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1. TRANSFER, TERRITORY FROM ONE SCHOOL DISTRICT TO ANOTHER SCHOOL DISTRICT — TO BE LAWFUL MUST BE DONE IN PURSUANCE OF PLANS FOR TERRITORIAL ORGANIZATION OF SCHOOL DISTRICTS — SECTION 4831 ET SEQ., G. C., EFFECTIVE SEPTEMBER 16, 1943.
2. HOUSE BILL 217, 95 GENERAL ASSEMBLY — SINCE EFFECTIVE DATE, NO AUTHORITY TO TRANSFER SCHOOL TERRITORY, CREATE NEW DISTRICTS OR ABOLISH FORMER ONES UNTIL ADOPTION AND CONSUMMATION OF PLANS TO ORGANIZE SCHOOL DISTRICT TERRITORY — THEREAFTER, NO CHANGE MAY BE MADE EXCEPT BY STATUTORY COMPLIANCE.
3. DUTY OF COUNTY BOARD OF EDUCATION TO CARRY OUT PROCEDURAL STEPS FOR BI-ANNUAL PLAN OF TERRITORIAL ORGANIZATION, ADOPTION AND CONSUMMATION — REASON, TO PRESERVE AND PROTECT RIGHT OF PROTEST — SECTION 4831-3 G. C.
4. STATUS, TRANSFER PART OF DISTRICT "A" TO DISTRICT "B" — "DISTRICT AFFECTED" — "ALL THE TERRITORY" PROTEST TO BE EFFECTIVE SHOULD BE SIGNED BY 51% OF ELECTORS IN AREA, TAKEN AS A WHOLE, COMPRISING ALL TERRITORY OF BOTH DISTRICTS "A" AND "B".
5. WHERE PLAN PROVIDES FOR INCORPORATION IN DISTRICT "A" OF ALL TERRITORY OF DISTRICT "B", ANY PROTEST FILED MUST BE SIGNED BY AT LEAST 51% OF ALL ELECTORS RESIDING IN COMBINED AREA OF BOTH DISTRICTS "A" AND "B".
6. PROCEDURE WHERE TRANSFER, PART OF DISTRICT "A" TO DISTRICT "B", ANOTHER PART TO DISTRICT "C" AND STILL ANOTHER PART TO DISTRICT "D" THUS ELIMINATING DISTRICT "A".
7. NEW SCHOOL DISTRICT CREATED BY CONSOLIDATION, TWO OR MORE EXISTING DISTRICTS, PROTEST TO BE EFFECTIVE MUST BE SIGNED BY AT LEAST 51% OF RESI-

DENT ELECTORS IN AREA INCLUDED IN SUCH PROPOSED CONSOLIDATION.

8. WHEN PLAN OF SCHOOL DISTRICT ORGANIZATION DOES NOT PROVIDE FOR CHANGES IN SCHOOL DISTRICT BOUNDARIES AND PROTEST IS FILED FOR FAILURE TO CHANGE BOUNDARY LINES, PROTEST SHOULD BE SIGNED BY AT LEAST 51% OF RESIDENT ELECTORS IN AREA COMPRISING EACH AND ALL OF SCHOOL DISTRICTS THAT MAY BE AFFECTED.
9. STATUS, PLAN OF TERRITORIAL ORGANIZATION ADOPTED AND THEN SUBMITTED TO SUPERINTENDENT OF PUBLIC INSTRUCTION — PROTEST — RECONSIDERATION — APPROVAL BY SUCH SUPERINTENDENT.
10. WHEN COUNTY BOARD OF EDUCATION OF NEW DISTRICT MUST PERFORM DUTIES — ELECTION — NEXT REGULAR ELECTION FOR MEMBERS HELD IN ODD NUMBERED YEAR — BOARD OF FIVE MEMBERS ELECTED TO SERVE FOUR YEARS.
11. NEW SCHOOL DISTRICT CREATED BY COMBINING TWO EXISTING DISTRICTS, ONE HAD UNEXPIRED VOTED TAX LEVY OUTSIDE TEN-MILL LIMITATION, TAXING AUTHORITY OF NEWLY CREATED DISTRICT MAY LAWFULLY SPREAD SAID VOTED LEVY OVER ALL TERRITORY OF CONSOLIDATED DISTRICT.
12. TWO SCHOOL DISTRICTS CONSOLIDATED — TAX LEVIES WHICH HAD BEEN MADE OUTSIDE THE TEN-MILL LIMITATION FOR RETIREMENT OF BONDS IN ONE DISTRICT MAY BE SPREAD OVER ENTIRE COMBINED DISTRICT EVEN THOUGH DEBT HAS BEEN CONTRACTED IN ONLY ONE DISTRICT.
13. IF PROPER PETITION FILED WITH REQUEST TO INCLUDE IN FORTHCOMING PLAN CERTAIN TRANSFERS OF TERRITORY FROM LOCAL SCHOOL DISTRICT TO ADJOINING COUNTY SCHOOL DISTRICT, AND PETITION IS FILED ON OR BEFORE MARCH FIRST IN EVEN NUMBERED YEAR, IT IS DUTY OF COUNTY BOARD OF EDUCATION

TO INCLUDE SUCH REQUESTED TRANSFER OF TERRITORY IN SAID PLAN, EVEN THOUGH BOARD MAY HAVE PREVIOUSLY ADOPTED ITS PROPOSED BIENNIAL PLAN OF ORGANIZATION AND IT MAY BE NECESSARY TO CALL A SPECIAL MEETING AND RECONSIDER, AMEND AND RE-ADOPT SAID BIENNIAL PLAN.

14. WHERE COUNTY BOARD OF EDUCATION INCLUDED IN PLAN OF TERRITORIAL ORGANIZATION, TRANSFER OF TERRITORY REQUESTED IN PETITION FILED WITH COUNTY BOARD OF EDUCATION SIGNED BY 75% OF ELECTORS OF TERRITORY, OR OF ITS OWN VOLITION, THE RIGHT OF PROTEST IS NOT FORECLOSED, NOR IN ANY WAY AFFECTED — RIGHT OF PROTEST MUST BE PRESERVED.

SYLLABUS:

1. A transfer of territory from one school district to another school district may not lawfully be made until it may be done in pursuance of plans for territorial organization of school districts as provided for by Section 4831, et seq. of the General Code, which became effective on September 16, 1943.

2. Since the effective date of House Bill No. 217, of the 95th General Assembly, no authority exists for the transfer of school district territory or the creation of new districts or the abolition of former ones, until the adoption and consummation of plans for organization of school district territory as provided for by Section 4831, et seq. of the General Code, and thereafter no change in school district territory may be made except in compliance with the directions therein contained.

3. Even though a county board of education may not contemplate making any changes in territorial organization of school districts upon the adoption of its bi-annual plan of territorial organization as provided by Section 4831, et seq. General Code, it is the duty of the board to carry out the procedural steps provided for by the pertinent statutes for the adoption and consummation of such plan if for no other reason than for the preservation and protection of the right of protest as provided by Section 4831-3, General Code.

4. Where a plan of organization for school district territory adopted by a county board of education provides for the transfer of a part of district "A" to district "B", the "districts affected" by such a transfer, as that term is used in Section 4831-3, General Code, is all the territory of district "A" and all the territory of district "B". In order that a protest which might be filed against such a transfer would be effective, it should be signed by 51% of the electors residing in the area taken as a whole, comprising all the territory of both districts "A" and "B".

5. Where an adopted plan of organization for school district territory provides for the incorporation in district "A" of all the territory of district "B" and it is desired to effectively protest against such an arrangement, it will be necessary that the protest filed in pursuance of Section 4831-3, General Code, be signed by at least 51% of all the electors residing in the combined area of both districts "A" and "B".

6. Where an adopted plan of organization provides for the transfer of a part of district "A" to district "B", another part to district "C", and still another part to district "D", thereby entirely eliminating district "A" by providing for the transfer of all its parts to adjoining districts, an effective protest thereto should be signed by not less than 51% of the resident electors residing in the area comprising all the territory of districts "A", "B", "C" and "D" taken as a whole.

7. When a new school district is created by consolidation of two or more existing districts, a protest thereto filed in pursuance of Section 4831-3, General Code, signed by less than 51% of the resident electors in the area included in such consolidation is not effective to defeat the action taken creating the new district.

8. When, upon the adoption of a plan of school district organization by a county board of education in pursuance of Section 4831, et seq. of the General Code, which does not provide for changes in school district boundaries and a protest thereto is filed for failure to change boundary lines as authorized by Section 4831-3, General Code, the protest, in order to be effective, should be signed by at least 51% of the resident electors in the area comprising each and all of the school districts which would be affected if the boundary lines were changed as desired by the protestants.

9. When a plan of territorial organization is adopted by a county board of education in pursuance of Section 4831, General Code, proper procedural steps thereafter taken and the plan is submitted to the Superintendent of Public Instruction and approved by him with or without modification and no protest is made to the action of the Superintendent of Public Instruction, whereupon the plan becomes final as provided by Section 4831-8, General Code, so far as the procedure thus far taken is concerned, no changes involving transfers of territory may thereafter be made in said plan of organization by reconsideration on the part of the county board of education, or otherwise, without the approval of the Superintendent of Public Instruction.

10. When a new local school district is created in the process of consummating plans of organization for county school district territory as provided by Section 4831, et seq. of the General Code, the county board of education in which such district is located must perform the duties of the board of education of such new district so created until a board of education therefor is duly elected at the next regular election for members of boards of education held in an odd numbered year and its members have qualified, at which time a board of five members shall be elected for such district to serve for four years.

11. Where a county board of education, by authority of Section 4831, et seq. of the General Code, creates a new school district by combining into one district all the territory of two existing districts, one

of which had an unexpired voted tax levy outside the ten-mill limitation, the taxing authority of the newly created district may lawfully spread the said voted levy over all the territory of the consolidated district.

12. When two school districts are consolidated in pursuance of plans for school district territorial reorganization, as provided by Section 4831, et seq. of the General Code, tax levies which had been made outside the ten-mill limitation for the retirement of bonds in one of the districts may be spread over the entire combined district even though the debt had been contracted in one of the districts only.

13. If a proper petition is filed with a county board of education requesting the inclusion in a forthcoming plan of territorial organization of certain proposed transfers of territory from a local school district within the county school district to an adjoining county school district, under and in pursuance of Section 4831-13, General Code, and the said petition is filed on or before March first in an even numbered year, it is the duty of the county board of education to include such requested transfer of territory in the said forthcoming plan of territorial organization, even though the county board of education may have previously adopted its proposed biennial plan of organization and it may, therefore, be necessary, in some instances, to call a special meeting of the county board of education and reconsider, amend and re-adopt the said biennial plan of organization.

14. Where a county board of education includes in its plan of territorial organization adopted in pursuance of Section 4831, et seq. of the General Code, a transfer of territory requested in a petition filed with the county board of education signed by 75% of the electors residing in the territory sought to be transferred, or of its own volition, as provided by Section 4831, General Code, the right of protest provided for by Section 4831-3, General Code, is not foreclosed, nor is it affected in any way. The right of protest must be preserved.

Columbus, Ohio, February 19, 1944

Hon. Kenneth C. Ray, Superintendent of Public Instruction  
Columbus, Ohio

Dear Sir:

I am in receipt of your recent letter submitting for my consideration a number of questions relating to the law pertaining to school district organization, which reads as follows:

“We are confronted with many requests for interpretation of the sections of the statutes which prescribe the procedure for planning territorial organization of school districts, namely Sections 4831 and 4831-1 to 4831-14, inclusive, of the General Code. Pursuant to such requests, we are submitting the following questions for formal opinion:

1. The county board of education of \_\_\_\_\_ county desires to transfer at this time a small section of territory, consisting of one farm, from one local school district under its supervision to another local district under its supervision. Can such proposed transfer be made legally at this time, or must the county board of education defer action and include the proposed transfer in the plan of territorial organization adopted in accordance with the provisions of section 4831?

2. Sections 4831 and 4831-1 prescribe what shall be included in a plan of territorial organization. Where a county board of education does not contemplate changing any of the boundaries of the school districts under its supervision what action is required in order to comply with the provisions of sections 4831 and 4831-4?

3. a. Where a plan of organization adopted by a county board of education provides that a part of the territory of district "A" shall be transferred to district "B", what territory comprises the territory referred to in the last paragraph of section 4831-3 as 'the local school district or districts so affected'? In what area or areas must 51% or more of the resident electors sign the protest in order to make it effective?

b. An adopted plan of organization prescribes the transfer of all of the territory of district 'A' to district 'B'. Fewer than 51% of the electors residing in district 'A' but more than 51% of the electors residing in district 'B' sign a protest against the proposed change and file such protest with the county board of education. Does such protest defeat the proposal to transfer the territory of district 'A' to district 'B'?

c. An adopted plan of organization provides for the elimination of district 'A' as a separate school district, by transferring one portion of the territory to district 'B', another portion to district 'C' and the remaining portion to district 'D'. A protest against such change filed with the county board of education is signed by 51% of the electors residing in the territory proposed to be transferred to district 'B' and by 51% of the electors residing in the territory proposed to be transferred to district 'C'. Of the resident electors in that part of the territory proposed to be transferred to district 'D' fewer than 51% signed the protest. The total number of signers to the protest does not represent 51% of the total resident electors in district 'A'. What is the legal effect of the protest?

d. An adopted plan of organization provides for the creation of a new school district by consolidating all of the territory of two local districts, 'A' and 'B'. Signers to a protest against such change filed with the county board of education represent more than 51% of the resident electors of district 'A' but fewer than 51% of the resident electors in district 'B'. The total number of signers to the protest represents fewer than 51% of the total number of resident electors in districts 'A' and 'B'. What is the effect of the protest?

e. Section 4831-3 authorizes any group of electors of a local school district to file with the county board of education a protest relating to the failure to change boundary lines of the district wherein the electors reside. What is the legal effect of such protest signed by 51% or more of the electors of a local district?

