

2098.

COUNTY BOARD OF EDUCATION—WHERE TERRITORY TRANSFERRED TO VILLAGE SCHOOL DISTRICT BY COUNTY BOARD—ELECTORS IN SUCH TERRITORY CANNOT TAKE PART IN SCHOOL ELECTION IN RURAL SCHOOL DISTRICT FROM WHICH THEY WERE TRANSFERRED—SAID TERRITORY REMAINS ATTACHED TO VILLAGE SCHOOL DISTRICT UNTIL PROPER ACTION TAKEN BY COUNTY BOARD.

1. *Where territory has been transferred to a village school district by the county board of education, under the provisions of section 4692 G. C., the electors residing in such territory are thereafter residents of the village school district and can take no part in a school election held in the rural school district from which they were transferred.*

2. *Where territory has been attached to a village school district by the county board of education, such territory remains a part of such village school district until proper action has been taken by the county board of education, taking such territory from the village school district.*

COLUMBUS, OHIO, May 24, 1921.

HON. JOHN M. HOEL, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

“Three sub-districts of Butler township, Darke county, Ohio—numbers three, four and eight—were by regular proceedings before the Darke county board of education, transferred to the village of New Madison in Harrison township, Darke county, Ohio.

Afterward a petition was filed by the requisite number calling for an election for the centralization of the schools of all of Butler township, Darke county, Ohio, and said election resulted in favor of centralization.

FIRST: Had the three districts, heretofore transferred to New Madison, a right to participate in said election for centralization of Butler township schools?

SECOND: What effect, if any, did such an election have to re-transfer said three districts back to Butler township?”

You indicate that these three former subdistricts of Butler township were properly transferred by the Darke county board of education to the village of New Madison, in Darke county, and since all territory concerned was within and under the jurisdiction of the county board of education, such transfer was presumably made under the provisions of section 4692 G. C., which reads in part 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.”

Thereafter, this transfer having been made by regular proceedings, the transferred territory would be an integral part of the New Madison village school district, as provided in section 4681 G. C., reading as follows:

“Each village, together with the territory attached to it for school pur-

poses, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district."

The electors residing in territory attached to the New Madison village school district for school purposes would thereafter be qualified to vote upon the school questions which might arise in the village school district, and not upon school questions which might be submitted by another board of education. That is to say, under existing law the electors in a school district vote only upon their own school questions and those which have been submitted by the board of education of the district in which they reside. Thus section 4711 G. C. in part says:

"Electors, residing in territory attached to a village district for school purposes, may vote for school officers and on all school questions at the proper voting place in the village to which the territory is attached."

It is understood that the New Madison village school district is one of those which are operated under the provisions of section 4740 G. C., which reads in part as follows:

"Any village or wholly centralized rural district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent shall upon application to the county board of education before June 1 of any year be continued as a separate district under the direct supervision of the county superintendent until the board of education of such district by resolution shall petition to become a part of a supervision district of the county school district. * **"

The effect of this section is that the New Madison village school district is under the direct supervision of the county superintendent and a part of the county school district, and territory attached to the New Madison village school district under the provisions of section 4692 G. C., would be a part of such village school district for all school purposes and the electors residing in the territory taken from Butler township and attached to the New Madison village school district could not thereafter participate in any school elections held in the Butler township rural school district. If there was but one board of education in Butler township, then the centralization election must have been called under the provisions of section 4726 G. C., and the petition must have been signed by not less than one-fourth of the qualified electors of such rural district. The effect of this would be that persons residing in the territory transferred to the New Madison village school district would not be legal petitioners in an election called under section 4726 G. C. If in Butler township there was more than one school district as an entirety, that is, in cases where in a civil township there will be rural school districts which were formerly special school districts, but which are not village school districts, the provisions of section 4726-1 G. C. would apply.

Bearing upon sections 4726 and 4726-1 G. C., the sections of the statutes under which centralization of schools is accomplished, your attention is invited to the syllabus of Opinion 547, issued August 5, 1919, and appearing at page 960, Vol. I, Opinions of the Attorney-General for 1919, the third and fourth branches of the syllabus reading as follows:

"3. Centralization of schools must be voted upon by the electors of a township and not a part of it, *village and city school districts being excluded.*

4. County boards of education have full authority to create a new school district from one or more districts or parts thereof."

