

1377.

## CITY SCHOOL DISTRICT—TERRITORY NOT TRANSFERABLE FROM SUCH DISTRICT.

*SYLLABUS:*

*There is no authority of law whereby territory may be transferred from a city school district.*

COLUMBUS, OHIO, January 8, 1930.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

"In Weathersfield Township, of this county, there lies a certain allotment, which is bounded on the north by the McDonald village school district; on the east and south by the Girard city school district; and on the west by the Weathersfield rural school district. This territory is contiguous to the McDonald village corporation, but is outside of the corporate limits, and not contiguous to the city of Girard.

Practically all of the people residing in this allotment are desirous of sending their children to the McDonald village schools, instead of to the Girard city schools. The board of education of the Girard city schools is agreeable to the transfer, and the board of education of McDonald district will accept the territory as a part of its district.

In going over the situation, I have been unable to find any authority granted by the statutes, governing the transfer of territory which would give the right to make this transfer, inasmuch as that portion of the Girard city district sought to be transferred, is outside the corporate limits of the city of Girard; and, consequently, the provisions of Section 4696-1 would apparently not apply.

"It occurred to us that perhaps the county board of education might accept a transfer of this territory from the board of education of the Girard city district, and annex it to the contiguous district of the Weathersfield rural school district; and then make a second transfer from the Weathersfield rural school district to the McDonald village school district. But, in looking for a solution along those lines, we could find no place in the statute governing the right, and, if any right existed, the procedure whereby the board of education of a city school district could transfer any of its territory, except as provided in Section 4696-1, which limits the territory to such as is within the corporate limits of the city.

Such a transfer is desired by all parties concerned, and the county board of education is willing to cooperate if there is anything in the statutes which gives them the right to accept the territory or make a transfer thereof. If you have any suggestions as to how this might be accomplished, we would appreciate them very much.

I am enclosing herewith a map, which will give some idea of the situation. That portion surrounded by red being the part sought to be transferred, the portion surrounded by green being the corporate limits of the village of McDonald, the portion surrounded by yellow is in the Girard city school district, although outside of the Girard corporate limits, and the uncolored portion to the west is in the Weathersfield rural school district."

From your statement and the accompanying map, it appears that the territory which it is now desired to have transferred to McDonald village school district is embraced in the boundaries of the Girard city school district and is a part of the Girard city school district.

The power to organize, establish or lay out new school districts, or to divide, change the boundaries or otherwise alter existing districts is vested primarily in the state Legislature. This power may be delegated to subordinate agencies and officers. See Cyc. Vol. 35, page 833, et seq. and cases cited. 43 Century Digest, Title, Schools and School Districts, Section 59½.

In Ohio, the power to alter existing school district boundaries is delegated to boards of education, Sections 4692, 4696, and 4736, General Code.

It is a well established principle of law that boards of education have such powers only as are expressly or by necessary implication delegated to them. This principle is so well settled as not to need the citation of authority. Any power granted to a board of education must be exercised in the manner provided for by the Legislature, and such board is limited in the exercise of the power, not only as to the manner, but as well to the extent so delegated.

An examination of the present existing statutes empowering boards of education to transfer school territory or change the boundaries of school districts discloses that there is no authority under the present law for boards of education by mutual consent, or otherwise, to transfer school territory from a city school district. Nor has such authority existed since the adoption of the school code of 1914, at which time Section 4692, General Code, was amended and the said section as it then existed was repealed, except the authority granted by Section 4696-1, General Code.

Quite a thorough review of the history of the legislation relating to the transfer of school territory as it bears on the right to transfer school territory from a city school district, is contained in an opinion of my immediate predecessor which is found in Opinions of the Attorney General for 1928 at page 1168, where it is held:

“Territory embraced within the corporate limits of a city can not be transferred from the city school district of said city for school purposes.”

The same subject was under consideration by the then Attorney General in 1918. His opinion with reference thereto, will be found in the Opinions of the Attorney General for 1918 at page 600, where it is held:

“There is no authority contained in our school laws to transfer territory from a city or an exempted village school district.”

The law with reference to this subject has not been materially changed since the above opinion of 1918 was rendered.

It sometimes happens in the incorporation of a new city or village, or upon the extension of the city or village limits, that territory may be included within the corporate limits of a city or village which had previously been attached for school purposes to a school district of an adjacent city or village. There existed for a time authority whereby such territory might be transferred to the school district of the municipality in which said territory was located. This authority was given by Section 4696-1, General Code. The provisions of said section would have no pertinency in the present instance even though the section were still in force. Said Section 4696-1, General Code was repealed by the 88th General Assembly (113 O. L. 688).

I am of the opinion, in specific answer to your inquiry, that there is no way by

which the territory described in your letter may be transferred to the McDonald village school district.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1378.

DISAPPROVAL, DEED TO LAND OF EDAR C. MILAR IN GOSHEN TOWNSHIP, TUSCARAWAS COUNTY.

COLUMBUS, OHIO, January 8, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, submitting for my examination and approval, a warranty deed executed by one Edar C. Milar, a widow, conveying to the State of Ohio a certain tract of 1.03 acres of land in Goshen Township, Tuscarawas County, Ohio, which tract of land is more particularly described in said deed and in Opinion No. 1251 approving the abstract of title with respect to the purchase of this property directed to you under date of December 3, 1929.

Upon examination of said deed I find that I am required to disapprove the same for the following reasons:

(1) It does not appear that said deed was signed and acknowledged in the presence of two witnesses, as required by the provisions of Section 8510, General Code. (2) The named grantee in said deed is "The State of Ohio, Division of Highways." The words "Division of Highways" should be eliminated so that the deed will stand as one to the State of Ohio, its successors and assigns, without qualification or limitation as to the department which is to make use of the property conveyed.

I am herewith returning said deed to you.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1379.

DITCH IMPROVEMENT—CONSTRUCTED BY MUNICIPALITY WITHIN THE CORPORATION—COUNTY MAY NOT PAY PART COST OF SAME EVEN THOUGH BENEFITED THEREBY—SUGGESTED REMEDY.

SYLLABUS:

*In the event a ditch improvement lies wholly within the corporate limits of a municipal corporation and such improvement is being constructed by the municipality, which has taken jurisdiction thereof, there is no authority for the expenditure of county funds to pay a portion of the cost of such improvement, notwithstanding the fact that the county may be benefited thereby. In the event the improvement will result in a benefit to the county, the county commissioners should take jurisdiction thereof*