4. a. Section 4831-8 provides that where no protest to a plan of territorial organization as approved by the superintendent of public instruction has been filed within the 15 day period allowed by statute for the filing of objections, then such approved plan becomes final. Since the statutes contain no provision for a county board of education to submit a revised plan of organization, what is the meaning of that part of the concluding sentence of Section 4831-8 which holds that no territory shall be transferred except in accordance with such plan of organization 'unless such transfer has the approval of the superintendent of public instruction'?

b. Where the 15-day protest period referred to in question 4 (a) has expired and no protest to the plan of organization as approved by the superintendent of public instruction has been filed, by what authority may the superintendent of public instruction approve a transfer of territory other than one included in the approved plan of organization? What procedural steps would be necessary in such action?

5. Where a county board of education, after all of the required preliminary procedural steps have been complied with, creates a new school district by uniting all of the territory of two or more school districts, what authority does the county board have to appoint a board of education for the newly created district? If the county board does not have authority to appoint a board of education for such newly created district, how will a board of education for the district be established?

6. A county board of education, after all of the required preliminary procedural steps have been complied with, creates a new school district by combining into one district all of the territory of two school districts.

a. One of the districts has a voted tax levy for current operating expenses, which levy is outside of the 10-mill constitutional limitation and has several years to run. May the taxing authority of the new district extend such voted levy to all of the territory of the newly created district?

b. One of the districts has outstanding bonds and prior to the issuance of such bonds had voted a levy therefor outside of the 10-mill constitutional limitation. Is it the duty of the taxing authority of the new district to levy outside of such limitations, upon all of the property of the new district, a uniform rate of taxation sufficient to pay for such bonds and the interest thereon?

7. If, in compliance with the provisions of Section 4831, a county board of education adopts a plan of territorial organization

at its regular monthly meeting in February 1944, which meeting is the last regular meeting of the board prior to the first Monday in March, and then subsequent to the adoption of the plan of territorial organization but prior to March 1, 1944, there is filed with the county board, under the provisions of section 4831-13 a petition requesting the transfer of certain territory from a local school district within the county school district to an adjoining county district which petition is signed by 75% of the qualified electors residing within the territory proposed to be transferred, what is the duty of the county board of education with regard to such petition?

8. Where a county board of education, pursuant to the provisions of Section 4831-13, includes in the plan of territorial organization adopted in compliance with the provisions of section 4831 a transfer of territory requested in a petition filed with the county board in accordance with the provisions of section 4831-13, which petition is signed by 75% of the qualified electors residing within the territory proposed to be transferred, what is the effect upon such proposed transfer of territory, of a protest signed by 51% or more of the electors of the affected districts and filed with the county board of education under the provisions of section 4831-3?"

In furtherance of the constitutional mandate contained in Sections 2 and 3 of Article VI of the Constitution of Ohio to provide by law a thorough and efficient system of common schools throughout the state and to provide for the organization, administration and control of the public school system, there have been enacted and have been in force for many years laws providing for the the organization of the public school system by districts, each created and governed for the most part locally, in accordance with a plan provided for by general laws enacted by the Legislature of Ohio. Such districts and their administrative bodies are purely creatures of statute.

The boundaries of school districts may be changed from time to time under general laws. Such districts may be abolished or dissolved at the will of the Legislature either with or without the consent of the district or the inhabitants or residents or electors within the district. Changes of boundaries of school districts have occurred under general laws by reason of consolidation of districts, creation of new districts from all or parts of two or more existing districts, the transferring of all or part of one district to another, and otherwise. When such changes of boundaries have taken place, in some instances a district was transferred in part or in entirety to another district, thereby causing one or more districts to be absorbed in another district and the former dis-



tract or districts to be dissolved and the powers and duties of their boards of education to be transferred in part or in entirety to boards of another district or other districts. Many questions arose with respect to adjustment of assets and liabilities among the districts involved and with respect to the powers and duties of local governmental agencies before and after such changes of boundaries are effected.

