

6950

TRANSFER — TERRITORY FROM LOCAL SCHOOL DISTRICT WITHIN COUNTY SCHOOL SYSTEM TO ADJOINING COUNTY SCHOOL DISTRICT OR ADJOINING CITY OR EXEMPTED VILLAGE SCHOOL DISTRICT — CHANGES OF BOUNDARY LINES IN EITHER COUNTY — RIGHT OF PROTEST — LIMITED TO ELECTORS RESIDING IN DISTRICT OR DISTRICTS FROM WHICH TERRITORY TRANSFERRED — NO RIGHT OF PROTEST ACCRUES TO ELECTORS WHO RESIDE IN DISTRICTS AFFECTED BY SUCH TRANSFER OF TERRITORY TO ADJOINING COUNTY SCHOOL DISTRICT — SECTIONS 4831-3, 4831-13 G. C.

SYLLABUS:

Where territory is transferred from a local school district within a county school system to an adjoining county school district or to an adjoining city or exempted village school district under the provisions of Section 4831-13, General Code, and thereupon changes of school district boundary lines within the territory involved in such transfer in either county, are brought about, the right of protest as provided for in Section 4831-3, General Code, to electors residing in districts affected by such change of boundary lines is limited to the electors residing in the district or districts from which the territory is transferred. No right of protest accrues to the electors residing in districts affected by such transfer of territory to the adjoining county school district.

Columbus, Ohio, May 31, 1944

Hon. Kenneth C. Ray, Superintendent of Public Instruction  
Columbus, Ohio

Dear Sir:

I am in receipt of your letter submitting for my consideration and opinion the following questions:

“Where a county board of education has included in the plan of territorial organization of school districts adopted by it pursuant to the provisions of Section 4831 of the General Code, a proposal to transfer certain territory from one of the local school districts within the county school district to an adjoining county school district or to an adjoining city or exempted village school district which proposed transfer of territory was requested by a petition, signed by 75 per cent of the qualified electors residing within the territory proposed to be transferred and filed with the county board of education, is it the territory of the local school district, of which the territory proposed to be transferred is a part, that becomes the affected territory for the purpose of determining whether or not a protest against such proposed transfer and filed with the county board of education becomes an effectual remonstrance to defeat the proposed transfer? Under the provisions of Section 4831-3 of the General Code, it would appear that only the signatures of electors residing in the county school district of which the territory proposed to be transferred is now a part are valid signatures to a protest against a transfer of territory such as herein referred to.

The following question is typical of a number of questions that have come to us on this subject. Pursuant to the provisions of Section 4831-13 of the General Code, there was filed prior to March 1, 1944 with the board of education of a county school district a petition which requested the transfer of certain territory from one of the local school districts within the said county school district to an adjoining county school district. Said petition was signed by more than 75 per cent of the qualified electors residing within the territory proposed to be transferred. The plan of territorial organization adopted by the county board of education under the provisions of Section 4831 of the General Code includes the transfer of territory as requested by the petition. The territory proposed to be transferred is contiguous to the territory of two local school districts in the county school district to which it is proposed to transfer the territory. Since the adoption of the plan of territorial organization, there has been filed with the county board of education a protest against the proposed transfer of territory. The number of electors signing said protest is more than 51 per cent of the number of electors residing in the local school district of which the territory proposed to be transferred

is a part, but is less than 51 per cent of the number of electors residing in such local school district plus the number of electors in either of the two contiguous local districts in the adjoining county school district. Does such protest defeat the proposed transfer of territory?"

Section 4831, General Code, provides as follows:

"On or before the first Monday in March in the year 1944 and on or before the first Monday in March in every even numbered year thereafter each county board of education shall, by a majority vote of its full membership, adopt a plan of territorial organization of the school districts under its supervision. Such plan of organization shall prescribe such transfers of territory, elimination of local school districts, and creation of new school districts which, in the opinion of the county board of education will provide a more economical or efficient county school system."

Section 4831-13, General Code, which is pertinent to your inquiry, reads as follows:

"If the county board of education deems it advisable to transfer territory from a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, or if a petition, signed by 75% of the qualified electors residing within the territory proposed to be transferred, requests such a transfer, and such petition is filed with the county board of education on or before March first in an even numbered year, the proposed transfer of territory shall be included in the forthcoming plan of territorial organization of the school districts to be made and adopted under the provisions of section 4831 of the General Code."

Upon the adoption of a plan of territorial organization of a county school district in pursuance of Section 4831, General Code involving, as it does, possible transfers of territory and the creation of new districts within the then existent county school system, the right of protest is preserved to electors residing in territory affected by a proposed change of boundary lines of any local district within the county school district or a failure to change such boundary lines, by the terms of Section 4831-3, General Code, which reads as follows:

"Any group of electors, qualified to vote in territory within the territorial boundary lines of the county school district,

may, at any time prior to the second Monday in April following the adoption of the plan of organization by the county board of education, file with the county board of education a protest relating to the change or failure to change boundary lines of any local school district within the county school system, wherein said electors reside.

