

tion 4768, General Code, and those of section 7671, General Code, inasmuch as Section 4768, General Code, provides that the funds coming into the hands of a school district treasurer, which, by virtue of Section 7671, General Code, include joint high school funds in districts where a joint high school building is located, shall not be paid out except on the "orders" of certain officials of that school district, whereas, Section 7671, General Code, provides that those moneys shall be paid out by "action" of the joint high school committee charged with the maintenance of the joint high school. The conflict between these two sections is, in my opinion, more apparent than real. By the terms of the two sections, it is apparent that the legislature did not intend the officials of the school district in whose treasury the funds were placed to issue "orders" for paying out these moneys without some "action" on the part of the high school committee. The high school committee, being in charge of the maintenance of the high school, should approve claims and bills to be paid before the payment is actually made. The facts on which the validity of such claims are based are peculiarly within the knowledge of this high school committee and the legislature no doubt intended that the committee should take "action" approving bills before "orders" are issued for their payment, very much in the same manner as county commissioners approve certain claims against the county before the county auditor is authorized to draw warrants on the county treasury for their payment. The actual orders or checks for the payment of the money are drawn and issued, however, by the county treasurer.

Likewise, in my opinion, the orders or checks for the payment, out of the school district treasury, of funds appropriated for a joint high school should be made in accordance with section 4768, General Code, upon the approval of the joint high school committee by taking action as directed by section 7671, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3863.

APPOINTMENT OF TEACHER BY COUNTY BOARD OF EDUCATION—  
WHEN SUPERINTENDENT OF COUNTY CHILDREN'S HOME ARBITRARILY REFUSES TO APPROVE SELECTION OF BOARD.

SYLLABUS:

1. *When a school is maintained at a county children's home, the said school shall be under the control and supervision of the city, township or village board of education having jurisdiction over the school district within which such home is located. Teachers for such school shall be employed by the said board of education with the approval of the superintendent of the home.*

2. *When a village or rural board of education, upon which there devolves the duty of employing a teacher or teachers for a school maintained at a county children's home, fails to do so because of the arbitrary action of the superintendent of the home in refusing to approve the employment of any other than one particular person, whereas the board offered to appoint anyone out of a large list of applicants other than the person whose employment the superintendent would approve, it becomes the duty of the county board of education, by force of Section 7610-1, General Code, to employ a teacher for said school.*

COLUMBUS, OHIO, December 16, 1931.

HON. MARCUS MCCALLISTER, *Prosecuting Attorney, Xenia, Ohio.*

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

“There is located within the Xenia Township Rural School District, the Greene County Children’s Home. For the past several years there has been maintained at the Home, a school under the instruction of two teachers for pupils of the elementary grades. Several weeks ago the Board of Education of the aforesaid district selected ‘A’ as one of the teachers of this particular school and received the approval of the Superintendent of the Home, as provided under Section 7676, General Code.

Out of a large list of applicants the aforesaid Board of Education selected the other teacher for this particular school; however, the Superintendent of the Home refused to approve the selection and appointment of this particular person. He, in turn, informed the Board of Education that he would approve no one except ‘X’, an individual who has been teaching in this particular school for some time. The Board of Education, seeking to relieve the situation, offered to appoint any one out of a large list of applicants, other than ‘X’. The said Superintendent refused to co-operate with the Board and insisted that he would approve no one except ‘X’.

Realizing the necessity of educating the children, the Board of Education assigned certain pupils of certain grades of the Home to other schools within the district.

I have informed the Board of Education that under the Opinions of the Attorney General, 1923, Page 37, that before a teacher of such a Home can be legally employed, the Board of Education must get the approval of the Superintendent of that particular institution. I informed them that General Code, Section 7676 does not, however, invest him, the Superintendent of the Home, with the power to make the selection or appointment of teachers. That the only provision the law makes is that after a selection and appointment is once made, before the employment becomes legal, his approval must be had. However, the Superintendent of the Home insists that the Board of Education must appoint and employ the person he recommends.

The question, therefore, may be stated as follows:

Is a mandatory duty imposed upon a Board of Education of a school district wherein a County Children’s Home is located, to employ for said Home, no other person as teacher except the one recommended by the Superintendent of the Home, when he has refused to approve the employment of any other?”

Section 7676, General Code, to which you refer, reads as follows:

“The inmates of a county, semi-public or district children’s home shall have the advantage of the privileges of the public schools. So far as possible such children shall attend such school or schools in the district within which such home is located.

