

311.

DISAPPROVAL, BOND FOR FAITHFUL PERFORMANCE OF DUTIES—
EDWARD STINGEL.

COLUMBUS, OHIO, April 12, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

DEAR SIR:—Receipt is acknowledged of your letter of recent date transmitting the bond of Edward Stingel, Resident Deputy State Highway Commissioner.

It will be noted in line eight of the body of said bond that after the words "the said" the name of the Resident Deputy State Highway Commissioner has been omitted.

While I am of the opinion that a court in passing upon the validity of such a bond would look to the entire instrument and would hold that the bonding company would be liable in case of a default upon the part of the Resident Deputy State Highway Commissioner, I am returning the bond without my approval endorsed thereon so that the same may be corrected as suggested.

Respectfully,
EDWARD C. TURNER,
Attorney General.

312.

COUNTY BOARDS OF EDUCATION—TRANSFER OF PROPERTY UNDER
SECTION 4692, GENERAL CODE.

SYLLABUS:

When county boards of education acting under authority of Section 4692, General Code, have passed a resolution for the transfer of territory from one county school district to an adjoining district and have filed with the auditor a map which shows by its lines that the boundaries of the territory transferred include more territory than is included within the terms of the resolution, the territory shown on the map but not within the terms of the resolution, will not be affected by the action of the board.

COLUMBUS, OHIO, April 12, 1927.

HON. EUGENE S. OWEN, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which is as follows:

"In the year 1915, the County Board of Education undertook to set off a part of the Rural School District of Oxford Township, Delaware County, Ohio, to the Ashley Village School District.

A portion of the township of Oxford had previously been annexed to the Marlboro Township School District, and a portion of the said Oxford township, along the west side thereof, consisting of four farms, one of which now belongs to a Mr. Ufferman, was annexed to the Troy Township School District, and was a part of the Troy Township School District for many years. So you will see there was two portions of Oxford Township, cut out of the Oxford township.

In the year 1915, the County Board of Education, as I said, undertook to dispose of the Oxford Township Rural School District, by making it a part of the Ashley School District. Now this is what is shown by their records.

Their records show that they set off to the Ashley Village School District, the balance of the Oxford Rural School District, but the plat that was filed, shows the balance of the Oxford Township School District included the four farms spoken of, adjoining Troy township, and in the Troy Township School District.

Now did they set off the part of Oxford township lying in the Troy Township School District, as there is no mention of the Troy Township School District in their record?

The auditor of Delaware county, has been paying the portion of the funds arising from taxation on these four farms, to the Ashley Village School District since 1915, through error. There is no record, or any mention of ever setting over any part of the Troy Township School District to the Ashley Village School District.

Mr. Ufferman is sending his children to the Delaware City High School, as Troy township has no high school, and he wants Troy township to pay the tuition. If he belongs in the Ashley Village School District of course he would have to send there, or pay his own tuition to Delaware."

You also enclose a copy of the resolution of the board of education for Delaware county as shown by the minutes of said board for January 2, 1915, at which time the board of education for Delaware county acting under authority of Section 4692, General Code, sought to transfer the territory embraced in Oxford Township Rural School District to Ashley Village School District which resolution is as follows:

"Moved by Mr. Bennett and seconded by Mr. McMillan that all the territory of Oxford township rural school district, except sub-district number one, designated by a map entered on these records, be transferred from Oxford township rural district to the Ashley Village District."

I take it that prior to January 2, 1915, the territory of Oxford township consisted of the Ashley Village School District, Oxford Township Rural School District, a portion of the township known as Oxford Township Sub-District No. 1, which had previously been annexed to and was a part of Marlboro Township School District and a small portion of territory in the southwest corner of the township which was a part of Troy Township School District, and the county board of education according to their resolution sought to transfer all the territory embraced in the Oxford Township Rural School District to Ashley Village School District and no more but that the map that was filed with the county auditor was wrong in that it did not show the boundaries of the small portion of territory that belonged to Troy Township School District and the auditor acting on the map and paying no attention to the resolution has been paying the school taxes collected from this small portion of territory to the Ashley Village School District instead of to the Troy Township School District as had formerly been done.

Section 4692, General Code, provides as follows:

"The county board of education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred, and a notice of such proposed transfer has been posted in three conspicuous places in the

district or districts proposed to be transferred, or printed in a paper of general circulation in said county, for ten days; nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred, shall within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer. * * *

It will be observed from the provisions of this statute that it is necessary before a transfer of territory from one school district to another takes effect that a map showing the boundaries of the territory transferred be filed with the auditor and notice by publication be given.

The purpose of the filing of the map and the giving of the notice is to fix the time when remonstrances may be filed and when the transfer takes effect. By the terms of the statute no transfer could take effect until after this is done and the time within which remonstrances may be filed has expired. If the lines of the map were not in accord with the terms of the resolution the persons affected by the proposed transfer would be misled and would not have an opportunity to intelligently decide whether or not they desired to remonstrate against the proposed transfer. In such a case it would be my opinion that if proper objection should be made within the proper time, even after the thirty days provided for in the statute for the filing of remonstrances, the action of the board would be declared to be ineffective and no transfer would take effect at all until a new and correct map had been filed and proper publication made and the time for remonstrances had expired.

In the case under consideration the map was incorrect and therefore the proposed transfer could not take effect at all if objection had been made at the proper time, but as I understand your communication the residents in the territory embraced in what was formerly Oxford Township Rural School District, as well as those in what was formerly Ashley Village School District, as well as all public officials have acted upon the resolution so far as it affects these two districts and have acquiesced in such arrangement for more than eleven years and it seems clear that anyone now attempting to take advantage of such irregularity as the filing of an incorrect map would not be heard to complain at this time.

Boards of education within the sphere of their powers are legislative bodies and as such speak through their journal as shown by their minutes, which in this case showed clearly that only Oxford Township Rural School District was to be transferred and that no part of Troy Township School District was to be in any way affected by the action of the board.

This action could not be enlarged by the filing of a map which included some of the territory of Troy Township School District as the map only served as notice to those who had been affected by the previous action of the board as shown by their resolution.

No one would argue that if a map showing the entire township or two townships, or even a county map showing no school district boundaries at all had been filed, any territory would be transferred that had not been included within the terms of the resolution of the board.

I am therefore of the opinion that the portion of Oxford township that was a part of Troy Township School District prior to January 2, 1915, is still a part of that district unless some action has been taken by the Delaware County Board of Education since that time to transfer that territory to some other district, and Troy township is responsible for tuition of high school pupils attending high school outside the district if the Troy Township School District does not maintain a high school.

Respectfully,

EDWARD C. TURNER,
Attorney General.