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1. TRANSFER, TERRITORY BY COUNTY BOARD OF EDUCATION — WHERE MISNOMER OF DISTRICT IN PETITION AND RESOLUTION — IF IDENTITY OF DISTRICT KNOWN OR ESTABLISHED, ACTS ARE EFFECTIVE — SECTION 4696 GENERAL CODE.
2. WHERE TRANSFER PROCEEDINGS ARE REGULAR, NOT NECESSARY FOR PETITION OR RESOLUTION TO CITE AS AUTHORITY, SECTION OF GENERAL CODE.
3. WHERE COUNTY BOARD OF EDUCATION ORDERS CERTAIN TERRITORY OF COUNTY SCHOOL DISTRICT TO BE TRANSFERRED TO ADJACENT EXEMPTED VILLAGE SCHOOL DISTRICT, UNDER REGULAR PROCEEDINGS — IF TRANSFER ACCEPTED, COUNTY BOARD OF EDUCATION MAY NOT SUBSEQUENTLY SET ASIDE SUCH ACTION.

SYLLABUS:

1. *Where a county board of education transfers territory contained in the county school district to an adjacent exempted village school district pursuant to the provisions of Section 4696, General Code, and in the petition requesting such transfer and the resolution ordering it there is a misnomer of the district from which the territory is transferred, the resolution is nevertheless effective if the identity of the district is known or could otherwise be established.*

2. *Where a petition is filed with a county board of education requesting transfer of territory contained in the county school district to an exempted village school district and is signed by at least fifty per cent of the electors residing in such territory sought to be transferred, it is not necessary for the petition to refer to the section of the General Code under authority of which such petition is filed, nor is it necessary for a resolution of the county board of education ordering such transfer to make any reference to such statute.*

3. *Where a county board of education orders certain territory contained in the county school district to be transferred to an adjacent ex-*

empted village school district upon a petition signed by at least fifty per cent of the electors residing in such transferred territory requesting such transfer and if such transfer is accepted by the board of education of such exempted village school district, action by the county board of education taken after such acceptance whereby it is sought to rescind and set aside the action ordering such transfer is ineffective.

Columbus, Ohio, December 17, 1941.

Hon. Kenneth C. Ray, Director of Education,
Columbus, Ohio.

Dear Sir:

Your recent request for my opinion is as follows:

“At the request of the Athens County Board of Education we are writing to ask for your opinion as to the status of the school territory involved in a transfer procedure, the facts of which, as reported to this department, are as follows:

At a regular meeting held on September 12, 1941, the Athens County Board of Education sought to transfer certain territory which was a part of the county school district to the Glouster Exempted Village School District. The Board's action appears on the minutes as follows:

‘Upon petition presented from certain electors of Trimble Township School District requesting transfer of territory from said school district to the Glouster Exempted Village School District, motion was made by Grim and seconded by Phillips that said territory, a map of which is to be filed in the office of the county auditor, be transferred from the Trimble Township School District, Athens County, Ohio, to the Glouster Exempted Village District, Athens County, Ohio.’

At a regular meeting held on October 10, 1941 the county board sought to rescind the action taken on September 12. The minutes show that:

‘After some discussion, motion was made by Grim and seconded by Phillips that the action taken by the Athens County Board of Education at their meeting on September 12 in attempting to transfer territory from one of county school districts to the Glouster Exempted Village School District be rescinded because of misrepresentation of the name of the district, illegality and failure to state under what section of the code transfer was to be made.’

Subsequent to the meeting of September 12, but prior to

the meeting on October 10, the board of education of the Gloucester Exempted Village School District adopted a resolution accepting the territory transferred on September 12.

We should like your opinion as to whether this territory is now a part of the Gloucester Exempted Village School District or whether, as the result of the action of the county board on October 10, it remains a part of the Trimble District.”

You do not state in your letter whether that portion of the Trimble Township School District in question is adjacent to the Gloucester Exempted Village School District or whether the Trimble Township School District is a part of the Athens County School District. However, in my consideration of your question, I have assumed these facts to exist and this opinion is in part based upon such assumption.

A county board of education has no authority to transfer territory comprised in the county school district to an exempted village school district except pursuant to the provisions of Section 4696, General Code, which provides:

“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.

In any case before such a transfer shall be complete (1) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be (2) an equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, which in the case of territory transferred to a county school district shall mean the board of education of the county school district to which such territory is transferred, and (3) a map shall be filed with the county auditor of each county affected by the transfer.

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.

Any territory which has been transferred to another district, or any part of such territory, shall not be transferred out of the district to which it has been transferred during a period of five years from the date of the original transfer without the approval of the state director of education to such a transfer."

It does not appear from your letter whether at least fifty per cent of the electors residing in that portion of the Trimble Township School District sought to be transferred to the Glouster Exempted Village School District signed the petition requesting the Athens County Board of Education to make this transfer. If the requisite number of electors did not sign the petition, the County Board of Education was without jurisdiction and its action in attempting to make the transfer was a nullity. It will therefore be necessary for me further to assume that at least fifty per cent of the electors of the territory sought to be transferred signed the petition; that the petition was proper in form and accurately described the territory sought to be transferred.

When these assumptions are made, the action of the Athens County Board of Education, in making the transfer, appears to be sufficient and since the transfer was accepted by the Board of Education of the Glouster Exempted Village School District, it becomes necessary to determine whether the action of the County Board purporting to rescind its former action is effective. The resolution adopted by the Board on October 10, whereby it was sought to rescind the action taken on September 12, was purportedly "because of misrepresentation of the name of the district, illegality and failure to state under what section of the code transfer was to be made."

It is not clear from your letter what, if any, misrepresentation was made as to the name of the district. However, if the name used in the petition and in the resolution of the Athens County Board of Education was sufficient to identify the district, the action of the Board would not be invalidated, even though the name so used was not technically the legal designation of the district. In my opinion No. 1546, found in Vol. III of the Opinions of the Attorney General for 1939, at page 2285, I reached the following conclusion as shown by the third and fourth paragraphs of the syllabus:

"3. A variation from the strict legal designation of a school district as to whether it is a city, village, exempted village or rural district as provided by law, in the transaction of official

business for the district, will not render invalid the business so conducted.

4. The misnomer of a school district in contracts made on behalf of the district is not fatal or effectual to avoid such contracts, if the identity of the district so contracting may otherwise be established."

The reasoning contained in that opinion would apply with equal force to the present situation if in the proceedings there were a misnomer of the school district in question, provided, of course, its identity was well known or could be otherwise established. Likewise, the conclusions reached in that opinion are by analogy also applicable to the situation now under consideration.

If, therefore, the school district in question was identified sufficiently for all of the interested parties to know and understand with what particular district they were dealing, it would make no difference that it was not given its strict legal designation in the proceedings and the action of the Board would not for such reason have been invalid.

The second reason advanced by the County Board for adopting the resolution to rescind its previous action was "illegality." This reason is at once so embracing and all-inclusive that it is impossible to discuss it in this opinion other than to say that, if the assumptions I have hitherto made are true, there does not appear to have been any illegality in the action of the County Board on September 12.

I come now to a consideration of the third reason advanced by the Board for its action on October 10, rescinding the transfer resolution adopted on September 12, viz., "failure to state under what section of the code transfer was to be made." There is no rule of law that the section of the General Code governing the proceedings be set forth either in the petition of the electors requesting transfer or in the minutes of the Board of Education ordering the transfer. There is no objection to a reference to the controlling statute and such a practice would in many ways be very desirable but the law does not require it. If the petition stated sufficient facts and properly identified the territory sought to be transferred and the district to which the transfer was asked to be made and if such petition contained the requisite number of signatures of electors residing in such territory, it was sufficient to invoke the jurisdic-

tion of the Board even though it did not state under authority of what particular section of the General Code it was filed. Likewise, if the Board had authority to order the transfer made, it was unnecessary for it to cite or refer to the statute granting it such authority.

This brings me to the final question raised by your request, that is, whether the County Board of Education, under the circumstances outlined in your letter, had authority to reconsider and rescind its previous action. In England, apparently, there can be no motion to reconsider, but in America it is an established principle of parliamentary practice for deliberative assemblies to reconsider the action taken. In Reed's Parliamentary Rules, Section 202, it is said:

“Even if a measure has passed the ordeal of consideration, of debate and amendment, and of final passage by the assembly, it has not yet, in American assemblies, reached an end. It is subject to a motion to reconsider. In England the motion to reconsider is not known. If any error has been committed it is rectified by another act.”

And in Section 205 of the same work, it is said:

“A motion to reconsider must be made on the day on which the action sought to be revised was had, and before any action has been taken by the assembly in consequence of it.”

In Cushing's Manual, Section 255a, the following rule is stated:

“All deliberative assemblies have a right, during the same session, to reconsider any vote which they may have taken, and only the final result is operative.”

It is, however, the ordinary practice in the United States for assemblies to provide by rule for motions to reconsider. Thus, in Cushing's Manual, Section 257, it is said:

“It is usual, in legislative bodies, to regulate by a special rule the time, manner, and by whom a motion to reconsider can be made; thus, for example, that it shall be made only on the same or a succeeding day, — by a member who voted with the majority, — or at a time when there are as many members present as there were when the vote was passed; but, where there is no special rule on the subject, a motion to reconsider must be considered in the same light as any other motion, and subject to no other rules.”

Section 4750, General Code, authorizes boards of education to adopt such rules as they may deem necessary for their government. It does

not appear whether the Athens County Board of Education has adopted any rule with respect to motions for reconsideration and under similar circumstances it has been held by courts in this State and in opinions of two of my predecessors that reconsideration may be had at any time during the same session before rights vest or the situation changes.

In Opinion No. 465, found in Vol. I of the Opinions of the Attorney General for 1929, at page 682, the first paragraph of the syllabus reads:

“A motion to reconsider the action taken by a board of education may be made by a member thereof who voted with the majority at any time during the same session at which the original vote which it is sought to reconsider was taken, provided no rights have vested thereunder, in the meantime, although it be done at an adjourned meeting of the session.”

A similar conclusion was reached in Opinion No. 2946, found in Vol. II of the Opinions of the Attorney General for 1934, at page 1081. I quote the first paragraph of the syllabus of such opinion:

“A motion to reconsider the action taken by a board of education may be made by a member thereof who voted with the majority at any time during the same session at which the original vote which it is sought to reconsider was taken; provided no rights have vested thereunder in the meantime, although it be done at an adjourned meeting of the session.”

In *Adkins v. City of Toledo*, 6 O.C.C.(N.S.), 433, 17 O.C.D., 417, the rule was stated by the court in the third paragraph of the syllabus as follows:

“As a general rule, in the absence of any special rule upon the subject of the particular legislative body acting, a vote upon a reconsideration need not be taken either at the same or the next succeeding meeting, but may be taken at any time *before rights have intervened in pursuance of the vote taken, or before the status quo has been changed.*” (Emphasis mine.)

In *State, ex rel., v. The Board of Public Service*, 81 O.S., 218, 224, 225, it was said by Spear, J., in delivering the opinion of the court:

“That rule, well settled by numerous adjudications, is to the effect that the action of such bodies respecting legislative or administrative matters is not always conclusive and beyond recall, but that they are possessed of inherent power to reconsider their action in matters of that nature, and adopt if need be the opposite

course in all cases *where no vested right of others has intervened*, the power to thus act being a continuing power." (Emphasis mine.)

From these authorities, it may be deduced that deliberative assemblies in Ohio have the power to reconsider their actions at any time unless the status is changed or rights become vested. An analysis of the facts contained in your letter discloses that the Board of Education of the Glouster Exempted Village School District accepted the proposed transfer prior to the action of the County Board whereby it sought to rescind its former action. It is true, of course, that such transfer would not be complete until an equitable division of the funds and indebtedness of the two districts was made and until a map was filed with the County Auditor showing the territory transferred. Nevertheless, the action of the two boards resulted in rights becoming vested in the Board of Education of the Glouster Exempted Village School District and the status was unquestionably changed. When the rule, as announced in the authorities above cited, is applied to the question presented by you, it is clear that the action of the County Board of Education taken on October 10, was without effect. Consequently, if my assumptions of fact herein are correct, the transferred territory is now a part of the Glouster Exempted Village School District.

Respectfully,

THOMAS J. HERBERT,

Attorney General.