

that it shall revert to the state of Ohio; such deed shall be executed upon the payment to the state of such consideration as may be agreed upon by the director of public welfare of the state and said city of Toledo."

From the data submitted, it appears that the city of Toledo and you, as Director of Public Welfare, have agreed upon the price, which is in accordance with the provisions of the act. It also appears that the city of Toledo has duly accepted the proposition submitted to it and has taken the proper legal action in order to pay the state for said premises.

The form of deed submitted appears in all respects to be sufficient when executed by the Governor and countersigned by the Secretary of State, and, therefore, I hereby approve said form.

Said form of deed and other data which you submitted are being returned herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1360.

SCHOOL DISTRICT—HAVING INCORPORATED VILLAGE WITHIN ITS BOUNDARIES AND TOTAL TAX VALUATION OF HALF-MILLION DOLLARS—CONSTITUTES VILLAGE SCHOOL DISTRICT—EXCEPTION.

SYLLABUS:

A school district containing within its boundaries an incorporated village, which, together with the territory attached to it for school purposes, 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 \$500,000.00 is a village school district, unless proceedings have at some time theretofore been had dissolving such village district and joining the same to a contiguous rural district, by authority of Section 4682-1, of the General Code.

COLUMBUS, OHIO, January 3, 1930.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

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

"At a joint meeting of the Windham Village Board of Education and the Windham Township Rural Board of Education, the following resolution was passed unanimously on August 29th, 1911:

RESOLUTION BY THE WINDHAM VILLAGE SCHOOL DISTRICT.

WHEREAS, It is deemed for the best interest of Windham Village School District that all of the territory of Windham Village School District be annexed to and form a part of Windham Township School District, therefore be it

RESOLVED, That all of the territory included within Windham Village School District and including territory annexed to said district for school

purposes, be annexed to and form a part of Windham Township School District, be it further

RESOLVED, That the President and Clerk of the Board of Education of Windham Village School District are hereby authorized, empowered and directed to execute a deed of all real estate, wherever situate, belonging to Windham Village School District, and also all personal property including money, to Windham Township School District, be it further

RESOLVED, That the aforesaid property is deeded to Windham Township School District on the condition that Windham Township School District will assume and agree to pay all of the debts and obligations of every kind whatsoever of Windham Village School District. Be it further

RESOLVED, That a map be prepared showing the correct boundaries of Windham Village School District with territory attached for school purposes, and that a copy of said map be placed upon the records of this board and that a copy of said map be certified by the president and clerk of this board together with a copy of this resolution to the County Auditor of Portage County.

Pursuant to this action of the board, the Windham Village School District was abandoned and since that time the entire district has been conducted in the name of the Windham Township Rural School District. The Examiner out of the Bureau of Inspection and Supervision of Public Offices has declared that this district is a village district, and made certain findings against the board for allowing compensation as provided in rural school districts. The clerk of the School Board has a letter from A. B. Peckinpaugh in which he says that this action in abandoning the village school district was without authority for the reason that Section 4682-1, providing for the dissolution of a village school district and formation of a joint rural school district was not passed until 1913.

I wish to call to your attention the opinion of the Attorney General, being No. 1092, rendered September 30, 1927, in which he approved the bonds of the Windham Township Rural School District for the State Teachers Retirement Fund.

In view of the above facts and inasmuch as this school district has been conducted as a rural school district since 1911, will you kindly give me your opinion as to whether this is a village or a rural school district?"

In 1911, transfers of territory from one school district to another were governed by the provisions of the then existing Sections 4692 et seq. of the General Code, formerly Sections 3894, 3895 and 3896, Revised Statutes. (97 O. L. 336, 337.)

Two methods of transferring school territory were provided for. From your statement, it appears that neither of the methods provided by statute was strictly followed by the Boards of Education of Windham Village and Windham Township, in their effort to transfer the territory comprising Windham Village School District to the Windham Township School District. One method provided for by Section 4692, General Code, was by mutual consent of the boards of education having control of the districts involved in a transfer. The manner of securing and recording that consent was set out in the statute, as follows:

"To secure such consent, it shall be necessary for each of the boards to pass a resolution indicating the action taken and definitely describing the territory to be transferred. The passage of such a resolution shall require a majority vote of the full membership of each board by a yea and nay vote, and the vote of each member shall be entered on the records of such boards."

