

lature felt that \$20.00 per improvement was sufficient compensation and all services performed after four days were adequately compensated by such sum and the salary attaching to the office of county commissioner. The Legislature placed no limitation in Section 6540, *supra*, as to the amount of expenses for which members of a joint board of county commissioners might be reimbursed other than to provide that such reimbursement shall be only for the actual expenses of the members for the performance of their duties at places other than in their own county.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that:

1. When the deposit of a successful bidder for the construction of a joint county ditch is forfeited under the provisions of Section 6479, *supra*, and the members of the joint board of county commissioners in charge of said improvement are required to perform additional services to obtain a new bidder with whom a contract may be made, the per diem compensation of such commissioners is governed by the four day limitation contained in Section 6502, *supra*.

2. Such commissioners, however, may be paid the amount of their actual expenses incurred in the performance of their respective duties at places other than in their own county.

Respectfully

THOMAS J. HERBERT,
Attorney General.

1065.

SCHOOL TERRITORY—TRANSFER—WHERE COURT ACTION
—FINDINGS OF COURT—JOURNAL ENTRY—DETERMINATIVE—FUNDS—ADMINISTRATIVE OFFICERS BOUND
BY FINAL ORDER—STATUS AS TO MODIFICATION.

SYLLABUS:

When proceedings are inaugurated to transfer school territory in accordance with the statutes relating thereto, and the matter is litigated by action in court begun either before or after the completion of the statutory steps for the transfer of territory, the findings of the court as shown by its final journal entry in the said action are determinative of all matters as they affect the parties involved, which were or might have been litigated incident to the transfer of the said territory including an equitable distribution of funds and indebtedness as between the districts involved in the said transfer, and administrative officers are bound by the final order of the court and are powerless to make distribution of funds or act in any respect otherwise than in strict accordance with the decree

of the court unless and until the court is convinced by proper action and proceedings that through inadvertence or otherwise in the presentation of the cause, the findings of the court should be modified, and does modify them.

COLUMBUS, OHIO, August 19, 1939.

HON. HUGH A. STALEY, *Prosecuting Attorney, Greenville, Ohio.*

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

“On April 15, 1937, there was filed with the County Board of Education of Darke County, Ohio, a petition to transfer from the Darke County District certain real estate to the Mercer County District. On May 6, 1937, the County Board of Education of the Darke County District passed a resolution to offer said territory to the Mercer County District. On June 4, 1937, the County Board of Education of Mercer County accepted said territory, and on July 22, 1937, the County Board of Education of Mercer County found that Mercer County was entitled to 7.8% of the property of the Mississinawa Township School District, being the school district to which this territory had originally been attached. Thereafter, the Mississinawa Township School District paid to the Mercer County School District \$277.64, being 7.8% of the funds on hand. Thereafter, suit was commenced in the Common Pleas Court of Darke County, Ohio, by a taxpayer, enjoining the transfer of real estate, and on the 25th day of January, 1938, said suit was compromised and settled by agreement that only 59% of the territory which had been sought to be transferred was actually transferred.

The question now presents itself, under this situation, as to whether or not the Mercer County School District is entitled to participate in the 1936 taxes which were distributed in August, 1937, having in mind that the County Board attempted to make the transfer on the 22nd of July, 1937, and which transfer was finally consummated by compromise entry in the Common Pleas Court on the 25th day of January, 1938.”

Transfers of school territory from a district of one county school district to an adjoining county school district are controlled by Section 4696, General Code, 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 dis-

trict, the territory of which is contiguous thereto. Upon petition of seventy-five percent 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."

From the terms of the statute quoted above, it clearly appears that transfers of school territory from a district of a county school district to an adjoining county school district are not complete until, among other things, maps are filed with the county auditors of the counties affected, and I judge that this was not done until the injunction suit to which you refer was finally disposed of on January 25, 1938, as the final entry in that case provided for the filing of maps in accordance with the statute. Even if a map had been filed at the time or soon after the territory was accepted by the Mercer County Board of Education the action taken apparently was rendered ineffectual by the proceedings later had in court. Although I do not have before me the entire record of the injunction case to which you refer in your inquiry, and in fact no part of it except the final entry, I assume that a preliminary injunction was issued, or at least some action taken to stay the action of the boards of education involved, in attempting to make the transfer and that therefore a transfer of territory in strict accordance with the resolution of May 6, 1937, of the Darke County Board transferring territory and that of June 4, 1937, of the Mercer County Board accepting the territory, as well as the action of the Mercer County Board of July 22, 1937, making an equitable dis-

tribution of the funds as between the district involved, never became effective. If that is the case, the territory in question remained in the Mississinawa District and the board of education of that district was under obligation to provide instruction in its schools for school pupils residing in the territory until it or such part of it was finally transferred in accordance with the approval of the court. That is, until January 25, 1938.

At the time of the August distribution of the proceeds of taxes collected on the general duplicate of real and public utility property it was the duty of the auditor of Darke County under and in pursuance of the terms of the statute, Section 2689, General Code, to distribute to the board of education of the Mississinawa District the proceeds of taxes collected from property in the district at the time of the distribution unless by the terms of an equitable distribution of funds as between that district and some other made previously by a court or administrative agency clothed with authority to make such a distribution a different distribution was authorized and directed.

From your statement and the decree of the court, it clearly appears that nothing was done by way of an equitable distribution of funds in this case that would affect future distribution of taxes then in process of collection or thereafter collected or distributed. In making equitable distributions of funds as between two subdivisions where transfers of territory are made, provision may be made, and oftentimes is made, as to future distributions of taxes collected or to be collected. The Mercer County Board was authorized and directed under the provisions of the statute to make the distribution of funds as between the districts involved and it of course was known at the time, when the distribution was made, that taxes were then in process of collection and that sometime thereafter the collection would be complete and distribution would be made, and that when that distribution was made it would be the duty of the auditor to distribute the taxes levied upon property located in the Mississinawa District and collected from the owners of such property to the board of education of that district unless by order of someone authorized to make such an order he would be directed to distribute them either in whole or in part to some other district. The Mercer County Board made no such order when it made the distribution you speak of on July 22, 1937.

Later, when proceedings were had in court, the whole matter was before the court and yet the court in its final entry made no order affecting the proceeds of the taxes in question. The final entry of the court in so far as it relates to the distribution of funds contains the following provision:

"It is agreed that the monies heretofore paid by Mississinawa Township Rural School District to the Mercer County School District pursuant to the proceedings for transfer, total \$277.64,

and that the real estate hereinbefore described which will remain a part of the Darke County School district, constitutes 41% of the entire valuation of the real estate described in said proceedings for transfer, and that by reason thereof 41% of the funds heretofore transferred to the Mercer County School District and paid to the Sharpsburg Rural School District of Mercer County, Ohio, should be paid back by the said Sharpsburg Rural School District of Mercer County, Ohio, to the Darke County School District, and that 41% of said funds amount to \$113.83.

It is further agreed as a part of the compromise of this action that from the funds in the sum of \$113.83 belonging to the Darke County School District, the costs of this action amounting to \$———— shall be paid; and that the Board of Education of the Sharpsburg Rural School District of Mercer County, Ohio, is hereby authorized to execute and deliver a check to the Darke County School District in the sum of \$76.14; and that said Board of Education of the Sharpsburg Rural School District of Mercer County, Ohio, shall execute and deliver to the Clerk of Courts of Darke County, Ohio, a check in the sum of \$37.69 in full settlement of court costs, and that said payment shall be in full settlement of the sum of \$113.83 refund hereinbefore provided for.”

It appears to me that the distribution of funds as between the districts involved in this litigation, as made by the court upon the final disposition of the matters involved as shown by the final entry, is res adjudicata, and the parties involved, which I understand were all the several boards of education interested, cannot now be heard to complain, as the opportunity to present their claims is past.

If there was something concealed or inadvertent action taken affecting the finding of the court, even though that finding was predicated on agreement of the parties, the court might upon proper motion permit further proceedings.

In conclusion, I am of the opinion that when proceedings are inaugurated to transfer school territory in accordance with the statutes relating thereto, and the matter is litigated by action in court begun either before or after the completion of the statutory steps for the transfer of territory, the findings of the court as shown by its final journal entry in the said action are determinative of all matters as they affect the parties involved, which were or might have been litigated incident to the transfer of the said territory including an equitable distribution of funds and indebtedness as between the districts involved in the said transfer, and administrative officers are bound by the final order of the court and are powerless to make distribution of funds or act in any respect otherwise than in strict accordance with the decree of the court unless and until the

court is convinced by proper action and proceedings that through inadvertence or otherwise in the presentation of the cause, the findings of the court should be modified, and does modify them.

Respectfully

THOMAS J. HERBERT,
Attorney General.

1066.

COUNTY COMMISSIONERS — UNIFORMS—1. HAVE AUTHORITY TO PURCHASE FOR SHERIFF AND DEPUTIES —SECTIONS 2419, 12616-2, G. C.—TOWNSHIP TRUSTEES—CONSTABLES—2. NO AUTHORITY TO PURCHASE UNIFORMS.

SYLLABUS:

1. *County commissioners, by virtue of Section 2419, General Code, have the authority to purchase for the sheriff and his deputies the uniforms required by Section 12616-2, General Code.*

2. *Township trustees have no authority to purchase for constables the uniforms required by Section 12616-2, General Code.*

COLUMBUS, OHIO, August 19, 1939.

HON. A. ROSS SIVERLING, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

“I respectfully request your opinion pertaining to the following questions:

G. C. 12616-2 requires that the State Highway Patrol and every other ‘peace officer’ shall wear a distinctive uniform, while on duty for the exclusive or main purpose of enforcing the motor vehicle laws.

Question: Can the County Commissioners, by virtue of G. C. 2419, provide sheriffs and their deputies with distinctive uniforms? Can the township trustees purchase distinctive uniforms for police constables whose duties include enforcement of the motor vehicle laws?”

The questions you have presented arise from the enactment of Section 12616-2, General Code, by the 93rd General Assembly, which section became effective August 3, 1939. This section provides: