

place upon it seems to be reasonable. We think it is the true construction, and that the court below erred in holding that in Ohio the pension money under that Sec. 4747 Rev. Stat. of the United States, was exempt. * * * "

In consideration of the foregoing discussion and authorities cited and considered, I have reached the conclusion, specifically answering your second question, that there is no authority under Section 4747, U. S. Revised Statutes, (Section 54, Title 38, U. S. C. A.), or Section 5327 G. C. of Ohio, or elsewhere for the exemption from taxation of pension money after the same has been received by said pensioner, and placed on deposit in bank to his credit.

Summarizing :

(1) The compensation, insurance and support allowance received by virtue of the World War Veterans' Act of 1924, are exempt from taxation, under the provisions of Section 22 of said Act (38 U. S. C. A., Sec. 454), as long as said funds are in their original form, in the hands of the beneficiary, or on deposit to his credit.

(2) Specific exemptions from taxation granted in the World War Veterans' Act of 1924, apply only to payments made under authority of said Act, and have no application to payments by way of pension or otherwise under other Acts of Congress.

(3) There is no authority under Section 4747, U. S. Revised Statute, (Section 54, Title 38, U. S. C. A.), Section 5327, G. C. of Ohio, or elsewhere, for the exemption from taxation of pension money, after the same has been received by the pensioner and placed on deposit in bank to his credit.

Respectfully,

GILBERT BETTMAN,

Attorney General.

61.

COUNTY BOARD OF EDUCATION—TRANSFER OF TERRITORY TO CITY SCHOOL DISTRICT—MANDATORY WHEN 75% OF ELECTORS PETITION—RIGHT OF TRANSFEREE TO ACCEPT OR REJECT.

SYLLABUS:

When a petition is filed with a county board of education, signed by 75% of the electors residing in a portion of territory comprised within a school district of the county school district, asking that that portion of territory be transferred to a contiguous city school district, it becomes the mandatory duty of the county board of education, to make the transfer in accordance with the prayer of the petition filed with it. The city board of education may or may not accept the transfer so made.

COLUMBUS, OHIO, February 5, 1929.

HON. G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

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

"Enclosed you will find a letter written by H. H. Phelps, county superintendent of schools, which I trust, is self-explanatory, your attention to which will be greatly appreciated."

The letter of your county superintendent, addressed to you, which you enclose with your communication, reads as follows:

"R. P. lives south of town and sends his children to Prospect school. He is in the Woodville district and he is trying to destroy the Woodville school in order that he will get his own children taken care of in Mansfield.

Now, the law says that the county board shall transfer territory when three-fourths of the voters of that district petition it. R. P. got two people that moved into this district to sign for a transfer of territory and then when they were ready to move out, withdrew their names so that he did not have 75% of the voters. A man and his wife have moved into the same property and P. got them to sign the petition.

Woodville district is up in arms because they have a good school at Woodville and the people do not want to be transferred into Mansfield. The people that own the property do not want this transferred but renters have signed it that likely will not stay in the property only a short time. But according to the law this seems to make the transfer legal and force the county board to do it against their wishes.

Can you get from the Attorney General an opinion on this matter and let us have it before the meeting of the county board which will be the middle of next month? Now, what we would like to know is, should the county board transfer territory from one district to another when they know it will be a detriment to the school district from which they transfer the territory, even though they have 75% of the voters?"

I gather from the superintendent's letter that Woodville School District is a school district of the Richland County School District, contiguous to Mansfield City School District. A transfer of territory from Woodville School District to Mansfield City School District would necessarily have to be accomplished, if at all, in accordance with the terms of Section 4696, General Code. The Richland county board of education does not have jurisdiction conferred by law to make transfers of territory from a district of its county school district to a contiguous city school district, as in the case of transfers between districts of the county school district under Section 4692, General Code. Jurisdiction to make transfers to a city school district must be conferred by petition signed by the electors residing in the territory seeking to be transferred.

If such a petition is signed by at least 50% of the electors residing in the territory which it is sought to have transferred to a city school district and filed with the county board of education, the said county board thereupon becomes vested with jurisdiction to make the transfer and, if signed by 50% and less than 75% of the electors residing in the territory described in the petition, the county board may use its discretion and make the transfer asked for if it determines that such a transfer is for the best interests of the schools concerned, but, if the petition is signed by 75% or more of the electors residing in the territory sought to be transferred, the county board of education has no discretion in the matter and must make the transfer in accordance with the prayer of the petition. If it refuses to comply with the prayer of the petition it may be compelled to do so by an action in mandamus.

The language of the statute, Section 4696, General Code, is clear and mandatory in its terms. The Supreme Court of Ohio in the case of *State ex rel. Brenner, et al., vs. County Board of Education*, 97 O. S. 336, which was an action in mandamus, seeking to compel the county board of education of Franklin County to make a transfer in accordance with a petition filed by authority of Section 4696, General Code, which petition was signed by 75% of the electors residing in a portion of territory seeking to be transferred to Fairfield County School District, held:

“* * * by the provisions of Section 4696, General Code, as amended 106 O. L. 396, whenever 75 per cent. of the electors residing in the territory sought to be transferred, petition for such transfer, the county board of education is vested with no discretion in the premises, but is required under the provisions of that section to transfer such territory in accordance with the prayer of the petition filed with it.”

Section 4696, General Code, has been amended in some respects since the decision of the Supreme Court in the case above referred to but the amendments are not such as to make the holding of the case inapplicable to the statute as it now reads.

It makes no difference how the members of the county board of education feel about the matter; even if they are assured that a transfer will be detrimental to the best interests of the schools concerned, they have no discretion in the matter, and are enjoined by law to comply with the prayer of the petition if it contains the requisite number of proper signatures, and is properly drawn and filed. The board should perform its mandatory duty and may be compelled to do so by proper court action.

It will be observed that the statute provides the petition shall be signed by electors. In the case referred to by the superintendent of schools I assume the renters referred to by him possess the qualification of electors. His specific question is based on the premise that the petition is signed by 75% of the voters.” Property owners, as such, are not authorized to sign the petition and they have nothing to say about the matter unless they are also electors residing in the territory sought to be transferred. The purpose of this provision of law is to provide facilities for making such transfers as may be desired by the patrons of the schools, regardless of whether they are property owners or not. Whether or not that be good policy is not for us at this time to concern ourselves. The law so provides, and we are bound by it as it is, whatever view may be held as to the wisdom of the provision.

It should be observed, however, that the mere making of the transfer by the Richland county board of education does not make the transfer complete. The board of education of the Mansfield City School District must first accept the transfer as made, and there is no way to compel the city board to accept a transfer of territory if it does not wish to do so, no matter how many persons petition for it.

Respectfully,

GILBERT BETTMAN,

Attorney General.

62.

DEPUTY COUNTY SURVEYOR—OCCUPYING POSITION OF COUNTY
MAINTENANCE ENGINEER—WITHIN UNCLASSIFIED SERVICE.

SYLLABUS:

A deputy county surveyor designated by the surveyor as county maintenance engineer, under the provisions of Section 2788-1, General Code, is in the unclassified civil service of the state, and no examination in such instance is required.

COLUMBUS, OHIO, February 5, 1929.

HON. H. E. CULBERTSON, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads as follows: