sandusky County, Ohio:

Since your ruling that the first petition takes preference and the transfer to Seneca County was illegal and, at any rate, Seneca County is not accepting same, at our Saturday's Regular County Board Meeting the second resolution which we quoted you in question eight when read was corrected to read 'all of Ballville Township School District is hereby transferred to the City of Fremont' instead of '*the remainder* of Ballville Township School District is hereby transferred to the City of Fremont.' First, does this offer a reasonable solution? Second, Must this correction be quoted in exact words or in any way in the minutes of Saturday's Meeting? Possibly we had better amend our original list of questions to embrace a ninth question which would be worded as follows:

Ninth, Since you are ruling (and we believe correctly so) that the second petition or the one asking for transfer of Meyers District to Seneca County was contradictory to the first petition which asked for all of Ballville Township Rural School District to be set into Fremont City School District, when the minutes are read Saturday, September 15th, before approved if the resolution were made to read 'all of Ballville Township Rural School District is hereby transferred to Fremont City School District' instead of '*the remainder* of Ballville Township Rural School District is hereby transferred to Fremont City School District' would that satisfy the conditions of law since it coincides with the wording and request of the first petition? Second, in correcting minutes thus, would it be necessary to state in the minutes of the Saturday's Meeting which would approve the minutes of August 18th, the exact correction or is it necessary in the minutes of September 15th to make any notation regarding the correction of these minutes which were then being approved?"

Section 4696, General Code, reads in part as follows:

“A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district.” * * *

By virtue of Section 4692, General Code, county boards of education are vested by law with jurisdiction to transfer school territory lying within the school district of a county school district to another school district of the same county school district. This jurisdiction is limited only by the provisions of Sections 4726 and 4727, General Code, with reference to rural school districts in which the schools have been centralized by vote of the people, and by the filing of remonstrances, as provided by the statute.

A county board of education is not vested by law, however, with the power to transfer school territory to a city, exempted village, or another county school district. Such jurisdiction exists in county boards of education only as it may be conferred upon them by petition, as provided in Section 4696, supra. Jurisdiction is conferred upon a county board of education to transfer school territory lying within a district of the county school district, other than centralized districts, to a city, exempted village, or another county school district by the filing of a petition with said county board, signed by a majority of the electors residing in the territory which it is sought to have transferred. The duty to act under the petition does not become mandatory unless the petition is signed by at least seventy-five percent of the electors residing in the territory to be transferred.

If the territory sought to be transferred lies within a centralized district, jurisdiction in a county board of education to make the transfer may only be conferred by the filing of a petition signed by two-thirds or more of the electors residing in the territory to be transferred and the duty to act in compliance therewith is never mandatory, regardless of how many electors signed the petition. *State ex rel. Darby vs. Haddaway, et al.*, 113 O. S. 658; *Board of Education vs. State, ex rel. Stipe*, 115 O. S., 333.

From the fact that jurisdiction is conferred on county boards of education to make transfers to a city, exempted village or another county school district, and from centralized districts by the filing of petitions, it clearly follows that the jurisdiction thus conferred is limited by the terms of the petition filed, and that jurisdiction thus conferred extends only to the transfer requested by the petition, in other words, to transferring such territory, and such only, as the petition requests to have transferred. In Opinion No. 2015, rendered under date of April 25, 1928, a copy of which is enclosed herewith, questions relating to transfers of school territory after jurisdiction had been conferred therefor by the filing of petitions with a county board of education, were considered, and it was held as stated in the ninth branch of the syllabus, as follows:

“When transfers of school territory are made by authority of Section 4696, General Code, or upon the filing of petitions for transfers from centralized districts, the board must, if the transfer be made at all, transfer the exact territory described in the petition.”

It appears from your inquiry, and from conversations had with the Sandusky County Superintendent of Schools, that sometime prior to August 18, 1928, a petition had been filed with the County Board of Education of Sandusky County, signed by eighty percent of the electors residing in Ballville Township Rural School District, a school district of the Sandusky County School District, in which the schools had not been centralized, asking for the transfer of the entire district to Fremont City School District. Immediately upon the filing of this petition, the Sandusky County Board of Education became vested with jurisdiction to transfer Ballville Rural School District to Fremont City District, and likewise, charged with the mandatory duty to make such transfer within a reasonable time after the petition was filed.

Before any action was taken on this petition, and in fact before, or at the time of the next regular meeting of the County Board of Education on August 18, 1928, a petition was filed with the County Board asking that the portion of Ballville Rural School District described by you as Myers School District, be transferred to the Seneca County School District, to which it was contiguous. This latter petition was signed by more than seventy-five percent of the electors residing in the so-called Myers School District, but none of the signers of the second petition seeking a transfer of a part of Ballville Rural School District to Seneca County School District had signed the petition seeking to have the entire district transferred to Fremont City School District.

The question arises whether when jurisdiction of a county board of education to transfer school territory is once invoked, it is withdrawn or defeated by the filing of another petition asking to have something done which is inconsistent with the power conferred by virtue of the first petition. Jurisdiction in my opinion, when once invoked or conferred, continues until the matter involved is finally disposed of. Thus it has been held a plea of set-off will not deprive a court of jurisdiction, although if established it would reduce the plaintiff's recovery below the jurisdictional amount. *Odell vs. Culbert*, 9 W. and S. (Pa.) 66, 42 Am. Dec. 317; *Lord vs. Goldberg*, 81 Calif. 599, 22 Pac. 1126.

It should not be understood, however, that if the jurisdiction of a county board of education were invoked by the filing of a petition signed by a majority of the electors residing in the territory to be transferred and less than seventy-five percent thereof, the jurisdiction thus conferred would continue indefinitely so as to deprive the electors of a portion of such territory from invoking the jurisdiction of the county board to make another and different transfer than that asked for in the original petition. Jurisdiction thus conferred might be lost by non-user if not exercised within a reasonable time, or after a sufficient time had elapsed to enable the board to investigate the matter and deliberate on the expediency of exercising its optional right to act in accordance with the jurisdiction with which it had been invested. The length of this time would of course depend on the circumstances.

Where jurisdiction is conferred on a county board of education to transfer territory by the filing of petitions asking for the performance of acts which are clearly inconsistent and conflicting, the board, so long as it is free to exercise its discretion in the matter, may act in accordance with either petition, or neither, as it chooses.

Jurisdiction is defined in *Parker vs. Wallace*, 3 Ohio, 494 as:

"The power to hear and determine a cause."

In *The Fair vs. Specialty Company*, 328, U. S. 22-25, it was said that jurisdiction is authority to decide a case either way.

Where petitions are filed under Section 4696, General Code, signed by fifty percent and less than seventy-five percent of the electors residing in the territory to be transferred, their effect is merely to confer jurisdiction on the board to act in the premises.

If, however, a petition is filed which is signed by more than seventy-five percent of the electors residing in the territory to be transferred, its effect is not only to confer jurisdiction, but to impose a mandatory duty upon the board, as well; and manifestly the board cannot be charged with two or more inconsistent and conflicting mandatory duties at the same time. Hence, the filing of the second petition asking for the transfer to Seneca County District of Myers School District which was a portion of Ballville Rural School District, with which the county board was at the time of the filing of the second petition charged with the mandatory duty of transferring to Fremont City School District, did not deprive the county board of education of jurisdiction in the premises, nor did it relieve it of the performance of its mandatory duty with respect thereto.

Jurisdiction once conferred, or a mandatory obligation once imposed by the filing of petitions under Section 4696, General Code, may no doubt be revoked by the withdrawal of signatures from the petitions before final action is taken thereon. *Hayes vs. Jones*, 27 O. S. 218; *Dutton vs. Hanover*, 42 O. S. 215; *State ex rel. vs. Auditor*, 99 O. S. 17; *Board of Education vs. Board of Education*, 112 O. S. 108; *Neiswander vs. Brickner*, 116 O. S. 289; 156 N. E. 138.

In my opinion, the signing of an inconsistent or conflicting petition would amount to a withdrawal from the first petition signed. This question, however, is not involved in your present inquiry because I am informed none of the signers of the second petition had signed the first.

