

It is true that section 7734 G. C. *supra*, provides for the admission of pupils to a school of another district, but is not broad enough to authorize a board of education to require pupils to attend schools outside the district of their residence.

Further, in this connection, your attention is directed to a former opinion of this department, to which you have already referred, being Opinions of Attorney-General for the year 1918, page 927, wherein the above quoted sections were discussed, and where it was held:

“A board of education has no authority to assign pupils to schools outside of the district over which such board has jurisdiction.”

Therefore, I am of the opinion, and you are advised, that notwithstanding the board of education of a given district may contract with the board of education of another district for the admission of pupils into the schools of such other district, such contract does not effect an assignment of the pupils of the first mentioned district to a school district outside of the district of their residence, and said pupils cannot thereby be required or compelled to attend the school in the adjacent district.

With reference to your second question concerning the maximum load for a school truck, you are advised that I find no provision of statute concerning same, and it would therefore seem that the matter of the regulation of the number of children that may be conveyed in a school bus would be largely within the discretion and control of the board of education making the contract for the transportation of pupils.

Respectfully,

C. C. CRABBE,
Attorney-General.

3720.

MUNICIPAL SCHOOL DISTRICT—ANNEXATION OF TERRITORY—DISTRIBUTION OF FUNDS DISCUSSED.

SYLLABUS:

Territory annexed by a municipality for municipal purposes becomes a part of a municipal school district by such annexation and the municipal school district is not entitled to a distribution of the funds collected by the district from which such territory is detached.

COLUMBUS, OHIO, October 18, 1926.

HON. ALBERT H. SCHARRER, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

“In July, 1926, the village of Oakwood, this county, annexed to itself part of the territory of Van Buren Township. The territory annexed automatically became part of the village of Oakwood School District. The time now being at hand for the semi-annual distribution of taxes, the village of Oakwood School District is claiming a proportionate amount of the distribution to be made to the Van Buren Township Rural School District. The Van Buren Township Rural School District claims that it has appropriated all of the money to be distributed to it at this time for the payment of teachers, etc., and demands that it receive the entire amount that would be distributed to it, the same as if part of its territory had not been annexed to the Village of Oakwood.

Section 4690 of the General Code provides for the annexation of territory and provides for the division of indebtedness and the assumption of same by the village of Oakwood School Board but says nothing as to sharing in the distribution of taxes.

Section 7600, et seq., provides the method by which the County Auditor shall make distribution of school funds, but provides nothing as to a division of funds upon annexation of territory.

Will you kindly advise us whether or not the county auditor has the authority to make a proportionate distribution of the funds of Van Buren Township Rural School District to the Oakwood Village School District, based upon the amount of territory, teachers, pupils, etc., that reside in and are necessary for the territory annexed to the village school district."

Section 4690 of the General Code provides as follows:

"When territory is annexed to a city or village, such territory thereby becomes a part of the city or village school district, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city or village school district. Provided, however, if there be any indebtedness on the school property in the territory annexed, the board of education of the city or village school district, shall assume such indebtedness and shall levy a tax annually sufficient to pay such indebtedness and shall pay to the board of education of the school district or districts from which such territory was detached, the amount of money collected from such levy as it becomes due."

It will be noted that in cases to which territory is annexed to a city or village such territory becomes a part of the city or village school district and the legal title to school property in such territory rests in the school district. If there be any indebtedness on the school property in the territory annexed the district shall assume such indebtedness and levy a tax sufficient to pay such indebtedness and pay the same over to the board of education of the district from which such territory was detached.

Nothing is said in this section relative to a division of funds or indebtedness other than the indebtedness on the school building which is assumed by the annexing district.

A study of the history of this section will show that such section was originally section 3893 Revised Statutes, and provides as follows:

"Whenever territory is annexed to a city or village, such territory thereby becomes a part of the city or village school district and the legal title to all school property in such territory shall be thereby vested in the board of education of such city or village school district."

At the same time section 3896 Revised Statutes, provided in part as follows:

"When territory is transferred from one school district to another * * * by the annexation of territory to a city or village, the proper division of funds in the treasury or in process of collection, of the board of education of the school district from which the territory is detached, shall upon application to the probate court of the county in which such territory is situated by either board of education interested, be determined and ordered by said court; in case said board of education is indebted such indebtedness, together with the proper amount of money to be paid to said board of education by the board of education of the school district to which the territory is * * * annexed, * * * shall be, in like manner, determined and ordered by said court."

Section 3893 Revised Statutes, was carried into the codification as section 4690 of the General Code, and such section was amended in 104 Ohio Laws, page 134, as follows:

“When territory is annexed to a city or village, such territory then becomes a part of the city or village school district, and the legal title to school property in such territory for school purposes shall remain vested in the board of education of the school district from which such territory was detached until such time as may be agreed upon by the several boards of education when such property may be transferred by a warranty deed.”

Section 3896 Revised Statutes, was carried into the codification as Section 4696 in practically the same form as it existed before the codification.

In 104 Ohio Laws, page 135, the method of transferring territory in a county school district was changed from a proceeding in the probate court to a transfer by mutual consent of the board of education of the districts concerned. Section 4696 of the General Code was amended at that time, the substance of the section remaining the same also conforming to the new procedure for such transfer.

Prior to the amendments of section 4690 and 4696 of the General Code in 104 Ohio Laws, page 134 and page 135, in the case of annexation of territory to the municipality, such territory became a part of the municipal school district and the title to such territory vested immediately in the municipal district and an adjustment or apportionment was made of the funds on hand or in process of collection and of the existing indebtedness.

By the amendment in 104 Ohio Laws, the title to the property remained in the district from which such annexed territory was detached and a division of the indebtedness and funds was made at the time of such transfer.

Section 4696 of the General Code was again amended in 106 Ohio Laws, page 397 as follows:

“A county board of education may transfer a part or all of a school district of the county school district to an adjoining exempted village school district or city school district, or to another county school district, provided at least fifty per centum of the electors of the territory to be transferred petition for such transfer. Provided, however, that if at least seventy-five per cent of the electors of the territory petition for such transfer, the county board of education shall make such transfer. No such transfer shall be in effect until the county board of education and the board of education to which the territory is to be transferred each pass resolutions by a majority vote of the full membership of each board and until an equitable division of the funds or indebtedness be decided upon by the boards of education acting in the transfer; also a map shall be filed with the auditor or auditors of the county or counties affected by such transfer.”

It will be noted that by this amendment the division of indebtedness and of funds between the district from which such territory was detached and the municipality to which such territory was annexed was done away with.

Sections 4690 and 4696 of the General Code remained the same until 109 Ohio Laws, page 588 and 109 Ohio Laws page 65. At this time Section 4690 was amended to read as at present and the title of property within the territory annexed was placed in the municipality annexing such territory and further provided for the assumption of any indebtedness or school property within such territory.

Section 4696 of the General Code was amended to provide the manner of completing a transfer of part or of all the school district to another, such transfer to be made by

the county board of education and provided for an equitable division of funds and indebtedness between the district involved. It will be noted that again no mention is made of a division of funds or indebtedness in cases in which municipalities annex territory.

The act of the legislature in striking from the legislation relating to the annexation of territory to a municipal school district the apportionment of funds and indebtedness between two districts after numerous changes as to the vesting of the title of property situated in the territory annexed, would indicate that the intent of the legislature was not to provide for a division of indebtedness or funds other than as indicated by their last act, unless provision is made in some other section for such apportionment.

Section 7600 of the General Code, provided for the apportionment of school funds by the county auditor, and would seem to indicate that after each semi-annual settlement with the county treasurer the county auditor should apportion the school funds derived from the interest on the common school funds the proceeds of the levy under Section 7575 of the General Code and the local school levy as set out in such section.

A study of the history of Section 7600 of the General Code will show that this section in substantially the same form was in existence prior to the codification as Section 3964 Revised Statutes.

As Section 7600 of the General Code was in existence in substantially the same form at the time of the changes it is not believed that it can be considered as authority for an apportionment of funds under the existing laws relating to the annexation of territory to a municipal corporation.

You are therefore advised that in the instant case the village of Oakwood is not entitled to an apportionment of the September distribution of taxes collected from the Van Buren Village School District.

Respectfully,

C. C. CRABBE,

Attorney-General.

3721.

SALE OF REAL ESTATE BY CITY OF EAST CLEVELAND ILLEGAL—
SPECIFIC CASE PASSED UPON.

SYLLABUS:

The sale of real estate by the city of East Cleveland, which is not in conformity with Sections 3698 and 3699 of the General Code, is in conflict with general laws and therefore illegal.

COLUMBUS, OHIO, October 18, 1926.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication as follows:

“We are enclosing herewith copy of charter of the city of East Cleveland and call your attention to Section 1 and 37 thereof.

Sections 3698 and 3699, General Code, provide for the sale of real estate to the highest bidder after advertisement for five consecutive weeks, etc. In the case of Kerlin Bros. v. Toledo, 20 C.C. 603, it was decided that the formalities required by the statutes for the sale of property by a city must be strictly complied with. In the case of State ex rel. v. Carroll, 103 O. S. 50, these sections were considered in connection with an ordinance passed by the council