

not been collected from the territory of New Boston Township, if, in fact, any such funds had been embezzled.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4844.

TRANSFER OF SCHOOL TERRITORY—SIGNERS OF REMONSTRANCE
MAY WITHDRAW NAMES BEFORE END OF THIRTY DAY PERIOD
FOR SUCH FILING—NAMES MAY NOT BE WITHDRAWN OR
ADDED AFTER SUCH PERIOD.

SYLLABUS:

1. *There is no authority for the filing of petitions for the transfer of school territory under and by virtue of Section 4692, General Code, except when a proposed transfer involves territory lying within a school district in which the schools have been centralized by authority of Section 4726, General Code. Transfers of territory between districts of a county school district, except when centralized district territory is involved in a proposed transfer, may be made as seems in the judgment of the county board of education to be for the best interests of the schools, subject to the filing of remonstrances by the electors residing in the territory affected.*
2. *Signers of a remonstrance against the transfer of school territory made by authority of Section 4692, General Code, may withdraw their names therefrom before and up to the end of the thirty day period allowed for the filing of the remonstrance.*
3. *Such a remonstrance is not considered as being filed until the thirty day period has elapsed.*
4. *After the expiration of the thirty day period allowed for the filing of a remonstrance under Section 4692, General Code, no names may be withdrawn from or added to a remonstrance which has been filed, so as to effect the efficacy of the remonstrance at the moment of the expiration of the thirty day period allowed for the filing of the same.*

COLUMBUS, OHIO, December 29, 1932.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

“Your opinion is respectfully requested upon the following set of facts involving, I believe, an interpretation of Section 4692 G. C. of Ohio, which is as follows:

A group of electors residing in Center Township filed a petition for transfer in the Carrollton Village School in regular form on September 3, 1932. On September 8, 1932, the map was filed with the County Auditor, covering this territory sought to be transferred.

On October 5, 1932, a remonstrance was filed with the Carroll County Board of Education, containing names aggregating more than 50% of the electors in the territory sought to be transferred. On October 6, 1932, a counter petition was filed by five electors asking that their names previously signed to the remonstrance be disregarded on said remonstrance and that their names be considered valid and as remaining on the original petition asking for the transfer of said territory. On October 13, after the 30 day period had elapsed, three electors filed a paper asking that their names be withdrawn from all papers heretofore signed by them with the exception of the remonstrance and that their names be considered to remain on said remonstrance and alleging that they were induced to sign the other papers by fraud and misrepresentation.

If the counter petition filed on October 6th, is legal, it has the effect of erasing their names from the remonstrance and the remonstrance fails for it does not contain a majority of the qualified electors in the territory sought to be transferred. On the other hand, if both the counter petition filed October 6, 1932, and the paper filed October 13, are considered valid, then more than 50% of the electors have signified their intention to oppose the transfer.

Please advise the undersigned at your earliest convenience—

(1) Whether or not, in your opinion, the counter petition has the effect of nullifying their previous signatures on the remonstrance and also of adding them to the original petition.

(2) Whether the paper filed October 13th, can be legally considered in this contested transfer having been filed 30 days after the filing of the map.”

I am informed that the Carrollton Village School District is not an exempted village district. Inasmuch, therefore, as Carrollton Village District and Center Township Rural District are both districts of the Carroll County School District, a transfer of territory from Center Township Rural District to the Carrollton Village District is controlled by Section 4692, General Code, and, if Center Township Rural District is a district in which the schools have been centralized by virtue of Section 4726, General Code, the limitation on the transfer of centralized school district territory, as contained in Section 4727, General Code, must be taken into consideration in making such transfer. Said sections 4692 and 4727, General Code, read as follows:

Sec. 4692. “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. Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred, and a notice of such proposed transfer has been posted in three conspicuous places in the district or districts proposed to be transferred, or printed in a paper of general circulation in said county, for ten days; nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred, shall, within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer. If an entire district be transferred the board of education of such district is thereby abolished or if a member of the board of education lives in a part of a school dis-

district transferred the member becomes a non-resident of the school district from which he was transferred and ceases to be a member of such board of education.

The legal title of the property of the board of education shall become vested in the board of education of the school district to which such territory is transferred. The county board of education is authorized to make an equitable division of the school funds of the transferred territory either in the treasury or in the course of collection. And also an equitable division of the indebtedness of the transferred territory."

Sec. 4727. "When the schools of a rural school district have been centralized such centralization shall not be discontinued within three years, and then only by petition and election, as provided in section 4726. If at such election more votes are cast against centralization than for it, the division into subdistricts as they existed prior to centralization shall thereby be re-established.

Nothing in this or the foregoing sections, namely, sections 4726 and 4726-1, shall prevent a county board of education upon the petition of two-thirds of the qualified electors of the territory petitioning for transfer, from transferring territory to or from a centralized school district, the same as to or from a district not centralized."

It does not appear from your statement whether or not Center Township Rural School District is a district in which the schools have been centralized by virtue of Section 4626, General Code, and I have no information on the subject. If it is a so-called centralized school district, the county board of education could acquire jurisdiction to transfer a portion of its territory to another school district only upon the filing of a petition signed by sixty-six and two-thirds percent of the electors residing in the territory sought to be transferred requesting the board to make such transfer.

You state that the petition which was filed asking for a transfer of this territory contained names aggregating "more than 50% of the electors in the territory sought to be transferred." You do not state whether the petition contained the names of sixty-six and two-thirds percent of those electors or not. If Center Township Rural School District is a centralized district and the petition mentioned did not contain the names of sixty-six and two-thirds percent of the electors residing in the territory sought to be transferred, the transfer, as made, is a nullity and we need give the question of remonstrance or withdrawal of names from the remonstrance no further consideration.

If Center Township Rural District is a centralized district, and the petition spoken of contained the names of sixty-six and two-thirds percent of the electors residing in the territory sought to be transferred, the county board of education of the Carroll County School District had the power to make the transfer as it was made and completed by the filing of the map spoken of, on September 8, 1932. Having taken official action on the petition by making the transfer, names could not be thereafter withdrawn from the petition so as to render nugatory the action so taken. It has been repeatedly held in this state that persons who have subscribed their names to petitions may withdraw their names therefrom at any time before official action is taken thereon. *Hayes vs. Jones*, 27 O. S. 218; *Dutton vs. Village of Hanover*, 42 O. S. 215; *State ex rel. Kahle vs. Ruppert, Auditor*, 99 O. S. 17. But I know of no instance either in this state or any other where the courts have sanctioned the withdrawal of names from a petition after official action has been taken thereon, and I am of the

opinion that this can not legally be done. If Center Township Rural District was a centralized district and the transfer made as you state, the right of remonstrance as given by Section 4692, General Code, existed, although names could not be withdrawn from the petition after the transfer was made.

If, however, Center Township Rural School District is not a centralized district the petition extended no additional authority or power to the county board of education to make the transfer than it had without the filing of the petition. The statute, itself, Section 4692, General Code, vests in a county board of education full authority to make a transfer of territory from one district of the county school district to another district of the same county school district, unless centralized territory is involved in the transfer and the filing of a petition adds nothing whatever to that authority. This fact has been noted in a number of opinions of this office. In Opinions of the Attorney General for 1919, page 1195, it is said:

In transfers of school territory under section 4692 G. C., there is no provision for any petition on the part of the electors, the only provision in such section being that a remonstrance and not a petition can be filed with the county board of education."

In Opinions of the Attorney General for 1928, at page 996, it is said:

"There is no authority for the filing of petitions for the transfer of school territory as authorized by Section 4692, General Code, except transfers from centralized districts. Transfers of territory between school districts of a county school district, except from centralized districts, may be made as seems in the judgment of the county board of education to be for the best interests of the schools, subject to the filing of remonstrances by the electors residing in the territory affected."

See also Opinions of the Attorney General for 1927, pages 1151 and 1255 and for 1929, page 1630.

I assume a proper resolution of the Carroll County Board of Education was adopted making the transfer spoken of, and that proper notices were posted, as provided by the statute. That being the case, the qualified electors residing in the territory transferred had thirty days from September 8, 1932, the date of the filing of the map spoken of, to remonstrate and if a proper remonstrance, in accordance with the statute, was filed within this time, to-wit; on or before October 8, 1932, the transfer as made, did not take effect. This right of remonstrance exists, in my opinion, whether the transfer involved territory lying in a district in which the schools had been centralized or not. From your statement it appears that a remonstrance was filed on October 5, 1932, of sufficient import to prevent the taking effect of the transfer.

On October 6, 1932, a "counter petition" was filed, the effect of which was to withdraw a sufficient number of names from the remonstrance to render it ineffective, if names may legally be withdrawn from a remonstrance in that way. On October 13, 1932, a paper was filed with the county board of education by three signers of the original petition and the remonstrance and the "counter petition", seeking to restore their names to the remonstrance, thus bringing the number of names of the remonstrance again to more than fifty percent of the electors residing in the territory transferred, providing this last paper filed had any effect whatever. In the meantime, however, between October 6, the date of the withdrawal of names from the remonstrance, and

October 13th, the date of the filing of the last paper mentioned above, the thirty day period from the time of the filing of the map, had elapsed.

Two substantial legal questions are therefore presented with reference to this remonstrance. First, whether or not names may be withdrawn from such remonstrance after it is filed and before the expiration of the thirty day period after the filing of the map so as to render the remonstrance insufficient in law, and secondly, whether the names withdrawn within the thirty day period, if that may be done, may be restored to the remonstrance after the thirty day period so as to render the remonstrance effectual.

With reference to the first question, your attention is directed to the case of *Neiswander, et al. vs. Brickner, et al.* 116 O. S. 249. The court in that case had under consideration the question of the right to withdraw names from a remonstrance which had been filed by authority of Section 4736, General Code. Said section 4736, General Code, authorizes a county board of education to create a new schools district from one or more school districts or parts thereof, and provides that any action so taken shall not take effect "if a majority of the qualified electors residing in the territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it."

The language quoted above is substantially the same as the language of Section 4692, General Code, with reference to the filing of remonstrances and I am of the opinion that the holding of the Supreme Court in the *Neiswander* case with reference to the withdrawal of names from remonstrances filed by authority of Section 4736, General Code, is equally applicable to the withdrawal of names from remonstrances filed by authority of Section 4692, General Code.

In the case mentioned, the court held:

"Under Section 4736, General Code, signers to a remonstrance may withdraw their names before and up to the thirty day period allowed for the filing of the remonstrance."

In an opinion rendered by me under date of January 5, 1931, and found in the reported Opinions of the Attorney General for that year, at page 859, consideration was given to the question of withdrawal of names from remonstrances filed by authority of Section 4692, General Code, and the analogy pointed out of such remonstrances to similar remonstrances filed by authority of Section 4736, General Code. In that opinion it was held "under Section 4692, General Code, signers to a remonstrance against the action of a county board of education may withdraw their names therefrom before and up to the end of the thirty day period allowed for the filing of the remonstrance."

I am of the opinion that the case of *Neiswander vs. Brickner, supra*, is dispositive of the first question referred to above and that by authority of this case, there can be no question but that names may be withdrawn from remonstrances filed by authority of Section 4692, General Code, at any time before the expiration of the thirty day period mentioned in the statute.

There are no direct authorities, so far as I know, which deal with the precise problem presented by the second question. It would seem however, from the provisions of the statute that the number of names lawfully on the remonstrance at the moment of the expiration of the thirty day period mentioned would be determinative of the efficacy of the remonstrance and if at that moment the remonstrance contained the names of more than fifty percent of the electors residing in the territory transferred, the action of the county

board in making the transfer would be ineffective, and if the remonstrance contained less than that number of names, the action of the board would go into effect and no attempt thereafter made to add to or withdraw from the remonstrance could have any effect. This conclusion is borne out by the decision of the Supreme Court in the case of *Board of Education vs. Board of Education*, 112 O. S. 108. That case involved the right to withdraw names from a remonstrance filed by authority of Section 4736, General Code, after the expiration of the thirty day period, instead of adding names thereto. It was held that this could not be done. The court in that case, after quoting the provisions of Section 4736, General Code, with reference to the filing of remonstrances, said:

"If this provision of the statute means anything, the action of the county board of education taken on May 6, 1924, was nullified at the end of the 30-day period by the filing of the remonstrance, and could not be resuscitated by the withdrawal of the names originally signed to the remonstrance after that period had expired.

We have no doubt that in the given case the signers to the remonstrance could have withdrawn their names before and up to the end of the 30-day period. It is only when the 30-day period has elapsed that the number of names upon the remonstrance is definitely fixed. The remonstrance must be placed in the hands of the county board of education within thirty days from the time of creation of the new school district by the county board, but the remonstrance cannot be considered as filed until the 30-day period has elapsed. Names could no doubt be added to the remonstrance within that time by qualified electors, and names could also be cancelled upon the remonstrance within that time, if such cancellations were made by the original signers. But the specific question here is whether the withdrawal of names by the electors is allowable after the 30-day period."

In my judgment, the foregoing remarks of the Supreme Court would be equally applicable if the provisions of Section 4692, General Code, with reference to the filing of remonstrances were under consideration.

In the present instance the thirty day period after the filing of the map on September 8, 1932, expired with October 8, 1932, and the question of whether or not the action of the county board in making the transfer spoken of took effect depends on the efficacy of the remonstrance as it existed on October 8, 1932. It appears that the remonstrance at that time did not contain the names of fifty percent of the electors residing in the territory to be transferred, a sufficient number of names having been withdrawn on October 6, 1932, to cut the number down to less than fifty percent of the number residing in the territory to be transferred and the remonstrance was therefore ineffective to stop the transfer. It follows therefore that the transfer took effect as made, unless Center Township Rural School District was a district in which the schools had been centralized by virtue of Section 4726, General Code, and the petition which was filed asking for this transfer did not contain the names of sixty-six and two-thirds percent of the names of the electors residing in the territory sought to be transferred, in which event the county board had no power to make the transfer at all, and the transfer was therefore unauthorized and void.

I am of the opinion in specific answer to the questions submitted:

1. The "counter petition" spoken of had the effect of withdrawing the

names of the signers of this counter petition from the remonstrance which had previously been filed. This did not have the effect of adding them to the original petition. No names had legally been withdrawn from the original petition so far as appears.

2. The paper filed on October 13, 1932, had no legal effect whatever.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4845.

APPROVAL, BONDS OF CITY OF YOUNGSTOWN, MAHONING COUNTY, OHIO, \$119,000.00.

COLUMBUS, OHIO, December 29, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4846.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE CYCLONE FENCE COMPANY OF WAUKEGAN, ILLINOIS, FOR THE CONSTRUCTION AND COMPLETION OF BOUNDARY FENCE AT URBANA GAME FARM, CHAMPAIGN COUNTY, OHIO, AT AN EXPENDITURE OF \$5067.59—SURETY BOND EXECUTED BY THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

COLUMBUS, OHIO, December 29, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Division of Conservation, Department of Agriculture, and the Cyclone Fence Company of Waukegan, Illinois, and Cleveland, Ohio. This contract covers the construction and completion of contract for Boundary Fence, Urbana Game Farm, Section No. 3, Champaign County, Ohio, in accordance with Item No. 1 of the Form of Proposal dated December 23, 1932. Said contract calls for an expenditure of five thousand sixty-seven dollars and fifty-nine cents (\$5,067.59).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also shown that the Controlling Board has approved the expenditure in accordance with Section 1 of House Bill No. 624 of the 89th General Assembly. In addition, you have submitted a contract bond, upon which the United States Fidelity and Guaranty Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the