

1339.

TRANSFERS—SCHOOL TERRITORY—TO DISTRICTS WHERE SCHOOLS CENTRALIZED — DO NOT EFFECT DECENTRALIZATION OF SCHOOLS OF DISTRICT TO WHICH TERRITORY TRANSFERRED—STATUS SUCH TERRITORY—WHEN APPROVAL REQUIRED BY STATE DIRECTOR OF EDUCATION — DUTY COUNTY BOARD TO TRANSFER NOT MANDATORY—“ORGANIZATION YEAR” —“THE CLOSE OF THE YEAR 1938-1939”—SEE SECTIONS 4726, 4692, 4696, 7600-1 ET SEQ. G. C.

SYLLABUS:

1. *Transfers of school territory to a district wherein the schools have been centralized by virtue of a vote of the people, under and in pursuance of Section 4726, General Code, do not effect a decentralization of the schools of the district to which the territory is transferred.*
2. *When territory is annexed to a school district where the schools had previously been centralized by a vote of the people, the annexed territory becomes by virtue of such annexation, centralized school territory.*
3. *When it is sought to transfer school territory of a county school district to a city, exempted village or another county school district, it is necessary that the transfer be approved by the State Director of Education, providing the said territory or any part thereof previously within five years had been the subject of a transfer to the district out of which it is then sought to transfer it.*
4. *The duty of a county board of education to transfer territory from a so-called centralized school district is never mandatory even though a petition therefor signed by all the residents of the territory sought to be transferred is filed with the county board of education of the county school district in which the territory lies.*
5. *When a petition signed by at least sixty-six and two-thirds per cent of the resident electors of centralized school territory of a county school district sought by said petition to be transferred to an adjoining city, exempted village or another county school district, is filed with the county board of education of the county school district in which the territory lies, and the said territory has not been the subject of a transfer within five years prior to the time it is sought to have the proposed transfer made or if it has, the assent to the present proposed transfer is given by the State Director of Education, it is optional with the said county board of education whether or not it makes the transfer in accordance with the petition, and the duty to make the transfer is not made mandatory by the filing of a petition seeking such transfer, signed by seventy-five per cent or more of the resident electors.*
6. *When, at any time after the expiration of the “organization*

year" of 1938, otherwise spoken of as "the close of the year 1938-1939" as the expressions are used in the case of *State ex rel. Adsmond v. Board of Education of Williams County*, 135 O. S., 383, at pages 389 and 390, it is proposed to transfer school territory either in pursuance of Section 4692 or 4696, General Code, or to create a new school district in pursuance of Section 4736, General Code, it is not necessary to follow the procedural steps laid down by Sections 7600-1 et seq., of the General Code, of Ohio.

COLUMBUS, OHIO, October 25, 1939.

HON. PAUL T. LANDIS, *Prosecuting Attorney, Allen County, Lima, Ohio.*

Dear Sir: I have your request for my opinion, which reads as follows:

"The Sugar Creek Township School District in Allen County, Ohio, is a centralized school district as a result of a vote of the people several years ago.

In accordance with the provisions of the School Foundation Law, being Section 7600-1 et seq., of the General Code, together with Section 4736 of the Code, the Allen County Board of Education in 1938, after published notice, a hearing and action taken pursuant thereto in accordance with the terms of said statutes, and without any petitions or remonstrances being filed on the part of any residents concerned, created a new school district by transferring certain territory from the Marion Township Rural School District, which was not centralized, to the Sugar Creek Centralized School District. This action was taken as a part of the general program for reallocating territory under the School Foundation Act in Allen County and at the same time that this particular portion of the Marion Township Rural School District was transferred to the Sugar Creek Centralized School District, all of the territory formerly comprised in the Marion Township Rural School District was transferred to other school districts.

Early in the month of June of 1939, over seventy-five per cent of the resident electors in a strip of territory contiguous to the city of Delphos, in Marion Township, Allen County, Ohio, which had been transferred to the Sugar Creek Centralized School District, as above set forth, petitioned the Allen County School Board to be transferred to the Delphos City School District. This petition is filed with the Allen County School Board under favor of General Code Section 4696 and is being pressed by the petitioners under authority of the case of *State, ex rel. Adsmond v. Board of Education of Williams County*, 135 O. S., page 383, and the case of *State ex rel. Misamore, et al., v. Hancock County Board of Education*, 135 O. S., page 394.

