

I direct your attention to an Opinion No. 1168, rendered under date of October 19, 1927, wherein a question very similar to this was considered. In this opinion the question considered had reference to the payment of the salary of a chief probation officer whose salary is fixed by the judge of a juvenile court under authority of Section 1662, General Code. A number of previous opinions relevant to the question were reviewed, and it was held:

“A chief probation officer can not receive a salary in excess of the amount appropriated as provided in Sections 5625-29 and 5625-32 of the General Code by the county commissioners.”

I am therefore of the opinion that a court constable appointed under authority of Section 1692, General Code, or a criminal bailiff appointed under the authority of Section 1541, General Code, can not be paid a salary in excess of the amount appropriated therefor; nor may the discretion of the board of county commissioners in fixing the amount of the appropriation for the payment of the salaries of such employes be controlled so long as its discretion be exercised in such a manner as not to amount to an abuse thereof.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1914.

ANNEXATION OF TERRITORY TO CITY OR VILLAGE—DISPOSITION AS TO SCHOOL DISTRICTS DISCUSSED.

*SYLLABUS:*

*When territory is annexed to a city or village it thereby becomes a part of the city or village school district; and the territory remaining in the school district, of which such annexed territory was formerly a part, remains and constitutes the same school district which had existed before the annexation, regardless of the area of the territory remaining.*

COLUMBUS, OHIO, March 30, 1928.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“Under Section 4687, when a village school district is created within the territory of a former rural school district and less than 16 square miles would thereby be left of the rural school district, that territory is attached also to the village school district which is being formed.

We now have the question whether in any way the principle of this statute applies when part of the territory of a rural school district is annexed to a city school district, thereby leaving less than 16 square miles in the rural school district. In such a case, does the rural school district of that diminished size continue to exist, or does it, with the rest of the rural district as it did exist, join the city school district?”

Section 4687, General Code, referred to in your letter, has reference only to situations arising upon the creation of a village or, in other words, upon the incorporation of territory to function under a village government. Its principles cannot be extended by analogy to situations other than those set out in the statute. It provides as follows:

"Upon the creation of a village, it shall thereby become a village school district, as herein provided, and, if the territory of such village previous to its creation was included within the boundaries of a rural school district and such rural school district included more territory than is included within the village, such territory shall thereby be attached to such village school district for school purposes, provided such territory has an area of less than 16 square miles. The legal title to school property for school purposes in such newly created village school district shall be vested in the board of education of the newly created village school district. Provided, however, if there be any indebtedness on the school property located within the newly created village school district, the board of education of the newly created 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 district or districts from which it acquired the school property, the amount of money collected from such levy as it becomes due."

When territory is annexed to a city or village, the status of school territory, in its relation to a particular school district, before and after annexation, is governed by Section 4690, General Code, which 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 observed that no provision is made in Section 4690, *supra*, for any change in the status of the school territory, which remains in a school district after a part of the district has become detached by reason of its being annexed to a city or village no matter how small or how large such remaining territory may be. It continues to exist as the same district it was before any territory had been detached therefrom.

Situations may arise, where considerable inconvenience will be suffered by the remaining portion of a school district after a part of it has been automatically taken away, by annexation to a city or village, unless relief is in some way given by the county board of education, or by the contiguous city or village authorities acting in conjunction with the inhabitants of the district. Especially will this be so if only a small part of the district remains after annexation and the portion annexed to the city or village contains the school buildings belonging to the district.

Sufficiently broad powers, I believe, are given to county boards of education, by Sections 4692, 4696 and 4736, General Code, to transfer school territory, or to create new districts, to take care of almost any kind of situation that might arise wherein

relief is required by isolated school territory brought about on account of the annexation of certain territory to cities and villages.

There is not at the present time any limitation on the size of school districts. No mention is made in any of the statutes relating to school districts, or the formation of school districts, of the number of square miles in a district except in the provisions of Section 4687, *supra*, which have reference only to school districts within which a village has been created.

Upon the adoption of the School Code in 1914 (104 v. 133), Section 4736, General Code, which authorized county boards of education to arrange school districts according to topography and population without regard to township lines, provided that no rural school district should be created containing less than fifteen square miles. However, upon the first amendment of Section 4736, General Code, in 1915 (106 v. 397), the provision with reference to the size of rural school districts was taken out and it has not been inserted in any subsequent amendment of the statute; nor does it appear in any other statute relating to school districts.

It is therefore my opinion that when territory is annexed to a city or village, it thereby becomes a part of the city or village school district; and the territory remaining in the school district, of which such annexed territory was formerly a part, remains and constitutes the same school district which had existed before the annexation, regardless of the area of such remaining territory.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1915.

RESOLUTION OF COUNTY COMMISSIONERS APPLYING FOR STATE  
AID—FORMS OF SAME SUBMITTED.

COLUMBUS, OHIO, March 30, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—In accordance with your request of recent date, I have prepared a form of resolution to be adopted by a board of county commissioners proposing to co-operate with the Department of Highways "in widening the paved portion of any state road where the paved portion of any such road is constructed or reconstructed to a width greater than eighteen feet." I am also submitting a form of resolution to be adopted by a board of county commissioners "of any county having a tax duplicate of real and personal property in excess of three hundred million dollars" proposing to co-operate with your department in the reconstruction of a state road. I have already submitted a form of resolution proposing to co-operate with the Director of Highways in the abolishment of railway grade crossings on the state highway system.

All of these resolutions are to be used by county commissioners when acting under the provisions of Section 1191, General Code, which as amended in House Bill No. 67 (112 v. 469), reads in part as follows:

"The commissioners of any county may co-operate with the Department of Highways in the abolishment of railway grade crossings on the state highway system or any extension thereof, and in the construction or recon-