The other method provided for by Sections 4693 et seq. of the General Code, was upon petition of the electors residing in the territory to be transferred.

The passage of a resolution providing for a transfer of school territory by two boards of education in joint session as seems to have been done in this case, was not in strict compliance with the law, and it is probable that if action had been instituted at the time, the functioning of the two districts as one would have been enjoined. However, so far as appears, the action of the boards in joint session was taken in good faith, and no fraud, corruption or injustice appears. The inhabitants of the two former districts apparently recognized the action taken as having been valid and have since acquiesced in the existence of the one district. One board of education has since administered the school affairs of the territory as one district, teachers have been employed, and tax levies and tax distributions made as and for one district.

Because of the lapse of time, the apparent good faith of the officials, the absence of corruption or gross injustice, and the acquiescence of the inhabitants in the transfer, as made, equity will not at this time interfere to undo the action so taken. Pomeroy's Equity Jurisprudence, 4th Ed. Vol. I, Sec. 419; *Metz vs. Anderson*, 23 Ill. 463; 76 Am. Dec. 704; *Board of Education of Warren Township Rural School District vs. Board of Education of Warren City School District* decided by the Supreme Court of Ohio May 29, 1929. 167 N. E. 872.

At the time the Windham Village and Windham Township School Boards took the proceedings hereinbefore mentioned, Section 4681, General Code, then in force, provided as follows:

"Each village, together with the territory attached to it for school purposes, 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 one hundred thousand dollars, shall constitute a village school district."

At that time, in 1911, Windham Village had a tax duplicate of \$343,605.00. A portion of the territory lying outside the village limits and attached to the village for school purposes had a tax valuation of \$151,625.00. Windham Township, outside the village school district and comprising the Windham Township School District had a tax valuation of \$1,368,990.00, so that any school district embracing within its boundaries the village of Windham would have had a tax duplicate in excess of \$100,000, and would have been a village school district, as provided by said Section 4681, supra. Its status as a village school district, in accordance with the statute, could not be changed by simply calling it something else.

The two boards of education by their action apparently attempted to attach the territory embraced within Windham Village School District to Windham Township School District and thus abolish Windham Village School District, and, as a matter of fact, I am informed that the board of education which had formerly functioned for Windham Village School District went out of existence, and the affairs of the combined district were thereafter administered by what had formerly been the Board of Education of Windham Township School District. Nevertheless, the district so formed by the combined territory contained within its boundaries an incorporated village and had a tax valuation of more than \$100,000.00 and was, therefore, under the statute, a village school district.

In 1913, Section 4681, General Code, was amended (103 O. L. 546) to provide that a village, together with the territory attached to it for school purposes, and excluding the territory detached therefrom for school purposes, and having a total tax valuation of not less than \$500,000.00 should constitute a village school district.

Under the terms of the statute as amended, this school district continued to be a village school district because of the fact that it contained the incorporated village

of Windham, which together with the territory attached to it for school purposes had a tax duplicate of more than \$500,000.00.

The mere fact that the residents of the district and the board of education continued to call it a township district was not controlling in the face of the fact that the statute by its terms positively identified it as a village district. It was held under the law then in force, that a township district containing an incorporated village became ipso facto a village school district upon the attainment of the tax duplicate valuation prescribed by statute. *Buckman, Auditor, vs. State ex rel. Board of Education*, 81 O. S. 171.

In 1913 there was enacted Section 4682-1, General Code, which authorized a village school district containing a population of less than 1,500 to dissolve and join a contiguous township district. In order to do so, however, it was necessary to submit the question to a vote of the people and get their approval. Both Sections 4681 and 4682-1, General Code, as enacted in 1913, are still in force, but Section 4682-1, General Code, was not in force in 1911, at the time the action referred to in your inquiry was taken.

