

Sixth, county auditors, in making their February, 1931, settlement with school districts which have advanced from village districts to city districts as a result of a change in population as shown by the fourteenth decennial census, should make no deduction for the payment of the salaries of the county superintendent of schools or assistant county superintendent or contingent expenses of the county board of education as provided for in Section 4744-3, General Code.

Seventh, the distribution of the proceeds of the 2.65 mills tax levy authorized by Section 7575, General Code, should be distributed to village school districts which are advanced to city school districts by reason of a change of population on the basis of their being village districts until December 31, 1930, and city districts thereafter. The entire proceeds of the levy within the district should be paid to the district in the February, 1931, settlement and thereafter.

Eighth, when the contract with the superintendent of schools in an exempted village school district which is advanced to a city district by reason of a change of population, expires in 1931, the acting board of education for the said district may elect a superintendent of schools for five years, as is authorized by Section 7702, of the General Code, for the election of superintendents in city school districts.

Ninth, village school districts which are advanced to city school districts by reason of a change of population, as shown by the fourteenth decennial census, should after December 31, 1930, be regarded as city school districts and official business should be conducted in the name of the district as a city school district.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3186.

COUNTY BOARD OF EDUCATION—UNAUTHORIZED TO HIRE AND
PAY CENSUS TAKERS TO DETERMINE WHETHER OR NOT
MAJORITY OF QUALIFIED ELECTORS HAVE SIGNED A REMON-
STRANCE AGAINST CREATION OF A NEW SCHOOL DISTRICT.

SYLLABUS:

An expenditure of public funds by a county board of education for the purpose of employing census takers specifically to count or enumerate the number of electors residing in any given territory, is unauthorized and beyond the power of the county board of education to make.

COLUMBUS, OHIO, April 27, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion in answer to the following question:

“When under the provisions of section 4736 of the General Code, a written remonstrance is filed with a county board of education against its action in the creation of a school district from one or more school districts or parts thereof, purporting to contain a majority of the qualified electors residing in the territory affected, may the county board of educa-

tion legally pay from the county board of education fund a person or persons for taking a census in the territory involved for the purpose of determining whether a majority of the qualified electors have signed the remonstrance?"

When remonstrances are filed against the creation of a new school district, by authority of section 4736, General Code, and when petitions are filed with a county board of education, asking for the transfer of school territory, by force of sections 4696 and 4727, General Code, it becomes the duty of the county board of education to weigh these petitions or remonstrances as to their sufficiency, that is to determine whether or not they are signed by a majority or two-thirds or three-fourths, as the case may be, of the electors residing in the territory sought to be affected by the proposed creation of a new school district or the transfer of school territory.

To do this, the board must necessarily know, for purposes of comparison, the whole number of electors residing in the territory. The only way the whole number of electors in any prescribed territory may be definitely determined is by a counting of noses or the taking of a census in this territory. The duty to make this determination by a count of the electors devolves on a county board of education with which a remonstrance or petition has been filed, as a necessary incident to the duty to determine the sufficiency of the petition or remonstrance. In fulfilling this duty, it clearly is within the power of the board to take the census or have it taken and pay the expense of taking it when necessary, unless the legislature has by law provided for the carrying out of this duty by some means other than by the hiring of census takers and paying them for the performance of that particular work. It can not be successfully asserted that the legislature in any case imposes duties on an administrative officer or board without either expressly providing the means of performing those duties or impliedly leaving to the officer or board the power to carry out these express duties by such means as may be necessary.

It is fundamental, however, that an administrative board such as a county board of education has limited powers only, and represents its constituency in such financial transactions only as it may be expressly authorized so to do by statute. *State ex rel v. Menning*, 95 O. S., 97; *State ex rel Clark v. Cook*, 103 O. S., 467. This principle as applied to county commissioners, is stated by the Supreme Court in the Menning case, supra:

"The authority to act in financial transactions must be clear and distinctly granted and, if such authority is of doubtful import, the doubt is rendered against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

It is significant that so far as the records of this office disclose, no county board of education has ever found it necessary to hire census takers especially for the purpose of taking a census to fix the basis of determining the sufficiency of petitions or remonstrances that may have been filed. These petitions and remonstrances have been filed with county boards of education by the score each year for a number of years. Many cases involving petitions and remonstrances filed with county boards of education have reached the courts and yet so far as we have any knowledge, little, if any, difficulty has arisen with reference to matters which apparently have prompted your inquiry.

Usually the territory involved, when petitions and remonstrances such as we

are here considering are filed, is not large. The parties interested, including members of the county board of education or some member of the county board or employe of the board are acquainted with the territory and the people living therein. In most cases the parties who are sufficiently interested in a proposed creation of a school district or a transfer of school territory to circulate and file a remonstrance or petition, will furnish as well a complete list of the electors residing in the territory involved, and all that is necessary for the county board to do is to check this list, which will usually be done by the opposition, and practically always opposition exists, else the occasion for determining the sufficiency of a remonstrance or petition would not arise.

It is not necessary, however, in my opinion, for a county board of education to depend entirely on petitioners and remonstrants for the necessary information to properly pass on the sufficiency of petitions and remonstrances that may be filed with it. The legislature has provided for what it no doubt considered necessary helpers for a county board of education in carrying out its functions, and the means of meeting the expense of securing that help. I am of the opinion that the board is limited to the use of the means provided by the legislature to have necessary tasks performed for the board and that the board does not have power to secure and pay for any other assistance in the performance of duties which the legislature has directed it to do.

Section 4744, General Code, provides that each county board of education shall appoint a county superintendent. It also provides as to this county superintendent that: "He shall be in all respects the executive officer of the county board of education, and shall attend all meetings with the privilege of discussion but not of voting."

Section 4744-1, General Code, relates to the fixing and payment of the salary of the county superintendent, and provides further:

"The county board may also allow the county superintendent a sum not to exceed three hundred dollars per annum for traveling expenses and may employ an efficient stenographer or clerk for such superintendent."

Authority is extended to the county board of education by section 4744-3a, General Code, to expend public funds for certain other purposes. Inasmuch as the legislature has provided an executive officer for the board and extended authority to the board to pay a salary to that officer and make an allowance for expenses and for clerk hire, and has specifically extended authority to the board to make certain other expenditures for certain specified purposes I am of the opinion that the legislature meant to limit the board to the expenditures authorized, and that the board is required to perform the duties which it is directed to perform with the means provided by the legislature, and within the expenditures authorized by the legislature.

I am therefore of the opinion that a county board of education is not empowered to expend public funds for the purpose of employing census takers to determine the number of electors in a given territory.

Respectfully,

GILBERT BETTMAN,
Attorney General.