Whenever this is impossible and a school is maintained at the home, such school shall be under the control and supervision of the city, town-

ship, village or special board of education, having jurisdiction over the school district within which such home is located.

Such board of education shall employ with the approval of the superintendent of the home necessary teachers, and provide books and educational equipment and supplies, and conduct such school in the same manner as a public school within the district. The trustees of the home shall furnish necessary furniture, fuel and light."

It will be observed from the foregoing statute, that when it is impossible for the inmates of a county, semi-public or district children's home to attend the public school in the district within which such home is located and a school is maintained at the home, such school shall be under the control and supervision of the board of education having jurisdiction over the school district within which such home is located. It is made the duty of the said board of education to employ teachers for said school. The board is limited, however, in making such employment to employing those teachers only who are approved by the superintendent of the home. See Opinions of the Attorney General for 1923, page 37.

It is not the intention of the law to take away all discretionary powers vested in the board with reference to employing a teacher by requiring that the board must employ persons who are approved by the superintendent of the home any more than it is the intention to require the superintendent to approve persons whom the board desires to employ. When the superintendent takes the stand that he will not approve any but certain persons to be employed as teachers, and the board refuses to employ those certain persons, a deadlock exists which would result, if there were no means of overcoming the deadlock, in the school not having a teacher at all. Certainly it can not be said that the intent of the law is to permit such a condition to exist.

The school, in order to function as such, must have a teacher, and the statute makes it imperative that the board of education of the district shall maintain the school and that it shall be under the control and supervision of the board of education. One of the duties imposed on the board is to employ a teacher or teachers for the school although the board is limited to some extent in the employing of those teachers and, when it is impossible for the board to act in the matter because of this limitation, it becomes the duty, in my opinion, of the county board of education to relieve the situation, which it is authorized to do by force of Section 7610-1, General Code, which reads in part, as follows:

"If the board of education in a district under the supervision of the county board of education fails to provide sufficient school privileges for all the youth of school age in the district, or to provide for the continuance of any school in the district for at least thirty-two weeks in the year, or to provide for each school an equitable share of school advantages as required by this title, or to provide suitable school houses for all the schools under its control, or to elect a superintendent or teachers, or to pay their salaries, \* \* the county board of education of the county to which such district belongs, upon being advised and satisfied thereof, shall perform any and all such duties or acts, in the same manner as the board of education by this title is authorized to perform them. \* \*"

The district in question, is a district of the county school district, and inasmuch as the law requires the local board of education to appoint a teacher or

teachers for this school, it becomes the duty of the county board of education to perform that duty if the local board fails to do so, and, although the statute provides that that duty shall be performed in the same manner as the local board is authorized to perform it, I am of the opinion that the county board may appoint a teacher whether the superintendent of the home approves the same or not.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3864.

SCHOOL DISTRICT—UNDER SECTION 4684, GENERAL CODE, EXPRESSION "GREATEST PART OF TERRITORY", MEANS GREATEST AREA—TRANSFER OF TERRITORY UNDER SECTION 4696, GENERAL CODE.

*SYLLABUS:*

1. *The words "greatest part of the territory", as used in Section 4684, General Code, should be construed as meaning the greatest area or extent of territory.*
2. *The provisions of Section 4684, General Code, to the effect that school districts having territory in more than one county shall become a part of the county school district of the county in which the greatest part of its territory lies, has reference to those school districts which include territory lying in more than one county at the time of the enactment of the statute.*
3. *The purpose of the enactment of Section 4684, General Code, was to define county school districts and to allocate to some one county school district those local districts that at that time extended into more than one county. It has no application to such school districts as thereafter are changed with respect to the proportionate amount of territory lying in one or more counties.*

COLUMBUS, OHIO, December 16, 1931.

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

GENTLEMEN:—I have before me your recent communication, wherein my opinion is requested with reference to the following matter:

"Under the provisions of Section 4696 of the General Code, the County Board of Education of Clermont County, upon petition of seventy-five per cent. of the electors of Loveland School District in that county, transferred the whole of this district to Hamilton County School District and the County Board of Education of Hamilton County annexed the territory to Loveland Village District in Hamilton County.

Question: 1. Does this transaction place the new district under the control of the Hamilton County Board of Education, or is the control to be determined by the greatest part of the territory as provided by Section 4684?

Question: 2. Do the words, 'the greatest part of the territory' as