

5032

1. TRANSFER OF TERRITORY — COUNTY BOARD OF EDUCATION MAY ACCEPT SAME — NO EXCEPTION IF LOCAL DISTRICT FROM WHICH TERRITORY WAS TRANSFERRED, SUBSEQUENT TO TRANSFER AND PRIOR TO ACCEPTANCE, PROCEEDS FOR CENTRALIZATION OF DISTRICT SCHOOLS, EXCEPT ACTUAL HOLDING OF ELECTION — SECTION 4696 G.C.
2. NO STATUTORY PROVISION FOR SPECIFIED TIME TO ACCEPT TERRITORY, IF AT ALL, WHEN TRANSFERRED — IF 127 DAYS MAY HAVE ELAPSED, AFTER TRANSFER, AND LOCAL BOARD FROM WHICH TERRITORY TRANSFERRED, PURCHASED TRANSPORTATION EQUIPMENT, SUCH EXPENDITURE DOES NOT PROHIBIT COUNTY BOARD OF COUNTY DISTRICT, TO WHICH TRANSFER MADE, FROM ACCEPTANCE OF TRANSFER.

SYLLABUS:

1. Under the provisions of Section 4696, General Code, a county board of education may accept a transfer of territory made to it in pursuance of the said statute even though the board of education of the local district from which the territory was transferred, subsequent to the making of the transfer and prior to the acceptance thereof, takes all necessary steps for the centralization of the schools of the district except the actual holding of an election therefor.

2. There is no specified time provided by law within which a county board of education must accept territory, if at all, which has been transferred to it in pursuance of Section 4696, General Code, and the fact that 127 days may have elapsed after the transfer was made and in the meantime the local board of education from which the territory was transferred expended money for the purchase of transportation equipment to transport the children to school within the district, as though the transfer had not been made, does not prevent the county board of education of the county district to which the transfer was made from accepting the transfer as made.

Columbus, Ohio, April 17, 1942.

Hon. Harold Lutz, Prosecuting Attorney,
Mansfield, Ohio.

Dear Sir:

This is to acknowledge receipt of your request for my opinion which reads as follows:

"On March 29th (1941), the Fredericktown School District of Knox County presented a petition to the County Board of Education of Richland County, asking for the transfer of certain territory now annexed to the Butler Village School District which is in Richland County. This petition was tabled and later on April 26th was rejected on the grounds that it did not contain sufficient signatures.

On May 29th a second petition was presented containing a sufficient number of signatures and on the same date a transfer was effected by the Board of Education of Richland County, transferring this territory to the Fredericktown District of Knox County and notice was given of its action to the Knox County Board of Education as well as the Fredericktown Village District, Knox County, Ohio.

On August 30th a third petition was presented to the Richland County Board by the Fredericktown District, asking for the transfer of different territory than was described in the petition of May 29th. This petition was immediately rejected by the Richland County Board on the grounds that it contained insufficient signatures.

On September 27th a fourth petition was presented to the Richland County Board covering different territory but including territory described in the second petition of May 29th. This fourth petition was rejected by the Richland County Board on the ground that on September 4, 1941, the local Board of Education of the Butler Village School District which is under the jurisdiction of the Richland County Board, passed a resolution for centralization. This district's territory includes all of the territory sought to be transferred by the aforesaid petitions. The fourth, or last petition was rejected solely on the grounds that the Butler District had made provisions according to law for centralization of all the territory in that district.

On October 3, 1941, approximately 127 days from the filing of the second petition dated May 29th, the Knox County Board of Education, in writing, accepted the transfer made by the Richland County Board on May 29th and on the same date said accepting board filed with the Richland County Board a statement as to the division of assets and liabilities and also a map as required by law. The Richland County Board at the present writing has not acted upon said acceptance.

127 days had elapsed from the time of the presentation of the second petition until the date of acceptance and the Butler Village School District prior to the date of acceptance purchased a bus and have furnished transportation to all of the children of this district for at least a month in which all of the children of said district attended their school. After the period of a month had elapsed and before the date of acceptance some of the children have been going to the Fredericktown District of Knox County and some of them have been going to the Butler District

in Richland County, and others have remained out of school.

The questions (on) which we would like to have your opinion are:

(1) Can a County Board of Education accept the transfer of territory from one School District to another after the district from which the transfer is sought to be made has passed a resolution of centralization and has taken all of the necessary steps as provided by law, except the holding of an election?

(2) Is there any specified time within which a County Board of Education may accept a transfer of territory from one school district to another, and if there is not, would the fact that one board in good faith expended money prior to the acceptance for the purpose of retaining jurisdiction of the district sought to be transferred and the fact that 127 days had elapsed from the time of the transferring to the date of the acceptance alter the situation?"