Such protest shall be in writing, signed by the electors making such protest, specifically setting forth the nature of the protest together with the reasons therefor and shall be in duplicate.

If such protest so filed be signed by 51% or more of the electors of the local school district or districts so affected, then the county board of education and the superintendent of public instruction shall not have the authority to adopt the plan of reorganization proposed so far as the said local school district or districts protesting are concerned."

It clearly appears from the provisions of Section 4831-13, supra, that if a county board of education determines to transfer territory from a local school district of the county school district to an adjoining county, city or exempted village school district, whether done of its own volition or in pursuance of a timely filed petition signed by 75% of the electors residing in the territory proposed to be transferred requesting such a transfer, the making of the transfer as deemed advisable by the county board or in conformity with the request of the petition, would probably involve the changing of boundary lines not only within the immediate local school district from which the territory is to be transferred but as well the changing of boundary lines within the adjoining district or districts to which the territory is to be transferred. The district to which the territory might be transferred might be a local school district of an adjoining county school district or possibly two or more such districts. In some such cases the district to which the territory is to be transferred would be a city or exempted village district. It is possible in some cases the district to which the transfer is to be made would be two of such districts or a combination thereof.

It is manifest that the carrying out of proposals for the transfer of territory from a local school district of a county school district to an adjoining county school district involves changes in territorial organization of at least two county school districts and therefore affects the territorial organization of at least two present existing local school districts and involves the changes of boundary lines of at least two such

local school districts. However, there is no way for a county board of education which surrenders territory to an adjoining county board of education in pursuance of Section 4831-13, General Code, and which thereupon is charged with the duty of making the transfer, of knowing, nor has the legislature provided any means of determining, which of the existing local districts in the county school district receiving the territory eventually will receive the territory by having it attached thereto, and thereby will be affected by a transfer of territory to the adjoining county school district until the attachment is made and concluded. Hence, there is no way of knowing at the time the transfer is directed which district or districts might have a right to file a protest under the terms of Section 4831-3, General Code.

I cannot believe that the legislature meant to create such a situation as to authorize the filing of protests under circumstances that it is impossible to determine by whom they may be filed. I conclude, therefore, that it was the intent of the law that when a transfer of territory is made from a local school district of a county school district to an adjoining county school district under the provisions of Section 4831-13, General Code, the right of protest as provided for by Section 4831-3, General Code, is limited to the electors residing in the local district or districts affected by the proposed transfer of territory from the county school district involved in the transfer and that no power of protest is extended to the district or districts embraced within the territory to which it is proposed to transfer the territory.

Moreover, this conclusion is further warranted by the fact that no provision is made for notifying a county board of education to which it is proposed to transfer territory under the terms of Section 4831-13 of the determination of the surrendering board to make such a transfer or of the filing of a petition requesting such a transfer nor is any provision whatever made for collaboration between the county boards in working out or solving any of the problems that frequently arise in making transfers of this kind.

The language of the statute itself lends further support to the conclusion here reached in that where the provision is made therein to the effect that under proper circumstances as stated in the statute the proposed transfer shall be included in the forthcoming "plan" of territorial organization to be made under the provisions of Section 4831,

General Code. It will be observed that the word "plan" is there used in the singular. It would appear that the manifest intention of the legislature in the use of this language is to limit the making and adopting of a plan of organization there spoken of to the one involving the county school district from which the territory is proposed to be transferred to which reference had been made in the earlier part of the statute.

Where a transfer of territory is made or proposed under the provisions of the statute, to transfer territory from a local school district to an adjoining city or exempted village district no question arises as to who may file a protest relating to the changing of boundary lines. The statute, Section 4831-3, General Code, in clear and unmistakable terms limits the rights of electors to file protest relating to change of boundaries upon the transfer of territory from one district to another to those residing within the territorial boundary lines of the county school district and to protests relating to changing of boundary lines of a local district. Protests are not authorized by the terms of the statute, relating to change of boundary lines in a city or exempted village district. It therefore clearly follows that when a transfer of territory from a local school district of a county school district to an adjoining city or exempted village district is proposed or made under the terms of Section 4831-13, General Code, no right of protest accrues to any district other than the local district from which it is proposed to transfer the territory.

Upon applying the conclusions hereinbefore stated to the situation you cite as being typical of questions relating to this subject which have come to your attention in a number of instances, it appears that inasmuch as the protest that was filed related to changing of boundary lines within the local school district from which it was proposed to transfer the territory, was signed by more than 51% of the electors residing in the territory, the protest as you have stated it is sufficient to defeat the transfer.

I am therefore of the opinion, in conclusion, that where territory is transferred from a local school district within a county school system to an adjoining county school district or to an adjoining city or exempted village school district under the provisions of Section 4831-13, General Code, and thereupon changes of school district boundary lines within the territory involved in such transfer in either county, are brought

about, the right of protest as provided for in Section 4831-3, General Code, to electors residing in districts affected by such change of boundary lines is limited to the electors residing in the district or districts from which the territory is transferred. No right of protest accrues to the electors residing in districts affected by such transfer of territory to the adjoining county school district.

Respectfully,

**THOMAS J. HERBERT**

Attorney General