

Moreover, the emergency clause contained in Senate Bill 336 reads as follows:

“This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the fact that under the existing provisions of Amended Senate Bill No. No. 15, passed January 31, 1935, questions of issuing bonds under said act must be submitted prior to April 1, 1935. Therefore in order that opportunity to vote on said bond issues may be given at the present time, under the extension granted in this act, this act shall go into immediate effect.”

This shows that it was the intention of the legislature that under Section 7, as originally passed, the question of issuing bonds under said act must be submitted prior to April 1, 1935. Since said Section 7 now reads the same as originally except that the date is changed to December 31, 1935, said Section 7 as amended would have the same meaning.

I am therefore of the opinion that under Amended Senate Bill No. 15 of the 91st General Assembly, as amended by Senate Bill No. 336 of said General Assembly, it was necessary to submit the question of issuing bonds to the electors of the municipality taking advantage of said act prior to December 31, 1935.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5227.

#### SCHOOL—TRANSFERS OF SCHOOL TERRITORY FROM ONE SCHOOL DISTRICT TO ANOTHER DISCUSSED.

##### *SYLLABUS:*

1. *Transfers of school territory from one school district of a county school district to another district of the same county school district may be made by the county board of education of a county school district upon its own initiative, providing such transfer conforms to a legally adopted and approved “plan of organization” for such county school district in pursuance of Sections 7600 to 7600-8, of the General Code of Ohio, unless centralized school territory is involved in the proposed transfer in which event no such transfer can be made unless jurisdiction is first conferred upon such board by the filing of a proper petition therefor as provided by Section 4727, General Code, and the duty to make such transfer is never*

*mandatory even though a petition signed by all the electors residing in territory which they seek to have transferred, is filed with said board.*

2. *A petition filed with a county board of education to transfer school territory from its county school district to an adjoining county school district should show on its face that the transfer requested is to an adjoining county school district. A petition which upon its face requests a transfer to a rural or village district of a contiguous county school district confers no jurisdiction whatever upon the county board of education to act in the premises.*

COLUMBUS, OHIO, March 11, 1936.

HON. PAUL T. KLAPP, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion concerning the following:

"A petition has been presented to the Miami County School Board in accordance with the provisions of Section 4696 of the General Code for a transfer of a part of the school district to a school district in Darke County. Said petition contains the signatures of 75% or more, apparently, of the electors residing in the territory proposed to be transferred. What the board desires to know in this regard, is exactly what their duties and responsibilities are at the present time in view of the provisions of Section 7600 of the General Code, and the following eight sub-sections as they apply to the transfers of territory. In accordance with Section 7600, and the following eight sub-sections, the county board of education has filed the necessary maps and surveys and a plan of organization has been adopted in accordance with said sections transmitted to the Director of Education, and a letter is on file stating that said plan of organization is approved by the Director of Education and effective November 20, 1935. We would appreciate a discussion of the application of these new sections of the school law to the matters of transfer in Section 4696.

A petition has been presented to the county school board of Miami County, Ohio, under the provisions of Section 4696, which petition contains, apparently, the signatures of 75% or more of the electors residing within the territory sought to be transferred. However, the petition states that a transfer is sought from 'The Union Township Rural School District' to an adjacent and contiguous Rural School District in Darke County, Ohio. At the present time there is no such school district, but due to a merger of said school district with the 'West Milton

Village School' a new district has been formed and has been in existence for several months and has been given the name of 'Milton Village School District'. Shall or must the county board of education recognize a petition for transfer from a school district named, which school district is now non-existent, and are the petitions fatally faulty in naming a non-existent school district, in view of the fact that the territory sought to be transferred was a part of the original Union Township Rural School District?

Three (3) petitions have been filed with the Miami County Board of Education for transfers of territory from a school district within said county, all of which petitions cover territory or parts of territory which are the same as follows:

(a) A petition filed first with the county board of education, which prays for a transfer of a small area of one of the school districts of the county to another school district of the county.

(b) A petition has been filed with the county board of education praying for a transfer of a large area from one county school district to an adjacent and contiguous school district in Darke County, Ohio. This petition was filed second with the Miami County Board of Education.

