

of township trustees and one member who need not be either a member of council or a member of a board of township trustees.

In the consideration of your second question, the views of my predecessor hereinbefore quoted and concurred in are dispositive thereof. Your attention is also directed to Opinion No. 1399, directed to your Bureau under date of January 13, 1930, which involves similar principles, the first branch of the syllabus being as follows:

“Trustees of a police relief fund chosen as representatives of a city council, cease to be trustees of such fund in the event that their terms as councilmen expire during their terms as trustees and their offices are accordingly vacated.”

The provisions of law relating to the council members of the police relief fund trustees are substantially the same as those relative to the council members and township trustee members of the board of union cemetery trustees. The principles set forth in Opinion No. 1399 are, therefore, applicable to your second question.

It is, accordingly, my opinion that if the one member of such board of cemetery trustees who is the representative of the municipal council or who is the representative of the board of township trustees, should cease to be a member of such council or board of township trustees, the office of such member of the board of cemetery trustees would be vacated.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

---

1674.

TRANSFER OF TERRITORY—COUNTY BOARD UNAUTHORIZED TO TRANSFER TERRITORY TO RURAL OR VILLAGE SCHOOL DISTRICT OF ADJOINING COUNTY—WHERE PROPERTY AND TAXES VEST WHEN TERRITORY TRANSFERRED TO ADJACENT COUNTY DISTRICT.

**SYLLABUS:**

1. *A petition filed with a county board of education, asking that school territory of a school district of the county school district be transferred to a rural or village school district of an adjacent county school district, confers no jurisdiction upon the county board of education to make the transfer as requested, and the county board of education has no authority to make the transfer of territory upon the filing of such a petition.*

2. *When a transfer of territory is made by a county board of education to an adjacent county school district and the said transfer is accepted by the county board of education of the district to which the transfer is made, it becomes the duty of the county board of education accepting such transfer to annex the territory transferred to a contiguous school district of its county school district, and when such transfer is complete, the legal title of the school property in the territory transferred becomes vested in the board of education of the school district to which the territory is annexed, and school taxes thereafter collected from*

*such territory should be distributed at the next tax distribution period to the school district receiving the territory.*

COLUMBUS, OHIO, March 26, 1930.

HON. L. M. SOLIDAY, *Prosecuting Attorney, Zanesville, Ohio.*

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

“By virtue of Section 4696 of the General Code of Ohio, when a petition is filed with the county board of education by 75% of the residents of a certain territory seeking to be transferred to a ‘city school district, an exempted village school district or a county school district’, which is contiguous to the territory sought to be transferred, the county board of education shall transfer such territory. It is therefore seen that by the statute there are but three (3) classes of territory to which the county board of education may transfer under this section.

If petitioners of a certain rural district of Muskingum County, Ohio, should petition under this section to be transferred to a certain designated rural school district in Perry County, would the Muskingum County Board of Education be compelled to or would they have the right to transfer the territory under such petition?

If the petition should request the transfer of territory from Muskingum County to ‘the Perry County School District’, without designating any particular portion of territory in Perry County to whom would the school property of the transferred property belong as such transfer and what disposition would be made of the taxes for school purposes in said transferred territory?”

Section 4696, General Code, reads in part 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. \* \* \* \* \*

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.” \* \* \* ”

It will be observed, from the terms of the foregoing statute, that by the authority there given, a county board of education may be authorized to transfer a part or all of a school district of a county school district to one of three classes of districts, to-wit: exempted village district, city school district or county school district, and that no authority is extended by the statute to make such a transfer unless a petition is filed therefor.

The above statute contains the only authority given anywhere for making transfers of school territory to exempted village, city or county school districts, and by its terms requires that before a county board of education may make any such transfer it must be vested with jurisdiction to do so by the filing with it of a petition asking for the transfer.

The filing of a petition asking for a transfer of all or part of a rural or village school district to another rural or village school district could not vest any jurisdiction in the board to act in the premises, so far as this statute is concerned, for the reason that the statute does not authorize such a transfer, that is a transfer to a village or rural school district, but authorizes only transfers to exempted village, city or county school districts.

In this connection, your attention is directed to an opinion of my predecessor found in the published opinions of the Attorney General for 1927, at page 2241, wherein this same question was under discussion, and it was held as stated in the first branch of the syllabus of said opinion:

"The filing of a proper petition is the only means by which a county board of education may be vested with jurisdiction to transfer a part or all of a school district of the county school district to an adjacent city, exempted village or county school district. The filing with a county board of education of a petition which asks for the transfer of a part or all of the territory of a school district of the county school district to an adjacent rural or village district which lies in an adjoining county school district vests no jurisdiction whatever in the county board of education to act in the premises."

A somewhat similar case, although not precisely in point, was passed upon by the Court of Appeals of Summit County, being the case of *State ex rel. Stipe vs. Carr*, reported in 4 Abstract, 469. This was an action in mandamus brought in the court of appeals for Summit County, to require the Summit County Board of Education to transfer certain school territory in accordance with a petition which had been filed with it signed by more than three-fourths of the electors in the territory sought to be transferred. The petition asked the county board of education to transfer certain territory "From the Green Township Rural School District to the Uniontown Special School District, one of the rural school districts of the Stark County Rural System". The Green Township Rural School District lay in the Summit County School District and the petition instead of asking to be transferred to Stark County School District, asked that the transfer be made to Uniontown Special School District, one of the rural districts of the Stark County Rural System.

The report of the case as contained in the abstract is not very complete and there is some question, upon a reading of the syllabus, whether the court's decision turned on the question alone of the petition asking for a transfer to a contiguous district not an exempted village, city or county school district, or whether the court questioned the validity of the petition because it asked for a transfer to a special school district, there being no such classification of districts as special school districts under the present law. At any rate, the writ was denied. The syllabus of the case reads as follows:

"1. Petition for transfer of territory from one school district to another must designate the class of school district to which it is to be transferred.

2. Writ to effect transfer of school territory will not issue unless statutory provisions regarding classification of the territories be complied with."

I am of the opinion that a petition filed with the county board of education,

asking that school territory be transferred from one rural school district to another, or from a rural district to a village district, or vice versa, confers no additional power on the board of education with reference to making such a transfer than it had, regardless of the filing of the petition, and the board possesses no power to make transfers of territory between village and rural school districts unless both districts involved in the transfer lie in the same county school district over which the county board of education has jurisdiction. Section 4692, General Code.

Coming now to your second question, you will observe that the statute provides:

“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.”

It follows that if a petition were filed with the county board of education to transfer territory to an adjacent county school district and the transfer is made as petitioned for, the county board of education of the county school district to which the transfer is made, may if it wishes, accept the same, and if it does accept it, it should annex the same to same school district of its county district which is contiguous to the territory transferred. When accepted and the transfer becomes complete in accordance with the statute, the legal title of the school property transferred, will become vested in the board of education of the school district to which the territory is annexed. The school taxes collected from the territory transferred will, of course, be distributed, at the next tax distribution period after the transfer, to the school district to which the territory becomes annexed.

In specific answer to your questions, I am of the opinion that:

1. If the residents of a part or all of a rural school district of Muskingum County file with the county board of education of Muskingum County School District a petition asking that the territory of such rural school district be transferred to a certain designated rural school district in Perry County, the county board of education would not only be compelled to comply with the terms of the petition, but would have no right to do so.

2. If the said petition should request a transfer of territory from a rural or village district of Muskingum County School District to “the Perry County School District” without designating any particular school district of the Perry County School District to which the transfer is to be made, and the transfer is made as asked for in the petition, and the Perry County Board of Education accepts said transfer as made, it becomes the duty of the Perry County Board of Education to annex the territory so transferred to a school district of the Perry County School District which is contiguous to the territory so transferred. Upon the completion of the transfer, the legal title of the school property in the territory transferred becomes vested in the board of education of the school district to which the territory is annexed by the Perry County Board of Education and school taxes thereafter collected from the transferred territory should be distributed at the next tax distribution period, to the school district to which the territory has become annexed.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*