Under this state of facts we would appreciate your formal opinion as to the following questions, to-wit :

1. In view of the fact that in the creation of the new school district by the Allen County Board of Education in 1938, there was a transfer of the affected territory to the Sugar Creek Centralized School District and in view of the absolute prohibition in Section 4696 against the transfer of any territory out of a school district which has been transferrerd to it within the last five years without the approval of the State Director of Education, is it mandatory upon the County Board of Education to grant the petition of the residents of Marion Township who wish to be transferred out of the Sugar Creek Centralized School District to the Delphos City School District?

2. In the light of the opinion of the Attorney General of Ohio, reported in 1928, Attorney General Opinions, page 996, to the effect that the transfer of territory to a centralized school district does not effect a decentralization of the schools of the district to which the transfer is made, does such transfer of territory as was made in 1938 by the Allen County School Board to the Sugar Creek Centralized School District result in such transferred territory becoming centralized so as to bring it within the provisions of Section 4727 of the General Code which makes it discretionary with the County School Board to transfer territory to or from a centralized school district upon the petition of two-thirds of the qualified electors of the territory sought to be transferred and thus take it out of the mandatory requirements of Section 4696 of the General Code?

It would seem that these questions are not covered by the Supreme Court in its opinion rendered in the case of State ex rel. Adsmond v. Williams County Board of Education, 135 O. S., page 383, because in such opinion the following language appears :

'The territory described in relator's petition is contiguous to Bryan Village School District, has not been transferred from one district to another within the past five years, and the schools in the territory are not centralized'.

3. Since none of the residents affected by the transfer of territory which was made in the proceedings of the Allen County Board of Education in 1938, or those who have petitioned to be transferred to the Delphos City School District in June of 1939 filed any petition with the Allen County Board of Education prior to the action taken in the summer of 1938 so as to make it possible for the Board of Education to consider their desires at the time that the Board was considering matters relating to the

organization plan for the whole county for the school year 1938 and 1939, would such failure on their part preclude such electors from now seeking the transfer of territory by petition under Section 4696 of the General Code? This would seem to be the inference to be deducted from the per curiam opinion of the Supreme Court in the case of the State ex rel Misamore, et al., v. Hancock County Board of Education, supra.

4. In view of the opinion of the Attorney General issued on December 20, 1938, being Opinion No. 3434 having to do with matters of procedure, in the event that it is mandatory on the part of the Allen County Board of Education to grant the petition filed with them in June of 1939, by those electors who desire to be transferred to the Delphos City School District, would it be necessary for the Allen County Board of Education to follow the procedural steps laid down in Sections 7600-1, 7600-2, 7600-3, 7600-4, 7600-5, 7600-7 and 7600-8 of the General Code calling for the preparation of maps, publication of notice four consecutive times, and the holding of a hearing in which all members of Boards of Education concerned as well as interested persons shall participate, the submission of the plan to the Director of Education, etc., or could the County School Board proceed to grant the prayer of the petition summarily and effectuate the transfer of territory under Section 4696 immediately without following the procedural steps laid down in the School Foundation Act?"

From correspondence which I have had relating to your inquiry and the proceedings of the County Board of Education of the Allen County School District as of April 13, 1938, at which time the adoption of the 1938 "plan of organization" for school districts in the Allen County District in pursuance of Sections 7600-1, et seq. of the General Code was under consideration copy of the record of which proceedings I have before me, it appears that the said plan of organization involved the dissolution of the Marion Township Rural School District in Allen County and the allocation of the territory comprising that district to other districts. After acting in accordance with the request contained in several petitions for transfers of parts of that district to other districts there remained a portion of the district in the northeasterly part thereof, the transfer of which had not been requested by petition and the members of the county board of education were somewhat doubtful as to whether this remaining part of the Marion Township District should be transferred to the Sugar Creek District or the Elida District. After considerable discussion, in which the question of bus routes, proximity of schools, etc., were given consideration, it was thought advisable that this territory be incorporated in the Sugar Creek District. In accomplishing this purpose the board

purported to act under the provisions of Section 4736, General Code, by creating a new district consisting of all of the Sugar Creek District and this northeasterly part of the Marion Township District although in effect the action taken was nothing more than a transfer of the northeasterly portion of the former Marion Township District to the Sugar Creek District, the name of which was not changed at the time. With this thought in mind, the questions submitted by you will be considered in their order, it now appearing that the residents of that portion of what had been Marion Township District that was transferred, to be and become a part of the Sugar Creek District, in 1938, or at least a part thereof, now desire to have this territory transferred to the Delphos City School District which is contiguous thereto and have filed with the Allen County Board a petition signed by more than seventy-five per cent of the electors residing in this territory, asking for such transfer.

1. Section 4696, General Code, relates to the transfer of school district territory to a contiguous city school district, exempted village school district or another county school district upon petition of the resident electors in the territory sought by the petition to be transferred, and provides in terms that when the petition is signed by seventy-five per cent or more of the resident electors in territory sought to be transferred, and filed with the county board of education for the county school district in which the territory sought to be transferred lies, it is the mandatory duty of the county board of education to make the transfer asked for in the petition. The said statute, Section 4696, General Code, contains the following provision:

“Any territory which has been transferred to another district, or any part of such territory, shall not be transferred out of the district to which it has been transferred during a period of five years from the date of the original transfer without the approval of the state director of education to such a transfer.”

Inasmuch as the territory sought to be transferred in the instant case has been transferred into the district out of which it is now sought to have it transferred within the past five years, a mandatory duty is not imposed upon the county board of education to make the transfer as petitioned for, even though such a mandatory duty would otherwise exist, unless the proposed transfer is approved by the State Director of Education.

2. The 1928 opinion to which you refer, held categorically in the second branch of the syllabus thereof:

“The transfer of territory to a centralized district does not effect a decentralization of the schools of the district to which the transfer is made.”

See Opinions of the Attorney General for 1928, page 996.

Upon examination of the above opinion, I am convinced that the conclusions therein stated are sound, and it therefore must be concluded that the transfer made of the territory in question to the Sugar Creek District in 1938, did not decentralize the schools of that district but simply added territory to the district which upon its being incorporated in the district took on the characteristics of the territory of the district to which it had been transferred and thereby became centralized school territory.

In an Opinion of the Attorney General in 1930, found in the published Opinions of the Attorney General for that year, at page 312, it is held :

“When territory is annexed to a so-called centralized school district, the annexed territory becomes, by virtue of such annexation, centralized school territory.”

That being the case, the mandatory provisions of Section 4696, General Code, do not apply. If a petition is filed with the county board of education asking for the transfer of territory from a school district in which the schools are centralized under and in pursuance of Section 4696, General Code, signed by sixty-six and two thirds per cent of the electors residing in the territory sought to be transferred, it is optional with the county board of education whether it makes the transfer or not. See Section 4727, General Code.

Board of Education v. Board of Education, 104 O. S., p. 1 ;
State ex rel. Darby v. Hadaway, et al., 113 O. S., 658 ;
Board of Education v. State, 115 O. S., 333 ;
Opinions of the Attorney General for 1927, pp. 739 and
1253 ; for 1928, p. 996.

In the case of State ex rel. Darby v. Hadaway, supra, it was held as stated in the syllabus :

“1. The mandatory provisions of Section 4696, General Code, have no application to centralized school districts.

2. Under the provisions of Sections 4696, General Code, and of Section 4727, General Code, as amended April 16, 1919 (108 O. L., pt. 1, 235), a board of education of a county school district is authorized to transfer territory from a centralized school district to another district upon the petition of two-thirds of the qualified electors of the territory sought to be transferred, but it is not required to make such transfer, though the petition therefor be signed by 75 per cent, of such qualified electors.”

Inasmuch as the schools in the Sugar Creek District have been centralized, it clearly follows, in the light of the authorities cited above, that

it is optional with the county board of education, in the case under consideration, whether they make the transfer asked for or not, provided the director of education approves the transfer.

3. The fact that the residents of the territory now seeking to be transferred from the Sugar Creek District to the Delphos City School District did not file any petition with the Allen County Board in 1938, from which could be gathered their desire with respect to the matter of school district organization, does not, in my opinion, have anything to do with their rights at this time. At that time the residents on this territory had a right, whether they exercised it or not, to attend the reorganization meeting which the law provided for upon the consideration by the county board of education of the 1938 reorganization plan and which meeting I assume was properly held, and to protest if they desired, the adoption of the then proposed plan. They also had the opportunity to file a remonstrance in 1938, when the transfer of the territory in question to the Sugar Creek District was made. I do not understand the per curiam opinion of the court in the case of *State ex rel. Misamore v. Board of Education of Hancock County*, 135 O. S., 394, 400, as bearing upon this question. Anyway, in that case the question considered related to the adoption of a plan of organization for the year 1938, which the law provided in mandatory terms should be adopted. There is no provision in the law for the adoption of a plan of organization for 1939.

4. In your fourth question, you inquire as to whether or not it will be necessary for the Allen County Board of Education to follow the procedural steps laid down in Sections 7600-1 et seq., calling for the preparation of maps, the publication of notice, etc., if it should be decided that it was their mandatory duty to make the transfer as prayed for in the petition or if they should decide to make the transfer even though it is not mandatory.

Inasmuch as the procedural steps to which you refer, as outlined in the statutes referred to above, related to the adoption of county plans of organization or reorganization of school districts, and the law makes no provision for the adoption of such a plan after the 1938 plan was adopted, it is my opinion that the transfer here under consideration may be made by the county board of education if it sees fit so to do, and the transfer is approved by the director of education, without following the procedural steps provided for by Sections 7600-1 et seq. of the General Code. In this connection, your attention is directed to my opinion No. 960, rendered under date of July 29, 1939, addressed to the Prosecuting Attorney of Darke County. The syllabus of this opinion reads:

“1. After the adoption of a ‘plan of organization’ of school district territory within a county in the year 1938 by a county board of education in pursuance of the provisions of Section 7600-1 to 7600-8, both inclusive, of the General Code of Ohio,

no mandatory duty rests upon a county board of education to formulate or adopt a further 'plan of organization' as the term is used in the statutes mentioned, nor does there exist any authority for a county board of education to adopt such a plan of organization.

2. After the close of the organization year 1938-1939 for which period a 'plan of organization' for school district territory within a county had been adopted by a county board of education in the year 1938 in pursuance of the provisions of Sections 7600-1 to 7600-8, both inclusive, of the General Code of Ohio, the provisions of Section 4696, General Code, are operative, free from any limitations contained in the provisions of the School Foundation Law.

3. After the expiration of the 'plan of organization' of school district territory within a county adopted by a county board of education in 1938 in pursuance of the provisions of Sections 7600-1 to 7600-8, both inclusive, of the General Code of Ohio, and in accordance with its mandatory duty as imposed by the aforesaid statutes, at the close of the organization year 1938-1939, it is the mandatory duty of a county board of education under Section 4696, General Code, when a petition is filed with it either after the close of said year 1938-1939 or within a reasonable time prior thereto, which petition meets all legal requirements and is signed by 75% of the electors residing on territory of a school district of the county school district praying for a transfer of that territory to a contiguous city, exempted village or another county school district, to make the transfer as required, provided, of course, that the territory which it is sought to have transferred does not lie in a rural school district in which the schools have been centralized by a vote of the people and that the said territory sought to be transferred has not been transferred into the district where it then lies within a period of five years prior to the filing of said petition or if such is the case, the approval of the Director of Education to the transfer sought has been obtained."

In conclusion, it is my opinion:

1. Under the circumstances as outlined in your inquiry, the proposed transfer of territory to the Delphos City School District cannot lawfully be made unless the transfer is approved by the State Director of Education.

2. If the proposed transfer is approved by the State Director of Education, it is optional with the county board of education of the Allen County School District whether it makes the transfer as prayed for or

not, and if the county board chooses to make the transfer as prayed for, it may be done without following the procedure laid down by Sections 7600-1 et seq. of the General Code of Ohio.

Respectfully,

THOMAS J. HERBERT,

Attorney General.

1340.

BOND—E. J. SALSINGER, \$5,000.00, ACTING RESIDENT DISTRICT DEPUTY DIRECTOR, DARKE, MERCER, AUGLAIZE AND LOGAN COUNTIES, DEPARTMENT OF HIGHWAYS.

COLUMBUS, OHIO, October 26, 1939.

HON. ROBERT S. BEIGHTLER, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval the official bond of E. J. Salsinger, in the sum of \$5,000.00 with the Continental Casualty Company as surety and covering Mr. Salsinger in the office of Acting Resident District Deputy Director for the Department of Highways in Darke, Mercer, Auglaize and Logan Counties, Ohio.

Finding said bond in proper legal form, I have noted my approval thereon, and same is returned to you herewith.

Respectfully,

THOMAS J. HERBERT,

Attorney General.

1341.

LEASE—STATE GAME REFUGE, TO STATE BY LYDIA B. IRVIN, DESIGNATED LAND, LIBERTY TOWNSHIP, WOOD COUNTY, 200 ACRES.

COLUMBUS, OHIO, October 26, 1939.

HON. DON G. WATERS, *Commissioner, Division of Conservation and Natural Resources, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease executed by Lydia B. Irvin to the State of Ohio, on a parcel of land in Liberty Township, Wood County, Ohio, containing 200 acres of land. By this lease, which is one for a term of three years, this land is leased and demised to the state solely for state game refuge pur-