(c) A petition has been filed with the county board of education requesting a transfer of territory from a school district in said county to an adjacent and contiguous school district in Montgomery County, Ohio. This was the third petition filed with the county board of education.

Petitions 'a' and 'c' are for small transfers. Petition 'b' is for a large transfer of territory, and embraces within the boundaries of the territory sought to be transferred also the territory sought to be transferred by petitions 'a' and 'c'. Apparently, each of the petitions contains the names of 75% or more of the qualified electors residing in the territory sought to be transferred.

How shall the Miami County Board of Education pass upon these petitions in regard to preference or precedence? If preference is given in order of time of filing and petition 'a' is granted first, and that territory transferred to an adjacent school district in the same county, does the county board of education have jurisdiction to act upon petition 'b' which petition contains the territory which would then be already transferred to another adjacent school district in the same county? If petitions 'a' and 'b' are both to be granted in order of their filing and 'b' in-

cludes the territory described in petition 'c', what must the county board of education do with petition 'c'?"

At the outset it may be observed as applicable to each of the questions submitted, that no transfers of school territory can be lawfully made at this time by a county board of education unless the transfers are made in conformity with a lawfully adopted "plan of organization" made in pursuance of Sections 7600 to 7600-8 of the General Code of Ohio as enacted June 12, 1935, which plan of organization has been approved by the Director of Education and a date prior to this time fixed by him for the plan to take effect. Section 7600-7, General Code, expressly provides:

"Upon approval of the director, such plan of organization within any county shall take effect upon a date to be fixed by the director, and thereafter no school district or parts thereof shall be transferred or the boundary lines thereof changed unless such transfer or change of boundary lines is in accordance with such adopted plan of organization."

In my opinion No. 5176, rendered under date of February 20, 1936, and addressed to the Director of Education, it is stated:

"4. Sections 4692, 4696 and 4736, General Code, were not repealed by implication by the provisions of the so-called School Foundation Law (Secs. 7600-1 to 7600-8, inclusive, of the General Code) except to the extent that the authority granted to county boards of education to transfer school territory and create new school districts by the terms of said Sections 4692, 4696 and 4736, General Code, is limited by the terms of Section 7600-7, General Code, to the transfer of school territory and the creation of new school districts to conform to a legally adopted and approved plan of organization of their several county school districts.

5. When a plan of organization of school districts of a county school district has been adopted by a county board of education or by the Director of Education, and the same has been approved by the Director of Education and a date fixed for it to become effective no transfers of school territory within said county school district may thereafter be made or school district boundaries therein changed, except in conformity with said plan or modifications or changes in said plan lawfully made."

In your first statement of facts you state that a plan of organization has been adopted for the Miami County School District in pursuance of

Sections 7600 to 7600-8, General Code, and the same was approved by the Director of Education and November 20, 1935, fixed as the date for it to become effective. Nothing appearing to the contrary, I assume the steps taken by the county board of education in adopting the plan of organization and by the Director of Education in approving said plan were regular and in accordance with law, and that a lawfully adopted plan of organization for the Miami County School District is now in effect. That being the case, the transfers sought by the several petitions mentioned in your inquiry may not be made by the Miami County Board of Education at this time unless such transfers are in conformity with the adopted and approved plan of organization. Upon the assumption that the transfers sought are in conformity with the said plan, the effect of the filing of the several petitions mentioned will be discussed in their order.

1. Under the plain terms of Section 4696, General Code, it is the mandatory duty of a county board of education to transfer territory of a school district of the county school district to an adjacent county school district upon petition of 75% of the electors residing in the territory sought to be transferred, unless the district from which the territory is sought to be detached is a district in which the schools have been centralized by a vote of the people, in accordance with Section 4726, General Code, in which event the duty to transfer is never mandatory but the transfer as requested, may be made at the discretion of the county board of education upon receipt of a petition therefor signed by 66 2/3% of the electors residing in the territory sought to be transferred, (Section 7627, G. C.) or unless the territory sought to be transferred has been transferred into the district from which it is sought to detach the territory within five years prior to the time the newly proposed transfer is to be made and the consent to the immediate transfer is not obtained from the Director of Education.

State ex rel. Bremen et al. v. County Board of Education, 97 O. S., 336;

State ex rel. Darby v. Hadaway, 113 O. S., 659;

Opinions of the Attorney General, 1927, page 739;

Opinions of the Attorney General, 1929, page 84;

Opinions of the Attorney General, 1930, page 421.

It will be observed, however, that the provisions of Section 4696, General Code, authorize transfers of school territory upon proper petition, to a contiguous county school district, and if the transfer is accepted, the county board of education of the county school district to which the territory has been transferred shall annex the territory to a school district of its county school district to which the territory is contiguous. The statute does not authorize transfers to a school district of a contiguous

county school district and it has been held by a former Attorney General in an opinion which will be found in the reported Opinions of the Attorney General for 1930, page 474, as follows:

“A petition filed with a county board of education, asking that school territory of a school district of the county school district be transferred to a rural or village school district of an adjacent county school district confers no jurisdiction upon the county board of education to make the transfers as requested, and the county board of education has no authority to make a transfer of territory upon the filing of such a petition.”

To the same effect is an opinion found in the reported Opinions of the Attorney General for 1927, page 2241.

In your statement you say that the petition in question asks for a transfer of a part of a school district of Miami County to “a school district in Darke County.” For that reason the petition confers no jurisdiction on the Miami County Board of Education to act in the premises. The petition to be valid should have requested a transfer to the Darke County School District.

2. Your second statement of facts involves the application of the same principles discussed under No. 1, above. The petition in question asks for a transfer to “an adjacent and contiguous rural school district in Darke County, Ohio” and not to the Darke County School District as it should have done in order to confer jurisdiction upon the county board of education to make the transfer. For that reason alone, the petition is defective and it is not necessary to pursue the subject further.

3. In your third statement you state under “(a)” that a petition has been filed asking the county board of education to transfer a small area of one of the school districts of the county to another school district of the county, which petition apparently bears the signature of 75% or more of the electors residing in the territory sought to be transferred. This petition confers no jurisdiction on the county board of education other than what it already possesses by virtue of Section 4692, General Code, unless the territory involved in the proposed transfer is territory of a school district in which the schools have been centralized. In that case such a petition would authorize the transfer but would not impose a mandatory duty on the board to make the transfer. In any event, the board may act as it sees fit in making or not making the proposed transfer. It has been held in a number of opinions of this office, that the filing of a petition to transfer territory from one district of a county school district to another district of the same county school district amounts to nothing more than its moral effect unless centralized school territory is involved. In Opinions of the Attorney General for 1929, at page 1630, it is held:

“There is no authority for the filing of petitions for the transfer of school territory under and by virtue of Section 4692, General Code, except when a proposed transfer involves territory lying within a centralized school district. Transfer of territory between school districts of a county school district, except when a centralized district is involved in a proposed transfer, may be made as seems in the judgment of the county board of education to be for the best interests of the schools, subject to the filing of a remonstrance by the electors residing in the territory affected. Under no circumstances is the making of such a transfer mandatory no matter how many resident electors petition therefor.”

See also Opinions of the Attorney General for 1932, page 1436; for 1922, page 312; for 1919, page 396.

In the case of *Board of Education v. Minnich*, 14 Ohio Law Abstract, page 651, decided by the Court of Appeals of the Second Appellate District, in 1933, it was sought to invoke the provisions of Section 4696, General Code, as amended in 1921, to compel a county board of education upon a petition signed by 75% of the electors in territory of a rural district in Miami County sought to be transferred to another district of the Miami County School District, to make the transfer as prayed for. It was held, however :

“It is not within the power of 75% or more of the electors of a rural school district within a county school district to compel a county board of education to transfer the territory in which the electors reside to an adjoining rural school district within the county school district.”

Both petitions (b) and (c) appear to be defective for the same reason that the petitions involved in Nos. 1 and 2, above, are defective. Both these petitions ask for transfers of territory to contiguous school districts in adjoining counties instead of adjacent county school districts, and for that reason confer no jurisdiction on the Miami County Board of Education to act in the premises.

I am therefore of the opinion that none of the petitions mentioned impose a mandatory duty upon the Miami County Board of Education to make the transfers requested, and the petitions asking for the transfer of territory out of the Miami County School District do not confer jurisdiction on the Miami County Board of Education or vest power in the said board to make the transfers requested.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*