

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

used in Section 4684, refer to the greatest area or to the greatest valuation of the territory?"

Section 4684, General Code, reads as follows:

"Each county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the supervision of the county board of education by the provisions of sections 4688 and 4688-1, and territory detached for school purposes, and including the territory attached to it for school purposes, shall constitute a county school district. In each case where any village or rural school district is situated in more than one county such district shall become a part of the county school district in which the greatest part of the territory of such village or rural district is situated."

By the terms of Section 4696, General Code, reference to which is made in your letter, boards of education of county school districts are authorized to transfer a part or all of a school district of the county school district to an adjoining county school district, upon petition of the electors residing in the territory sought to be transferred. When such a petition is signed by two-thirds of the said electors the duty devolving upon the county board of education to make the transfer as requested, is mandatory. When a transfer is made, by force of this statute, to an adjoining county school district, and the board of education of the adjoining county school district accepts the transfer, it becomes the duty of that county board of education to attach the territory so transferred to a school district of that county school district to which the territory is contiguous.

While you do not so state, I infer from the gist of your inquiry, that after the transfer in question had been made, and the board of education of the Hamilton County school district had accepted the transfer and attached the transferred territory to Loveland Village School District of the Hamilton County School District, it was found that the greater part of the Loveland Village School District, as then constituted, lay in Clermont County and the question at once arose whether or not in view of the terms of Section 4684, *supra*, the district automatically became a part of the Clermont County School District from which the transfer had been made. If this be true, then the transfer to the Hamilton County School District, as requested by the petitioners, had the ultimate effect of causing the territory transferred to become a part of a local district in the same county district it was before, although the petitioners had requested that it be transferred to the Hamilton County School District, and the statute, Section 4696, General Code, authorized its transfer to the Hamilton County School District.

If, under the circumstances, the Loveland Village School District, after the transferred territory had been attached to it, became a school district of the Clermont County School District, the territory transferred would still be under the jurisdiction of the same county school district it was before it was transferred, although the apparent object of the petitioners, and of the statute authorizing the procedure (Section 4696, General Code,) is to transfer the territory from one county school district to another and thus place it under the jurisdiction of a different county board of education than the one under which it had functioned before the transfer.

I have little difficulty in construing the words "greater part of the territory",

as used in Section 4684, General Code, to mean the larger area or greater number of square miles or fractional parts thereof. Words in a statute are to be construed according to their usual and natural import, unless a contrary intention appears. When we speak of a portion of territory, geographically and in a comparative sense it is generally understood that we refer to it from the standpoint of surface proportions, in other words, we compare portions of territory, as such, with reference to quantity rather than quality. The word "territory" imports area or extent of the surface of the earth. Webster defines the term "territory" as:

"A large extent or tract of land; extent of lands and waters belonging to, or under the jurisdiction or sovereignty of a prince, state or government of any form, or any given portion of it; any definite or particular portion of the area of a state considered by itself."

The words "greatest part of territory" standing alone, do not suggest value or worth; nor is there anything in the context of this statute to suggest such a meaning for these words. When the legislature intended a larger or greater tax valuation to control, it so stated, as for instance, in section 7599, General Code, wherein it is provided that the funds belonging to a school district composed of territory in more than one county shall be paid by the treasurers of the other counties to the treasurer of the county "having the greatest tax valuation in such district." It further provides that the auditors of other counties must make settlement on account of such funds with the auditor of the county "having the greatest tax valuation."

I am convinced therefore that the words "greatest part of the territory" as used in Section 4684, General Code, were intended to mean greatest area or extent of surface.

The practical application of the provisions of this statute with reference to a district which lies in two or more counties becoming a part of the county school district of the county which contains the greatest part of its territory is somewhat more difficult. If effect is to be given to the provisions of this statute each time a transfer of territory is made from one county school district to another and each time a change is made in the territorial boundaries of a school district which lies in two or more counties, situations will arise which, not only defeat the will of the petitioners who request the transfer of territory to an adjoining county school district and the statute which authorizes such transfers, as is suggested in the instant case, if, in fact, the Loveland Village District as constituted after the transfer has more territory in Clermont County than in Hamilton County, but which also will permit a county board of education to cause such an entire district to become a part of another county school district by the simple expedient of detaching a portion of its territory by authority of Section 4692, General Code, and thus cause the amount of territory lying in that particular county school district to become less than the extent of territory within the district which lies in the other county school district.

