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1. EDUCATION, COUNTY BOARD OF—AUTHORITY TO TRANSFER PORTION OF RURAL SCHOOL DISTRICT TO ANOTHER RURAL SCHOOL DISTRICT—INTERPRETATION OF SECTIONS 4692, 4726, 4727 G. C. AT TIME SAME WERE OPERATIVE—
2. COUNTY BOARD OF EDUCATION WITHOUT AUTHORITY TO TRANSFER OR CHANGE BOUNDARY LINES OF ANY SCHOOL DISTRICT UNDER ITS JURISDICTION UNLESS TRANSFER OR CHANGE WAS IN ACCORDANCE WITH ADOPTED PLAN OF ORGANIZATION PREPARED BY COUNTY BOARD OF EDUCATION AND APPROVED BY DIRECTOR OF EDUCATION—SECTION 7600-1 ET SEQ., G. C.

SYLLABUS:

1. Under the provisions of former Section 4692 of the General Code, a county board of education had authority to transfer a portion of a rural school district under its jurisdiction to another rural district; but in case the district from which such transfer was to be made had been centralized under the provisions of Section 4726, General Code, such board was without authority to make such transfer except upon the petition of two-thirds of the qualified electors of the territory proposed to be transferred, as provided in Section 4727, General Code then in force.

2. In case at the time of such proposed transfer a plan of the entire territorial organization of the said county school district had been prepared by the county board of education and approved by the director of education as provided by Section 7600-1 et seq. of the General Code then in force, the county board was without authority to make any such transfer or change the boundary lines of any district under its jurisdiction unless such transfer or change of boundary lines was in accordance with such adopted plan of organization.

Columbus, Ohio, April 25, 1947

Hon. Kenneth M. Robbins, Prosecuting Attorney, Pickaway County
Circleville, Ohio

Dear Sir:

I have before me your communication requesting my opinion, and reading as follows:

“Mr. G. M., County Superintendent of Schools, Pickaway County, Ohio, and Mr. F. T., County Auditor of Pickaway County, Ohio, are in controversy as to whether or not the County Board of Education of Pickaway County, Ohio, has sufficiently complied with the statutes appertaining to the transfer of territory from one rural school district to another rural school district to compel the County Auditor to recognize the transfer and to make the necessary changes of the tax duplicate of the county. Inasmuch as these men are both very adamant in their attitudes, I feel that an opinion from myself would be of no value.

Therefore, I am forwarding to you a copy of the various resolutions passed by the said school board appertaining to the transfer. And I am requesting you to give an opinion as to the legality of the transfer.

If you need any further information upon this matter, please feel free to communicate with me and I will furnish the same to you immediately. I might add that the basis of the Auditor's Contention is a certain decision rendered by the Court of Appeals of this judicial district some time during the year 1939 or 1940. In so far as I know this decision was never reported in any publication.

If you desire a report of this decision, please notify me, and I will forward the same to you immediately.”

At the time the proceedings referred to in your letter were had, Section 4692, General Code, was in force reading in part, as follows:

“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, or, in the case of the transfer of a part of one city school district to another city school district, in a paper of general circulation in both districts, 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, in the case of the transfer of territory under the jurisdiction of said board and in the case of a transfer of any school district with either board affected by such transfer, a written remonstrance against such proposed transfer. * * * The legal title of the property of the board of education shall become vested in the board of education of the school district to which such territory is transferred. The county board of education, or in the case of a transfer of part of one city school district to another city school district, both boards affected are authorized to make an equitable division of the school funds of the transferred territory either in the treasury or in the course of collection. And also an equitable division of the indebtedness of the transferred territory.” (Emphasis added.)

You have attached to your letter a transcript of the proceedings of the county board. From an examination of that transcript it would appear that the board was following the steps outlined in the section quoted. It does not appear from this transcript that the two school districts involved were centralized districts, but by a later letter you have informed me that both districts had previously been centralized, a fact which, as will be seen has an important bearing.

On July 19, 1939, all members being present, a resolution was offered and unanimously adopted, ordering the transfer of certain territory lying in Deercreek Township Rural School District to the Perry Township Rural School District, such resolution being apparently in full accord with all the provisions of Section 4692 supra.

The following resolution was also unanimously adopted:

“Mr. Y. moved that the County Superintendent be instructed to file a copy of the Resolution of Transfer and a correct map of

the territory transferred, with the Auditor of Pickaway County and to post typewritten notices within said territory proposed for transfer and to report back to this board of education for compliance with the above instructions.”

At the regular meeting of August 2, 1939, the minutes show the following:

“The County Superintendent reported that he had filed a copy of the Resolution of Transfer for the seven Farm Security Project Farms, numbers 68, 69, 70, 71, 72, 73, and 74, from the Deercreek Township School District to the Perry Township School at the County Auditor’s Office.

He also reported that three copies of the required public notice had been posted in the district to be transferred.”

At the meeting held May 1, 1940, all members being present, the following resolution was adopted:

“WHEREAS, the Circuit Court of Appeals of this district has ruled that no transfer of centralized school territory may be made under Section 4692 without a petition signed by two-thirds of the resident electors of said territory petitioning for transfer as required under Section 4727, this County Board of Education hereby declares that full recognition of this Court ruling is accorded the transfer of school territory embodying the seven Federal Farm Security Units, from the Deercreek Township School District to the Perry Township School District.”

At a regular meeting held August 7, 1940, the minutes show the following resolution adopted by a vote of four members:

“Pursuant to the filing of a petition signed by all of the qualified resident electors residing in the territory hereinafter described, and pursuant to resolutions of transfer which were passed by the County Board of Education on May 19, 1938 and July 19, 1939, which assigned and transferred to the Perry Township Rural School District seven Farm Security Project farms, numbers 68, 69, 70, 71, 72, 73 and 74, from the Deercreek Township Rural School District, Pickaway County, Ohio.

IT IS HEREBY RESOLVED, that the following described territory be and the same is hereby transferred from the Deercreek Township Rural School District, Pickaway County, Ohio, to the Perry Township Rural School District, Pickaway County, Ohio, subject to the provisions of Section 4692, General Code of Ohio.

SECTION I. Said territory is known as that portion of the Farm Security Project farms known as numbers 68, 69, 70, 71, 72, 73 and 74. Said territory is described as shown on the attached map and as follows:

Beginning in the Plummer Road and the land line between the United States Government and Aberta Nugent; thence in a westerly direction to the Deercreek-Perry Townships school district line; thence southwesterly to the land line of Charles Schleich (H. C. Reed) and the land line of the United States Government; thence in an easterly direction to the Plummer Road; thence northeasterly along the Plummer Road to the place of beginning.

SECTION II. RESOLVED, that the Clerk of the Board of Education be and is hereby instructed to notify the clerk of the board of Education of the Deercreek Township Rural School District of Pickaway County, Ohio, of the passage of this resolution.

SECTION III. That an equitable division of the funds of indebtedness of said territory transferred, be made and that the Auditor of Pickaway County be and he hereby is instructed to pay to the Perry Township Rural School District all monies derived from taxes for school taxes levied and collected from said territory herein transferred in the June, 1940 collection of taxes and thereafter.

SECTION IV. That a correct map of the territory herein transferred be filed with the Auditor of Pickaway County.

SECTION V. That the County Superintendent be instructed to post written or printed notices within said territory proposed for transfer and to report back to this Board for compliance with the provisions of this Section.

SECTION VI. That this Resolution shall be in full force and effect from and after the full requirements of this resolution and all the requirements of the law have been complied with."

The case referred to in your letter and in the board's resolution was never reported, but was the case of Board of Education of Muhlenberg Township Rural (centralized) School District v. Dick et al. as The Pickaway County Board of Education. The case was decided in 1940, and was carried to the Supreme Court where on December 11, 1941, the motion to certify was overruled. (Case No. 28816).

That case arose on a slightly different state of facts from the one we are considering. There, it was proposed to consolidate two entire districts

into a new school district, and to create a board of education for such new district. The county board had proceeded under the provisions of Section 4736, General Code (now repealed) which expressly authorized a county board to create such new district and to make an equitable division of funds and indebtedness; such action not to be effective if within thirty days a majority of the electors of the territory affected should file a remonstrance. The procedure is almost identical with that set forth in Section 4692 which I have quoted except that the latter section relates to the transfer of a portion only of the territory of a district. The court held that the procedure under Section 4736 was only applicable to a district which had not been centralized, and that when it was proposed to transfer an entire centralized district to another district a different set of statutes must be resorted to. The court cited its own earlier decision in the case of Board of Education of Muhlenberg Township v. Pickaway County Board of Education, 65 O. App., 92, for a full outline of the history of the pertinent statutes, and as a precedent for its present holding that the county board had not complied with the law.

The case last cited grew out of a situation almost identically like the one you present. There, it had been undertaken to transfer a portion of a centralized district to another district, the proceeding being had under Section 4692 supra. The first branch of the syllabus is as follows:

“Whether the proposed transfer of a part or all of a school district to another district is initiated by the electors under the provisions of Section 4696, General Code, or by the county board of education itself under the provisions of Section 4692, General Code, can not in any measure change the nature of the construction and the effect of Section 4727, General Code, providing for the decentralization of school districts and the transfer of territory of a centralized school district by a county board of education.”

Section 4727, General Code, then in force, read as follows:

“When the schools of a rural school district have been centralized such centralization shall not be discontinued within three years, and then only by petition and election, as provided in Section 4726. If at such election more votes are cast against centralization than for it, the division into subdistricts as they existed prior to centralization shall thereby be re-established.

“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 transfer, from transferring territory to or from a centralized school district, the same as to or from a district not centralized.” (Emphasis added.)

The court in the unreported case above referred to, cited in support of its holding as to the relation of Section 4727 to Section 4692, the cases of Board of Education v. Board of Education, 104 O. S., 1, and State ex rel. Darby v. Hadaway, 113 O. S., 658. The syllabus of the first case is as follows:

“1. The provision of Section 4727, General Code, as amended April 16, 1919 (108 O. L., pt. 1, 235), authorizes a county board of education, upon the petition of two-thirds of the qualified electors of territory included in a centralized school district, to transfer such territory to another district.

2. Such action may be taken by the board of education upon the filing of the required petition, notwithstanding the pendency of proceedings to erect a school building in the centralized school district.”

Giving due effect to the portion of Section 4727 which I have emphasized, and to the construction placed upon it by the decisions above referred to, it is clear that while a county board of education could not, on its own motion take away territory from a district which had been centralized by a vote of the electors under former Section 4726, yet if a petition requesting such transfer was filed bearing the signatures of two-thirds of the qualified electors of a given territory in a centralized district, the county board of education had the authority to transfer such territory to another district.

That is precisely what appears to have happened in the case you present. The board had evidently started under the impression that it had full authority to make the proposed transfer under the provisions of Section 4692. Upon learning of the ruling of the court of appeals as to the necessity of a petition of two-thirds of the electors to give it jurisdiction to make the desired change, it apparently abandoned its former action and started anew with its resolution of August 7, 1940, based on the filing of a petition which according to the preamble of the resolution was signed by “all of the qualified resident electors residing in the territory.” This resolution appears to be in full compliance with Section 4692 supra, and should be held to accomplish the purpose of the board unless

there be other provisions of law that in some way limit or qualify the power of the board in the matter.

One more group of statutes must be noted as having a bearing on the procedure of the county board. On June 12, 1935, the General Assembly passed an act known as the School Foundation Law. Section 7600-1 et seq. of this act provided that each county board of education on or before the first day of September, 1935, and on or before the first days of April of 1936, 1937 and 1938, should prepare a map showing the location of all school districts in the county, together with a statement showing recommended transfers of territory, elimination of school districts or creation of new school districts which would provide a more economical and efficient system of county schools. This plan of proposed reorganization was to be laid before the members of all boards of education of rural and village school districts and notice of the time and place of a hearing thereon was required to be published. The final approval of the plan was left to the Director of Education. Section 7600-7 provided in part:

“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.” (Emphasis added.)

The question having been raised whether the enactment of said Section 7600-1 et seq., General Code, repealed by implication the provisions of Section 4692 supra, it was held by a former Attorney General in 1936 Opinions of the Attorney General, page 200, that all of these sections were in pari materia and that Section 4692 was still in force, but it was held that the powers which could be exercised thereunder were subject to the limitations of the provisions of Section 7600-7 which I have quoted. Shortly thereafter the Court of Appeals of Hocking County made a like holding in the case of State, ex rel. Johnson v. Board of Education, 24 O. L. A., 193. The fifth and sixth paragraphs of the syllabus read as follows:

“Secs. 4692, 4696 and 4736, General Code were not repealed by implication by the School Foundation Law (Secs. 7600-1 to 7600-8, General Code) except in so far as the powers that may be exercised thereunder are limited by the provisions of Section 7600-7, General Code.

The powers to be exercised by a county board of education in the transfer of school districts or parts thereof and/or the creation of new school districts within the county school district, under the provisions of Sections 4692 and 4736, General Code, come within the limitation in Section 7600-7, General Code prohibiting transfers after the date of approval by the director of reorganization plans unless in accordance therewith."

The court in its opinion referred to, and expressly approved the opinion of the Attorney General to which I have referred.

An appeal in the above case to the Supreme Court, was dismissed. (132 O. S., 452).

Whether, in the situation presented by your inquiry, a general plan of county territorial organization had been adopted and approved as required by Section 7600-1 et seq., and if so, whether the transfer proposed by the board in its resolution was consistent with that plan, are matters as to which your letter contains no information. Manifestly the proposed transfer could not be effective if it was inconsistent with such adopted plan. I am assuming for the purpose of this opinion that there is no such inconsistency. I am also assuming, in the absence of any information to the contrary, that the notices were posted and the map filed with the county auditor as required by Section 4692.

Accordingly, in specific answer to your inquiry it is my opinion that the proceedings of the Pickaway County board of education for the transfer of a part of the Deercreek Township rural school district to the Perry Township rural school district were conducted in accordance with law and that the transfer was duly completed.

Respectfully,

HUGH S. JENKINS,
Attorney General.