It would thus appear under the above opinion of this department that the electors of the New Madison village school district, including those attached by the county board of education to the New Madison village school district, would not be permitted to vote upon the question of the centralization of schools in the Butler township rural school district. If the county board of education desired to give these electors, formerly attached to the New Madison village school district, the right to vote upon centralization in the Butler township rural school district, then the county board of education could transfer this territory again under the provision of section 4692 G. C. or create a new school district under the provisions of section 4736 G. C., the latter section being the one upon which the fourth branch of the syllabus of Opinion 547 is based. This construction of section 4736 G. C. was upheld on April 26 by the supreme court of the state in the case of the County Board of Hancock County vs. John G. Boehm (No. 16790), the higher court reversing the Hancock court of appeals in that district.

It is clear that proceedings properly had under section 4726-1 do have the effect of abolishing existing school districts, winding up existing boards of education and substituting entirely new and independent territorial boundaries based, at least in part, upon the civil township boundaries. The question we have to decide is whether an election can be had under this section where some of the territory of the township belongs in districts which are partly outside of the boundaries of the civil township, with the result that the territory which is within the boundaries of the civil township would be separated from that which is outside such boundaries. It would seem that this result is impossible because no disposition is made by section 4726-1 of any territory outside of the boundaries of the civil township. The whole section proceeds on the theory that the result of the election is to abolish all the constituent districts. The new board of education is to be made up of representatives of the old boards of education, which are thus assumed to be abolished, or, as the statute puts it, "thus consolidated". Therefore, it must be that the result of the election is to operate upon whole districts and merge them or consolidate them as districts into the new township district. In short, there can be no action under section 4726-1 which has the effect of dividing an existing school district.

This proposition answers the second question, in so far as that question can be interpreted as asking whether or not the election had the effect of re-transferring the three districts back to Butler township without transferring also the balance of the New Madison village school district. But it might be contended that the effect of the election was to consolidate all the districts, any part of the territory of which is located in the civil township in which the election was held. If this were true, then the election would bring into the new Butler township rural school district not merely the three subdistricts but also the New Madison district, as territory automatically attached to the new district. This, however, is believed to be contrary to the intention of section 4726-1, when it speaks of a "township" district. There is thus cogent evidence that only in the event that the districts to be consolidated are wholly within the township is there authority to vote under section 4726-1.

Should S. B. 114 (which clarifies 4726-1 G. C.) now pending in the house of representatives, having passed the senate, be enacted into law, the word "township" disappears from the section and the wording properly will be "school districts". But your case arose under existing law and we need go no further than to say that regardless of whether or not the electors of the three subdistricts had a right to

participate in the election (which does not seem now to be a live question) the election had no effect upon the New Madison village school district.

See also the following opinions of this department upon the centralization of schools, to-wit:

- Opinions of the Attorney-General, 1915, Vol. I, p. 338.
- Opinions of the Attorney-General, 1916, Vol. I, p. 343.
- Opinions of the Attorney-General, 1916, Vol. I, p. 557.
- Opinions of the Attorney-General, 1917, Vol. I, p. 305.
- Opinions of the Attorney-General, 1917, Vol. III, p. 2047.
- Opinions of the Attorney-General, 1918, Vol. I, p. 476.
- Opinions of the Attorney-General, 1918, Vol. I, p. 723.
- Opinions of the Attorney-General, 1919, Vol. I, p. 797.
- Opinions of the Attorney-General, 1919, Vol. II, p. 1229.

You are therefore advised, in answer to your questions, that

1. Where territory has been transferred to a village school district by the county board of education, under the provisions of 4692 G. C., the electors residing in such territory are thereafter residents of the village school district and can take no part in a school election held in the rural school district from which they were transferred.

2. Where territory has been attached to a village school district by the county board of education, such territory remains a part of such village school district until proper action has been taken by the county board of education, taking such territory from the village school district.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2099.

CHILDREN'S HOME—COUNTY COMMISSIONERS AUTHORIZED TO
LEND FINANCIAL ASSISTANCE TO INCORPORATED SOCIETIES
WHOSE OBJECT IS CARE, AID AND EDUCATION OF NEGLECTED
OR DESTITUTE CHILDREN.

County commissioners are authorized under the provisions of sections 3108-1 and 14654 G. C. to lend financial assistance to incorporated societies whose object is the care, aid and education of neglected or destitute children, towards purchasing land or the erection of buildings to serve the purpose of a home for such children.

COLUMBUS, OHIO, May 24, 1921.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter of recent date, in which you request the opinion of this department upon the following letter received by you from Hon. G. W. C. Perry, president, Ross County Children's Home Association:

“For the guidance and legal direction of the directors of the Ross County Children's Home Association, we beg to submit to you and through you for an opinion by the Attorney-General in relation to certain legal