Section 4692, *supra*, permits a county board of education to change the boundaries of local districts under its jurisdiction without petition therefor, and oftentimes against the will of the residents of the immediate territory which is detached from one district and attached to another. Such transfers when made can be defeated only by remonstrance signed by a majority of the electors affected, which means a majority of all those in each entire district from which or to which territory is detached or attached. In the instant case, if the Loveland

Village District becomes a part of the Clermont County District, the Clermont County Board of Education could, by exercising the power conferred upon it by Section 4692, *supra*, detach from this district, and attach to some contiguous district of the Clermont County School District, a sufficient amount of territory to make the territory of the district in Clermont County less than that in Hamilton County and cause the district to become a part of the Hamilton County School District until such time as the Hamilton County Board went through the same process. The county boards of education could, if they saw fit, continue to play checkers with this district so long as any substantial amount of territory remained in either county.

The said statute, Section 4684, was enacted in 1914, at the time of the enactment of the so-called School Code whereby county school districts as units of school supervision were created. Prior to that time county school districts did not exist. By force of the same act in which Section 4684, General Code, was enacted, county school districts were created and boards of education for these school districts were invested with a considerable measure of power with respect to the supervision of schools under their jurisdiction and the transfer of school territory as between local village and rural school districts. Transfers of territory to and from city and county school districts, and village districts exempted from county supervision, were also provided for, but the powers of the several county boards of education with respect to this class of transfers were considerably limited.

Therefore, there had existed many local districts the territory of which extended into two or more counties. Some provision necessarily had to be made at that time to fix the status of these districts in the county district units, to carry out the scheme of county district supervision for all the schools of the state outside of city and exempted village districts. If the boundaries of these districts, which extended into two or more counties were to be not disturbed in providing for county district supervision, the situs of all such districts necessarily had to be fixed in one or the other county districts for the counties into which the district extended. The legislature chose the method set up in the statute by providing that each such district should become a part of the county district of the county in which the greatest part of the territory of the district lay.

There is presented the question of whether or not the legislature intended, in view of the existing situation at the time the statute was enacted, to limit the provisions of the statute with respect to districts becoming a part of the county school district of the county wherein the greatest part of the territory of the district lay, to the then existing districts, or whether the provisions were meant to apply to situations arising in the future, where boundaries of a district should become changed by reason of the transfer of territory to or from the district and thereby the proportion of territory lying in one or another county would be changed.

This question has never been the subject of a formal opinion of this office, nor has it been passed upon by any court to my knowledge. The practical application of the statute over the state has not been uniform. In the few instances where occasion has arisen for the application of the statute since its original enactment some administrative officials have applied it while others have not; more often the latter course has been followed. The language of this provision of the statute, standing alone, is capable of either construction. When considered in relation to the context of the entire statute, that is when read with the

evident purpose of the remainder of the statute in mind, there is a very substantial reason for saying that it was merely intended to fix the status of the several county school districts in the state, and in view of the fact that the legislature, in the same act in which the statute was enacted (104 O. L. 133) provided for the transfer of territory from one county school to another (Section 4692, General Code, 104 O. L. 135) which provision clearly was intended to operate prospectively, I am of the belief that this construction is the proper one.

I do not believe the legislature intended to set up a procedure whereby school districts which extended into two or more counties might be automatically transferred from one county school district to another at the mere whim of a county board of education, by detaching or attaching territory to the district so as to change the amount of territory in one or the other counties into which the district extended and thus make that amount of territory greater or less, as the case might be, than in the other, especially in view of the fact that at the time of enacting this statute a method was provided for the transfer of a part or of an entire school district from one county school district to another. The purpose of the entire statute, was, in my opinion, nothing more than to define county school districts.

I am therefore of the opinion in specific answer to your questions, that the Loveland Village School District as constituted after the Loveland District of Clermont County had been transferred to the Hamilton County School District and attached to Loveland Village District of Hamilton County, is a part of the Hamilton County School District, regardless of the proportionate amount of its territory which lies in Clermont and Hamilton Counties.

If it seems desirable that this district should be a part of the Clermont County School District it may be transferred in toto by action taken in pursuance of Section 4696, General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3865.

SUPERINTENDENT OF BANKS—MAY SELL ASSETS OF BANK BEING LIQUIDATED, AND TAKE NOTE SECURED BY SECOND LIEN—LIMITATIONS.

SYLLABUS:

When it appears to the Superintendent of Banks that the transaction is reasonable, proper and business-like in all respects, and will probably expedite the liquidation of the bank, and he has obtained the approval of the court of common pleas having jurisdiction in the matter, he may sell an asset or assets of the bank being liquidated, and take in part payment the note of the purchasers secured by second lien on the purchased assets.

COLUMBUS, OHIO, December 16, 1931.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion which reads as follows:

“A corporation proposes to purchase from the undersigned, as