

jects mentioned is to be considered as a fee covering a preliminary examination relative to the eligibility of the applicant. It is true section 1373 G. C. provides certain qualifications required of persons practicing as public accountants, but such limitations would seemingly reach rather their right to practice accountancy than the right to be examined in the subjects specified in section 1374 G. C. Such reasoning however is not intended to warrant the assumption that the board of accountancy may not pass upon the eligibility of those applying for examinations, but it thought rather to strengthen the conclusion, that the twenty-five dollar fee indicated in section 1375 G. C. is an examination fee charged for the examination held by the state board of accountancy, for the purpose of determining the applicants' knowledge relative to the subjects specified, and which apparently do not include questions of the applicants' eligibility. Thus it would seem to follow that an applicant who is rejected by the board as ineligible to be examined, could not upon any equitable grounds be charged a fee for an examination which in turn he is prevented from taking by the action of the board of accountancy in the instance. Reading together therefore sections 1374 and 1375 G. C. it is thought rather that the paragraph reading "Such examination fee shall not be refunded, but an applicant may be re-examined without the payment of an additional fee within eighteen months from the date of his application" is intended to contemplate those cases where the applicant has been examined in the subjects mentioned in section 1374 G. C. and has failed to pass such an examination.

In support of the view expressed, attention is directed to a former opinion of this department, found in Opinions of the Attorney-General, 1913, Vol. I, page 922, wherein it is held, that where an application for an examination in accountancy is filed with the state board, accompanied by the required fee for such examination, and the applicant denied examination, the board should return to the rejected applicant the fee which he had deposited.

Concurring therefore with the views of my predecessor upon the subject considered, I am of the opinion that in cases where the applicant for examination in accountancy, has deposited with the state board the fee specified by section 1374 G. C. and has been precluded from the examination provided by section 1375 G. C. for reasons of ineligibility, said fee under such circumstances may not be retained by said board, but should in such cases be returned to the applicant.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2917.

SCHOOLS--TRANSFER OF TERRITORY UNDER SECTION 4696 G. C. FROM MORE THAN ONE DISTRICT--FOR MANDATORY TRANSFER PETITION SHOULD BE PRESENTED FROM EACH SCHOOL DISTRICT AND CONTAIN SEVENTY-FIVE PER CENT OF ELECTORS IN EACH SCHOOL DISTRICT.

*Where it is desired to transfer school territory under section 4696 G. C. and such school territory is taken from more than one school district, a petition (required for a mandatory transfer of such school territory) should be presented from*

*each school district and must contain at least seventy-five per cent of the electors in each school district residing in the territory proposed to be transferred.*

COLUMBUS, OHIO, March 9, 1922.

HON. JONATHAN E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

“A petition of which the following is a copy was presented to the County Board of Education of Henry County:

‘Petition for Transfer of Territory.

We, the undersigned legal voters do hereby petition the Henry County Board of Education to transfer the territory described below from the Henry County School District to the Wood County School District as provided in section 4696, General Code of Ohio:

The east 360 acres of the south three-quarters (S $\frac{3}{4}$ ) and the northeast quarter (NE $\frac{1}{4}$ ) of section thirty-six (36), Damascus township, town five north, range eight east, and the south 68.24 acres of the northeast one-fourth of section one (1), Richfield township, town four north, range eight east, all in Henry county, Ohio.

(Signatures of Seven Petitioners)”

The Henry County Board found that the petition was signed by more than seventy-five per cent of the electors residing in the territory to be transferred, which territory was a part of the Henry County School District. Thereupon a resolution was duly passed by said board transferring said territory. It was later ascertained by said board that *the territory described in said petition was a part of two separate rural school districts, to-wit, Richfield Township Rural School District and Damascus Township Rural School District, said Henry county, and while there was more than seventy-five per cent of the electors residing in the territory of the Richfield Township Rural School District, it did not contain seventy-five per cent of the electors residing in the territory of the Damascus Township Rural School District. Whereupon the Henry County Board of Education rescinded its action as to the transfer of the territory in the Damascus Township Rural School District and refused to order such transfer unless a separate petition were presented signed by more than seventy-five per cent of the electors residing in the territory of the Damascus Township Rural School District, sought to be transferred.*

Query: Was it mandatory upon the County Board of Education of Henry county to transfer the territory described in the petition, which was a part of the Henry County School District and contiguous to the Wood County School District, or is it necessary that the petition be signed by more than seventy-five per cent of the electors of the territory in each school district?”

Section 4696 G. C. upon which your inquiry is based and as amended in S. B. 102, 109 O. L., page 65, now reads:

“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."

This section and the manner of procedure thereunder and the rights of the petitioners as mentioned therein is very fully discussed in Opinion 2432, page 857, issued by this department on September 21, 1921, to the Superintendent of Public Instruction, the syllabus of such opinion reading as follows:

"1. Under the provisions of section 4696 G. C., for a county board of education to accept a transfer of territory from an exempted village school district, such transfer must be petitioned for by a majority of the electors residing in the territory to be transferred, and a resolution of the board of education of the exempted village district concerned, offering to yield such territory, is not sufficient basis for the county board of education's acceptance.

2. Under the provisions of section 4696 G. C., in order to make it obligatory for the county board of education to accept a transfer of school territory from an exempted village school district or a city school district, or another county school district, the petition presented from the school territory to be transferred must contain the signatures of seventy-five per cent of the electors residing in such school territory."

This opinion (No. 2432) was issued to the Superintendent of Public Instruction in reply to an inquiry in which the leading feature was the transfer of territory from an exempted village school district since transfers of territory to or from an exempted village school district fall within the provisions of section 4696 G. C. Thus, in considering section 4696 G. C. and in arriving at the conclusions set forth in opinion 2432, the question in mind was a transfer of territory under section 4696 G. C. *from a single school district to another school district* and not upon the question as to where a transfer was to be made from two school districts to another county school district as is apparently the case which you present. The use of the words "school territory" as appearing in opinion 2432 and also in the syllabus of such opinion therefore refers to the school territory which lies in a single district which it is desired to transfer to a city, exempted village, or county school district.

The first two sentences of 4696 G. C. in which your question really lies read 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."

It will be noted in the above section that the county board of education may transfer "a part or all of a school district of the county school district" and the section does not say "a part or all of a school district or two or more school districts." The county board of education may transfer a part of a *school district* of a county school district; or it may transfer *all of a school district* of the county school district. Here we have a clear inference that the transaction under 4696 G. C. where a petition for transfer is necessary is a transaction limited to a single school district, for "school district" is used in the singular and not in the plural sense. After using "school district" in the singular, we then have this language that "Upon petition of seventy-five per cent of the electors *in the territory proposed to be transferred.*" This latter sentence of section 4696 G. C. taken singly and alone does not of itself indicate what is the "territory proposed to be transferred" so it is necessary to read this sentence in conjunction with the first sentence of 4696 so that "the territory proposed to be transferred" is necessarily "a part or all of a school district of the county school district" and not a part of two school districts of the county school district, nor all of two school districts of the county school district. The reason for this is rather plain. In the case which you submitted, your statement shows that seven petitioners constituted more than seventy-five per cent of the electors residing in a piece of territory which as a whole was taken from Richfield rural school district and Damascus rural school district in Henry county. In other words, parts of two school districts joined in a single petition to the county board of education for the transfer in one transaction of a part of each of the two school districts. The petition presented contains more than seventy-five per cent of the electors residing in the territory of the Richfield township rural school district, but did not contain seventy-five per cent of the electors residing in the territory proposed to be transferred from the Damascus township rural school district. The intent in section 4696 G. C. as last amended is to take care of the rights and desires of the electors in a school district, hence the provision for the petition and the further provision for a mandatory transfer when seventy-five per cent of the electors sign the petition. In practical operation, if it could be held that seventy-five per cent of the electors residing in a territory set out in the petition and not all coming from one school district could mandatorily bring about such transfer under section 4696 G. C. then it would be possible for seventy-five per cent of the names, or practically all the names to come from one school district a portion of which decided to be transferred and by simply joining contiguous territory in another school district on their prepared map and name the same in the petition, they could force the school territory lying in the second district to be mandatorily transferred to another county school district when possibly a majority in the second rural school district did not desire to be transferred at all. A case might exist where in the first school district there was one kind of school condition, and in the adjoining, or second school district there was another kind of school condition. The electors in the part of the first named district might desire a transfer to another county school district, while the electors in the part of the second school district would not desire to leave their school district at all. In the first named district there might be no consolidation or centralization of schools or any tendency on the part of the local board of education to furnish transportation facilities, while in the second district it may have central-

ization or consolidation of schools with transportation furnished. It can hardly be contemplated that it was the intent of the General Assembly that where a school district or a portion of it was satisfied with its own local school procedure, that a corner of such school district could be mandatorily transferred to another county school district by being attached on a map to a portion of a contiguous school district and a petition presented for transfer under section 4696 G. C. where the petitioners very largely came from the other district, and the required number in the local district itself showed no desire to be transferred. To all appearances this would be taking advantage of electors in a second district by simply placing them on a map as attached territory to be considered and adding them as a part of the territory described in the petition and taking from them the right of local representation on an educational matter of this kind.

In reply to your inquiry, then, you are advised that it is the opinion of this department that:

Where it is desired to transfer school territory under section 4696 G. C. and such school territory is taken from more than one school district, a petition (required for a mandatory transfer of such school territory) should be presented from each school district and must contain at least seventy-five per cent of the electors in each school district residing in the territory proposed to be transferred.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

2918.

SCHOOLS — CHIEF ARCHITECT — SUPERINTENDENT OF SCHOOLS — EXPENSES IN ATTENDING CONVENTIONS NOT LEGAL PRIOR TO CREATION OF SERVICE FUND IN SECTION 7704 G. C. (109 O. L. 589) — EXPENSES PAID FOR ENTERTAINING NATIONAL EDUCATIONAL ASSOCIATION ILLEGAL — ALSO PLACING MONEYS IN HANDS OF AN OFFICER OR EMPLOYEE TO PAY CLAIMS AGAINST BOARD OF EDUCATION ILLEGAL — HOW WARRANTS TO PAY VALID CLAIMS SHOULD BE ISSUED — CITY OF CLEVELAND.

1. *The expenses of the chief architect or of the superintendent of schools made in attending meetings of conventions, educational or otherwise, prior to the amendment of section 7704 G. C. could not legally be paid from the funds of the school district, but since amendment effective September 7, 1921, under the conditions imposed, such expenses may be paid from the service fund of a city school district.*

2. *Expenses paid for entertaining the National Educational Association at its meeting in the city of Cleveland is an unauthorized use of a school fund and illegal.*

3. *Placing cash in the hands of an officer or employe of a city board of education other than the treasurer, out of which to pay claims against the board before or after such claims are properly approved, is unauthorized and illegal.*

4. *A duty of the clerk or of the director of schools is the issuing of warrants for the payment of claims properly approved by the board of education or its auditor. Such officials are clothed with no discretion in the issuance of warrants to*