It clearly appears from what has been said, that the school district now existing and made up of what was formerly Windham Village School District and Windham Township School District, was a village school district at the time of its formation in 1911 and has remained so to the present time.

My attention is directed to the fact that bonds were issued in 1927 under the name of the Windham Township Rural School District and that the bonds were sold to the State Teachers Retirement Fund and were approved by the Attorney General.

It is probable that at the time of the approval of this bond issue by the Attorney General, the facts stated in your letter were not before him, and, if the bond transcript showed that the district contained an incorporated village, it might well have been presumed, inasmuch as the district was called a rural school district, that action had been taken under Section 4682-1, General Code, and the district thereby constituted a rural school district. I am not advised as to just what consideration the then Attorney General gave to the proposition of the district being called a rural school district, in the face of the fact that it contained an incorporated village and had a tax duplicate in excess of \$500,000.00.

Be that as it may, however, if the board of education of the district regularly and properly conducted the proceedings in the issuance of the bonds in the manner provided by law and devoted the proceeds of the bonds to the lawful needs of the district, the fact that the bonds recited that they were issued by a rural district, when in fact it was a village district, does not in my opinion, affect the validity of the bonds, and it is very possible that the then Attorney General was of the same opinion and for that reason approved the bond issue without making any comment as to whether the district was a village or a rural district.

At any rate, there is very little difference, so far as the administration of the affairs of the district is concerned, whether it is a village district or a rural district, except that a village district may, under certain circumstances, become an exempted village district, and further, the members of the board of education in a rural district are entitled to pay for attending meetings, whereas those of a village district are not. This may seem somewhat arbitrary, but the Legislature so provided, and no doubt advisedly. There is another distinction between village and rural school districts, that is, that schools may be centralized in rural districts in accordance with the terms of Section 4726, General Code. There is no provision for the centralization of schools by vote of the people in village school districts.

I am of the opinion that the school district consisting of the village of Windham and the territory in the civil township of Windham attached to the village for school

purposes, now constitutes a village school district, and has been a village school district since 1911.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1361.

COUNTY AGRICULTURAL SOCIETY—HAVING INDEBTEDNESS OF \$15,000 OR MORE RESULTING FROM PURCHASING GROUNDS AND CONDUCTING FAIRS SEVERAL YEARS AGO—HOW COUNTY COMMISSIONERS MAY PAY SUCH INDEBTEDNESS.

SYLLABUS:

Where a county agricultural society has purchased a site whereon to hold fairs and in the purchase of said grounds and in the conduct of fairs has incurred an indebtedness of \$15,000.00 or more, which is due and out-standing, the county commissioners of the county may provide for the payment of such indebtedness out of the proceeds of a special tax levy authorized by the electors of the county under the provisions of Section 9887, General Code, or out of the proceeds of bonds issued on the approval of the electors of the county as provided in Sections 9888, et seq., General Code. The county commissioners may provide for the payment of such indebtedness in the manner above stated, although such county agricultural society no longer owns the fair grounds and has not conducted any fairs in the county for several years.

COLUMBUS, OHIO, January 3, 1930.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

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

“Please submit your written opinion on the following set of facts:

The Hancock County Agricultural Society, an association organized under the laws of this state, on the 11th day of June, 1890, sold a tract of land in this county used for the purpose of holding fairs and with the proceeds paid one half of the purchase price for another tract which was better situate, and the Hancock County commissioners, by proper proceedings, paid the remaining one-half of the purchase price of this tract and on the 6th day of July, 1891, the title was vested in The Hancock County Agricultural Society and the Hancock County Commissioners as joint owners or tenants in common.

In order that this tract of land might be made suitable for fair purposes, it was necessary to construct a race track, grand stand, horse and cattle barns and other necessary buildings and improvements. All of these improvements were made with the consent of the Hancock County commissioners and in so doing this association expended a large sum of money.

In order that the association might meet these obligations and pay the losses which have accrued over a period of twenty (20) years, it was necessary for them to borrow money which they did and the members of the fair board signed the notes individually as surety, and due to this procedure there now exists an indebtedness of \$18,184.97. This tract of land was used for fair purposes up until a period of six (6) or seven (7) years ago, at which time