The transfer of school territory is controlled entirely by statute. The statute relating to the transfer of school territory from one county school district to another, is Section 4696 of the General Code of Ohio, which reads as follows:

"A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district.

In any case before such a transfer shall be complete (1) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be (2) an equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, which in the case of territory transferred to a county school district shall mean the board of education of the county school district to which such territory is transferred, and (3) a map shall be filed with the county auditor of each county affected by the transfer.

When such transfer is complete the legal title of the school property shall become vested in the board of education of the school district to which such territory is transferred.

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."

In the first paragraph of your letter, you state that on March 29, 1941, the Fredericktown School District of Knox County presented a petition to the County Board of Education of Richland County, asking for the transfer of certain territory now annexed to the Butler Village School District which is in Richland County, which petition was tabled because it did not contain enough signatures. You further state that on May 29, 1941, a second petition was presented, and on that date a transfer was effected, transferring this territory to the Fredericktown District of Knox County.

Although I do not have before me the minutes of the Richland County Board of Education or those of the Knox County Board of Education, I assume that the petitions mentioned were petitions presented to the Richland County Board of Education, signed by electors residing in the Butler Village School District asking for a transfer of a portion of the territory of that district to the Knox County School District and that the transfer made on May 29th was to the Knox County District. You will observe from the provisions of the statute quoted above, that there is no provision contained therein for the transfer of territory from a county school district on petition of a school district of another county school district, nor is there any authority for a county board of education to transfer territory from its county school district to a district of another county school district. Such transfers, if made at all, must be to an adjoining county school district, and the county board of education of that county district if the transfer as made is accepted by it is to annex the transferred territory to any local district in its county school district to which the transferred territory is contiguous, as it sees fit.

In the case of *State, ex rel. Hall et al. v. Miami County Board of Education*, 131 O. S., 506, the Supreme Court of Ohio said:

" * * * Section 4696, General Code, does not authorize the transfer of territory from one rural school district in one county to another rural school district in another county."

With the assumption that the transfer made was to the Knox County School District, and the further assumption that the petition filed with the Richland County Board asking for the transfer, was signed by at least fifty percent of the electors residing in the territory sought to be transferred, thereby giving the Richland County Board jurisdiction to make the transfer, it would seem clear that the transfer as made on May 29th was complete so far as the Richland County Board was concerned, and it awaited only the acceptance of the transfer by the Knox County Board and the annexation by that board to a contiguous district of the Knox County School District, the making of an equitable division of funds and indebtedness by that board and the filing of the proper maps as provided by the statute.

The fact that other petitions were filed later for the transfers of territory, including the same territory transferred on May 29th, which petitions were rejected for various reasons, is not material. The Richland County Board had done all it could do to accomplish the transfer of this territory on May 29th, and it does not appear that any action was thereafter taken by the Richland County Board to rescind the action taken on May 29th, before the acceptance of the territory by the Knox County Board. If the Richland County Board had rescinded its action of May 29th, transferring the territory, as it might have done, before the transfer was accepted by the Knox County Board the situation would be different, but this was not done, and for that reason the resolution of transfer continued in effect and was as potent 127 days after May 29th as on that date, unless conditions changed in the meantime to render it impotent. There is no provision in Section 4696, General Code, or any other statute, fixing any time limit upon when a county board of education may accept a transfer of territory which is made to it by another county board of education.

This brings us to the inquiry as to the effect of the resolution of centralization adopted by the Butler Village District Board of Education on September 4, 1941, and the expenditure of money by this board for a bus to transport the pupils in the district as though the territory in question would not be transferred out of the district. As to the latter proposition you predicate your specific inquiry, which of course must be read in the light of the facts presented, on an expenditure of money before the acceptance of the territory "in good faith * * * for the purpose of retaining jurisdiction of the district sought to be transferred."

I, of course, would not question the actual good faith of the board in making this expenditure even though it had been done as you state for the purpose of retaining jurisdiction of the district or, in other words, of defeating the transfer, but in my opinion, it makes no difference under the circumstances. Merely by expending money for transportation equipment the local board of education could not take away the right of the Knox County Board to accept the transfer if that right existed, as the right of a county board of education to accept territory is fixed by the law if a transfer is made to it as was done here. In fact a local board of education has nothing whatever to say in the premises. The law places the entire matter in the electors of the district who may by a proper petition vest jurisdiction in the county board of education to make the transfer and the receiving board to accept the transfer when made. The local board under certain circumstances cannot be heard to say as a matter of law that it acted in good faith if it does something to attempt to defeat the operation of the machinery of the law as set up in the statutes. In a situation such as this, the law expressly authorizes one county board to make a transfer when a proper petition is filed with it, and the other board to take it or leave it, despite what the local board in the district affected may wish or do.

As to the effect of the resolution of the Butler Village District Board for centralization adopted on September 4, 1941, some time before the acceptance of the territory by the Knox County Board on October 3, 1941, it should be noted that at the time of the adoption of the resolution for centralization jurisdiction over the territory transferred was not in the Butler Village District. That jurisdiction for the purpose of transfer had been vested in the Richland County Board by the filing of a petition therefor and had been acted upon on May 29, 1941, and by this action of the Richland County Board and its certification on that date to the Knox County Board, jurisdiction for the purpose of acceptance of the transfer became vested in the Knox County Board by virtue of the statute itself. There is no time fixed by the statute within which a county board of education must act in accepting a transfer of territory made to it by the county board of education of an adjoining district.

The principle of law stated in the first paragraph of the syllabus of the case of Board of Education v. State, 122 O. S., 247, has no application to the situation here existent. That paragraph is as follows:

“Where power is given under the statutes to two different governmental boards to act with reference to the same subject matter, exclusive authority to act with reference to such subject-matter is vested in the board first acting under the power.”

The principle there stated must be read in the light of the facts presented in the case. That case was a suit in mandamus in which it was sought to compel the county board of education of the Trumbull County School District to transfer certain territory lying in the Weathersfield Township Rural School District to the Niles City District to which the territory was contiguous, in pursuance of a petition therefor filed with the county board and signed by three-fourths of the electors residing in the territory sought by the petition to have transferred. It appeared that prior to the filing of this petition the Board of Education of Weathersfield Township District had passed a resolution to hold an election under Section 4726, General Code, to submit to the voters the question of centralization of schools within the said district, and gave notice of such election under the statute. The court held that because of those facts, and in pursuance of the principle of law stated in the first branch of the syllabus which is quoted above, “mandamus will not issue to compel the county board of education to transfer the territory in accordance with the provisions of Section 4696, General Code.”

The question of the discretionary right of the county board to make the transfer upon a proper petition was not involved, and even if it had been, the situation would not have been parallel with the situation which we have here. In the instant case the transfer was made prior to the adoption of the resolution to submit the question of centralization and everything had been done that could have been done by the Richland County Board to accomplish the transfer. Not only from the plain terms of the statute itself is it manifest that the acceptance of the territory by the Knox County Board is not mandatory but the Supreme Court expressly held in the case of *State, ex rel, v. Whartenby*, 122 O.S., 463, that the acceptance of territory transferred under Section 4696, General Code, is discretionary.

If the adoption of the resolution for centralization had been followed by an election prior to the acceptance of the territory by the Knox County Board, and the result of that election had been favorable to centralization, a different question would be presented, but that is not involved here and I am not passing on that question. The mere adoption

of a resolution for an election for centralization does not make the district a centralized district. In *State, ex rel. County Board of Education of Wood County v. Board of Education of Bloom Township Rural School District*, 104 O.S., 75, which is cited with approval in *State, ex rel. v. Pence*, 137 O.S., 569, it was held:

“A school district is a centralized school district within the contemplation of the statute regulating the same, from the time of the election resulting in favor of the proposition of centralization.”

I do not think that a board of education of a school district from which territory has been transferred by the county board of education to an adjoining county school district can foreclose the right of the board of education of the county district to which the transfer has been made by merely adopting a resolution to submit to the voters of the district the question of centralization of the schools.

Inasmuch as no mention is made in your inquiry of the territory in question having been transferred into the Butler Village District within a period of five years prior to the transfer made by the Richland County Board of Education which is here under consideration, I assume that such was not the case and therefore the approval of the state Director of Education as provided by the last paragraph of Section 4696, *supra*, was not necessary.

Specifically answering your questions I am of the opinion:

First, that under the provisions of Section 4696, General Code, a county board of education may accept a transfer of territory made to it in pursuance of the said statute even though the board of education of the local district from which the territory was transferred, subsequent to the making of the transfer and prior to the acceptance thereof takes all necessary steps for the centralization of the schools of the district except the actual holding of an election therefor.

Second, there is no specified time provided by law within which a county board of education must accept territory if at all which has been transferred to it in pursuance of Section 4969, General Code, and the fact that 127 days may have elapsed after the transfer was made and in the meantime the local board of education from which the territory

was transferred expended money for the purchase of transportation equipment to transport the children to school within the district as though the transfer had not been made does not prevent the county board of education of the county district to which the transfer was made from accepting the transfer as made.

Respectfully,

THOMAS J. HERBERT
Attorney General.