A mandatory duty imposed by the filing of petitions under Section 4696, General Code, may be rendered nugatory, and at an end if a transfer is made in accordance with the petition and the district to which it is made formally refuses to accept the transfer as made. This likewise, is not involved in your present inquiry, for the reason that the transfer as requested by the first petition has not yet been made.

The resolutions adopted by the county board on August 18th were both unauthorized and of no avail, for the reason that each purported to make a transfer of territory that the board was not empowered to make. The board had not been vested with jurisdiction to transfer less than the entire Ballville Rural School District to Fremont School District, nor more than Myers School District to Seneca County District. The fact that the board was charged with the mandatory duty of transferring the entire Ballville District rendered the vesting of jurisdiction in it to transfer a part of the district to some other district, as was done upon the filing of the second petition, of no avail, unless the former mandatory obligation was later abrogated by the withdrawal of signatures from the petition upon which it was based, or unless this mandatory duty was rendered nugatory by the formal refusal of Fremont City District to accept the transfer when made, in compliance with its mandatory duty.

The attempted transfers of August 18th being invalid, the acceptance of them as made, would not validate them. The county board still stood charged with the duty of making the transfer as requested by the first petition, and that is what should now be done.

It appears that the board attempted to do this at the meeting of September 15, 1928, by correcting the minutes of the August 18th meeting and approving them as corrected. It would seem that the board has mistaken the purport of the approval of minutes of previous sessions. The minutes of a meeting should show exactly what occurs at the meeting, whether the action so taken was legal or not. If, after the proceedings are recorded, it is found that the record does not conform to the facts, the record should be corrected before being finally approved. A record cannot be changed at a subsequent meeting so as to render legal and valid acts which were unauthorized or invalid. The attempted transfer made at the August 18th meeting should be recorded in the minutes of that meeting exactly as the attempt to make them occurred, and if so done, the minutes of the meeting should be approved at the next meeting. A new resolution should be passed, making the transfer to Fremont City School District as

it should be made. If necessary, this may be done at a special meeting after taking the necessary steps to call a special meeting.

Answering your specific questions in the order asked, I am of the opinion in answer to the first:

The filing of the second petition, under the circumstances, had no effect other than to invest the county board of education with jurisdiction to make a transfer as requested by the petition and to charge it with the mandatory duty to do so in the event the mandatory duty with which the board was charged at that time by virtue of the filing of the first petition, should later be abrogated by the withdrawal of signatures therefrom before action was taken thereon, or the mandatory duty of the board with reference thereto rendered nugatory by compliance therewith and refusal on the part of the Fremont City School District to accept the transfer.

Second: A county board of education in no event is authorized to transfer school territory to a city, exempted village or other county school district, other than the exact territory described in the petition filed therefor.

Third: The first petition takes precedence, under the circumstances outlined in your inquiry, for the reason that it imposes a mandatory obligation on the county board of education to act in compliance with its terms.

Fourth: The county board of education, under the circumstances, has no discretion in the matter, and may not act in compliance with the second petition, unless the mandatory duty imposed by the first petition is abrogated or rendered nugatory, as hereinbefore stated.

Fifth: Neither attempted transfer made on August 18th is effective nor will the acceptance by the Fremont City School District or the Seneca County School District of the transfers as made, make them so.

Sixth: In view of the answers to the former questions, your sixth question need not be answered.

Seventh: No matter what action, if any, may be taken by Fremont City School District or Seneca County School District, with reference to the attempted transfers of August 18th, a mandatory duty still rests on the county board of education to transfer Ballville School District in its entirety, to Fremont City School District, as requested by the petition filed therefor.

Eighth: Both these resolutions were invalid and ineffective.

Ninth: The invalid resolutions for the transfer of territory adopted at the meeting of August 18th, cannot be validated by changing the wording of the resolutions under the guise of correcting the minutes of the meeting of August 18th at the meeting of September 15th and approving the minutes of the previous meeting as corrected.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2618.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF EDWARD CUNNINGHAM IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, September 24, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, reading as follows: