

tricts or parts of districts taken together, thus bringing about a situation whereby a district or part of a district might be transferred contrary to the wishes of the electors affected.

In the specific case about which you inquire, different rules apply as to the transfer of territory from each of the two districts. One of these districts is a district in which the schools have been centralized and the other not. When a petition is filed, signed by seventy-five per cent of the electors residing in a rural school district or part of a rural district in which the schools have not been centralized asking to be transferred to an exempted village school district it becomes the mandatory duty of the county board of education to make the transfer subject of course to its being accepted by the exempted village district, but when the territory sought to be transferred is a centralized district or part of a centralized district the county board is vested with the discretion of making the transfer or not irrespective of the number of petitioners therefor. This has been definitely decided by the Supreme Court in the case of *Darby v. Hadaway, et al.* 113 O. S. 658; *Summit County Board of Education et al. v. State ex rel. Stipe*, 115 O. S. 333, Ohio Law Bulletin and Reporter, January 24, 1927; Opinions, Attorney General, 1919, page 1195.

I am therefore of the opinion that county boards of education must deal separately with school districts or parts of districts, seeking transfers of territory to other districts, and that there is no authority for the electors of more than one, or parts of more than one district to join in one petition for the transfer of territory sought by virtue of the authority granted in Section 4696, General Code. The filing of such a petition does not give jurisdiction to the county board of education to make the transfer as asked for in the petition.

Respectfully,
EDWARD C. TURNER,
Attorney General.

729.

BOARD OF EDUCATION—JURISDICTION OF COUNTY BOARDS TO TRANSFER SCHOOL DISTRICT TERRITORY TO OR FROM A CENTRALIZED SCHOOL DISTRICT.

SYLLABUS:

1. *County boards of education may be vested with jurisdiction to transfer school district territory to or from a centralized school district by the filing with it of a petition signed by two thirds of the qualified electors residing in the territory petitioning for the transfer.*

2. *Upon the filing of a petition for the transfer of territory to or from a school district in which the schools have been centralized, the county board of education with whom the petition is filed may use its discretion to either make the transfer as asked for, or not, as may in its opinion be for the best interests of the districts to be affected by the transfer.*

COLUMBUS, OHIO, July 12, 1927.

HON. JOHN E. PRIDDY, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—I have before me your correspondence, together with that of the attorneys for your county board of education and the Benton Ridge Village Board of Education with reference to the controversies over the transfer of school district territory within your county school district.

It appears that the Benton Ridge Village School District, the Mt. Cory Village School District and the Liberty Township Centralized School District are all under the supervision of the Hancock County Board of Education. The facts relative to the situation as set out by Mr. Fuller, acting for the Benton Ridge Village School District and acknowledged to be correctly stated by Mr. Burket, attorney for the Hancock County Board of Education are as follows:

"On the ---- day of February, 1927, a petition of 92% of the qualified electors of the Benton Ridge Village School District, to have the entire district transferred, and attached to the Liberty Township Centralized School District to which it was adjacent, was filed with the Hancock County Board of Education.

On the 21st day of May, 1927, after holding said petition in abeyance without specific action on it allowing or refusing to allow it, said county board of education on its own initiative under section 4692, divided the said Benton Ridge Village School District into two parts (east and west) and attached the west part to the Mt. Cory Village School District and the east part to the said Liberty Township Centralized School District.

Following the action of said board on the 18th day of June, 1927, each of said portions of the Benton Ridge Village School District, east and west, within thirty days from the filing of the maps and resolution with the county auditor of the two said divisions of the Benton Ridge Village District filed remonstrances with said board of education each containing the names of more than 50% of the qualified electors residing within the territories described in said maps and by the boards resolution attached respectively to the Mt. Cory District and the Liberty Township District. * * *

On June 18, 1927, when said remonstrances were filed without any action thereon the board adjourned till June 21st for a special purpose of considering the same and taking such action as might be necessary therein.

In the adjourned meeting of June 21st, and before any action whatever was taken upon either remonstrance there was filed with the board a statement * * * signed by 157 names that had been signed to remonstrance A (meaning the remonstrance filed by the electors of the east portion of Benton Ridge Village School District) withdrawing their names from such remonstrance. If this withdrawal of names was in time and effective it left this remonstrance with much less than 50% of the qualified electors of the east portion of said Benton Ridge Village District on the remonstrance itself."

In the light of these facts you submit for my opinion this specific question:

"Does the fact that the petition of the electors of the Benton Ridge Village School District, asking the county board to transfer it to the Liberty Township Centralized School District, bring it within the provision of the decisions which provide that the mandatory provisions of section 4696 does not apply to centralized school districts?"

Provision is made for the transfer of territory from one school district to another, by Sections 4692 and 4696, General Code, pertinent parts of which are as follows:

"Sec. 4692. 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, and

a notice of such proposed transfer has been posted in three conspicuous places in the district or districts proposed to be transferred, or printed in a paper of general circulation in said county, for ten days; nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred, shall, within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer."

"Sec. 4696. 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 percent 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."

The several classes of school districts are by the provisions of Section 4679, General Code, styled respectively, "city school districts, exempted village school districts, village school districts, rural school districts and county school districts." Provision is made by Sections 4726, et seq., of the General Code for the centralization of rural school districts. When centralization is effected no change is made in the district so far as its class as defined by the statute is concerned. It still remains a rural school district.

A county school district is defined in Section 4884, General Code, as embracing the territory in each county of the state, exclusive of the territory detached for school purposes, and inclusive of the territory attached for school purposes, excepting therefrom the territory embraced within all city and exempted village school districts, that is to say, a county school district includes all the village and rural school districts lying within the territory over which it has jurisdiction, but does not include city or exempted village school districts.

Bearing in mind the terms defining a county school district it will be noted that the provision of Section 4692, supra, wherein it says: "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" has reference only to transfers made from or to village or rural districts lying within the same county district. It will also be noted that the terms of the statute are not mandatory and that no provision is made for transfers to be made upon petition of the electors of the several districts.

Transfers to and from school districts other than village and rural school districts, to wit; city, exempted village, and county school districts are regulated by the provisions of Section 4696, supra, wherein provision is made for transfers to be made upon petition of the electors residing in the territory proposed to be transferred. If 50 percent of the said electors sign the said petition it is discretionary with the board whether the transfer is made or not, but if 75 percent or more of the said electors sign the petition it becomes the mandatory duty of the board to make the transfer as requested by the petitioners unless the territory to be detached from one county district and attached to another county district is a rural district wherein the schools have been centralized, in which event it has been held that the mandatory provisions of Section 4696, General Code do not apply, and the county board may use its discretion as to complying with the request of the petitioners, irrespective of how many signers there are to the petition. *State ex rel Darby vs. Hadaway, et al*, 113 O. S. 658. *Summit County Board of Education, et al, vs. State, ex rel Stipe*, 115 O. S. 333, Ohio

Law Bulletin and Reporter, January 24, 1927. Opinions of the Attorney General, 1919, p. 1195.

However, inasmuch as the districts involved in the controversy about which you inquire are village districts and a rural district within the same county, we need not give any further consideration to the provisions of Section 4696, General Code, as its provisions have no application whatever to the situation. The entire matter is controlled by Sections 4692 and 4727, General Code.

Although in different chapters of the code, the provisions of law with reference to centralization of schools in rural school districts are in pari materia with Sections 4692 and 4696, General Code, and therefore must be construed together. Previous to the amendment of Section 4727, General Code, April 16, 1919, county boards of education were not authorized to transfer territory to or from a centralized school district. *State ex rel Snapp, vs. Goul, et al*, 97 O. S. 259. It was there held that transfers of territory from centralized school districts would affect a decentralization thereof, contrary to the provisions of Section 4727, General Code, and that therefore the provisions of Section 4727, precluded the taking of any part of a centralized school district to form a part of another district. Although the Snapp case, supra, had to do with the transfer of territory from centralized districts, I think the reasons given for the conclusions reached are just as applicable and the conclusions just as pertinent in cases where the proposed transfer was to be to a centralized district. This conclusion is fortified by the case of *Fulks et al. vs. Wright*, 72 O. S. 547 which holds:

“When the schools of a township have been centralized no part of the territory comprised in such centralization is subject to be taken to form a special school district.”

At the time of the decision of this case the terms of Section 3927-2 of the Revised Statutes which the court had under consideration were the same as Section 4727, General Code before its amendment in 1919.

For the very apparent purpose of providing for transfers of territory to and from centralized school districts, Section 4727, General Code was so amended as to provide that:

“Nothing in this or the foregoing sections, namely, Sections 4726 and 4726-1 shall prevent a county board of education upon the petition of two-thirds of the qualified electors of the territory petitioning for a transfer from transferring territory to or from a centralized school district the same as to or from a school district not centralized.”

The effect of this amendment is to extend to county boards of education the general powers of transferring territory vested in such boards by Sections 4692 and 4696, General Code upon petition of two-thirds of the qualified electors of the territory petitioning for the transfer. The filing of this petition however is jurisdictional, that is to say, the county board has no authority to make such transfers unless a petition of two-thirds of the electors of the territory to be transferred is filed.

The fact that under the law prior to the amendment of Section 4727, General Code, as interpreted by the Supreme Court in the Snapp Case, supra, a county board of education had no jurisdiction to transfer territory to or from a centralized school district, and the amendment extends to such boards the right to make such a transfer upon petition, renders the language of the amendment clearly indicative that the filing of the petition is a condition precedent to the vesting of jurisdiction in the board, to make the transfer.

An analysis of the terms of Section 4727, General Code as amended, clearly shows that the right extended to a county board of education to transfer territory to and from a centralized school district does not in any wise enjoin upon it a duty, but merely extends to it discretionary powers. As stated by Judge Matthias in the Hadaway Case, *supra*:

"It is to be observed that the terms of this statute as amended above are permissive only and that whereas the board was theretofore precluded from transferring territory from such district that prohibition is now removed and the board may make such transfer provided two-thirds of the qualified electors of the territory petitioned therefor. No mandatory language is found in this amendment."

The Hancock County Board of Education exercised its discretion after the filing of the petition in February, 1927, by not making the transfer as requested, which it had a right to do.

There is no mandatory duty enjoined upon a county board of education to make transfers to and from village and rural school districts in the same county school district in any case, such transfers being authorized by the provision of Section 4692, General Code, the terms of which are permissive, nor is there any provision for the filing of petitions in such cases, but only for the filing of remonstrances after the county board has acted. This question has been considered by this department in a number of opinions, the most recent of which is Opinion No. 676, under date of June 29, 1927, a copy of which I enclose herewith. See also Opinions, Attorney General, 1916, p. 399, Opinions, Attorney General, 1919, p. 396 and 1119.

Inasmuch as no petition was filed asking for the transfer of territory from the east side of Benton Ridge Village School District to Liberty Township Centralized District, the county board had no jurisdiction to make the transfer, which it attempted to make on May 28, 1927, and its action in that respect was unauthorized, and of no effect.

The county board did have authority under Section 4692, General Code, to transfer the west side of Benton Ridge Village School District to the Mt. Cory Rural School District, as it did, on May 21, 1927, but inasmuch as a proper remonstrance was duly filed by the electors residing in the territory denominated herein the west side of Benton Ridge Village School District, and was not withdrawn within thirty days after the filing of the map with the county auditor, the action of the board in making this transfer was thereby automatically rendered ineffective. *Bd. of Ed. vs. Bd. of Ed.*, 112 O. S. 108.

I am therefore of the opinion that the territory of all three of the districts over which this controversy has arisen has been unaffected by the action of the county board, and the districts are now as they were before the action of the board as of May 21, 1927, and June 21, 1927.

Respectfully,

EDWARD C. TURNER,

Attorney General.

730.

BOARD OF EMBALMING—CONCERNING REQUIREMENTS OF APPLICANTS TAKING THE STATE EMBALMING EXAMINATIONS.

SYLLABUS:

Under the provisions of Section 1342, General Code, an applicant for examination as a registered embalmer, before taking the examination, is required to furnish to the State