The frequency of changes in school district organizations was noted by the Supreme Court of Ohio in an early case, decided in 1859, wherein mention was made of earlier laws with reference to the subject enacted in 1849 and 1853. See *Canton Union School v. Meyer*, 9 O. S. 581. At page 586 of this report, it is stated:

“It has always been the policy of our school laws to provide for changes in boundaries of school districts, and thus by giving flexibility to the system, to adapt it to the ever-varying wants of a growing country, in which the convenience of the present can but faintly indicate the necessities of the future.”

In *Board of Education v. Boehm*, 102 O. S. 292, decided in 1921, the late Judge Robinson, speaking for the court, said on page 299:

“The fact that almost each succeeding general assembly has seen fit to revise or repeal the school legislation of its predecessor is instructive only in its emphasis of the fact that any system thus far discovered and adopted has failed to give general satisfaction. The whole structure having been built piecemeal by different legislators living at different times under different conditions and having in view different standards of attainment, the usual result has followed, to-wit, an inconsistent, inharmonious, and in some respects unintelligible code governing the powers and duties of boards of education; \* \* \* .”

In an attempt to render the school legislation then in force, more consistent, harmonious and intelligible, the 95th General Assembly enacted, what purports to be a comprehensive Ohio School Code, House Bill No. 217, which, as stated in its title, is “An Act to provide for the recodification and revision of the laws of Ohio relating to the public schools.” This act is sometimes popularly referred to as the “Ohio School Code”, and became effective September 16, 1943. In this legislation there were contained Sections 4831 to 4831-14, General Code, relating to territorial organization of school districts, reference to which is made by you in your inquiry.

The subject matter involved in the statutes mentioned above is

all pertinent to the several questions submitted by you. I shall, therefore, consider these questions in their order.

1. Immediately prior to such enactment there were in force Sections 4692, 4696 and 4736, General Code, which were thereby repealed. These statutes, by their terms, made provision for transfers of school territory or changes of boundaries as between city, exempted village or county school districts and local districts within county districts. Section 4692, General Code, expressly provided for transfers of territory from one local school district of a county school district to another local district of the same county school district or to an adjoining county district, whereupon any territory involved in the latter class of transfer might be attached to a contiguous district.

In the enactment of such school code, the General Assembly made new provisions with respect to the territorial organization of local school districts within a county, which provisions are contained in Sections 4831 to 4831-14 of the General Code. Section 4831 of the General Code reads as follows:

“On or before the first Monday in March in the year 1944 and on or before the first Monday in March in every even numbered year thereafter each county board of education shall, by a majority vote of its full membership, adopt a plan of territorial organization of the school districts under its supervision. Such plan of organization shall prescribe such transfers of territory, elimination of local school districts, and creation of new school districts which, in the opinion of the county board of education, will provide a more economical or efficient county school system.”

In view of the fact that the Legislature repealed the former provisions of law authorizing isolated transfers of territory from one district to another and has now provided for transfers only by the adoption of a plan of territorial organization of all the territory within the county biennially during the even numbered years, it would seem that transfers may be now made only as provided in Section 4831, et seq. of the General Code. No statutory provision now exists for the transfer of territory from one school district to another in any other manner. It follows that a transfer of school territory from one local district of a county school district to another local school district therein can not lawfully be made until such proposed transfer is included in a plan of territorial organization provided for by Section 4831, et seq. Gen-

eral Code, and the plan becomes operative and is carried out and such proposed transfer becomes final and effective in accordance with the terms of Section 4831-12, General Code.

2. It will be observed that the requirement of Section 4831 of the General Code is that on or before the first Monday of March, 1944 and on the first Monday of March in each of the even numbered years thereafter, the county board of education shall adopt a plan of territorial organization of the school districts under its supervision. Under the terms of such section it is not necessary that there be any transfer of territory from one district to another, unless the county board of education shall have found that such transfer will provide a more economical or efficient county school system. The mandatory language is that the plan must be adopted at that time. From such adoption of a plan, Section 4831-3 of the General Code provides that:

“Any group of electors, qualified to vote in territory within the territorial boundary lines of the county school district, may, at any time prior to the second Monday in April, following the adoption of the plan of organization by the county board of education, file with the county board of education a protest relating to the change or failure to change boundary lines of any local school district within the county school system, wherein said electors reside.

Such protest shall be in writing, signed by the electors making such protest, specifically setting forth the nature of the protest together with the reasons therefor and shall be in duplicate.

If such protest so filed be signed by 51% or more of the electors of the local school district or districts so affected, then the county board of education and the superintendent of public instruction shall not have the authority to adopt the plan of reorganization proposed so far as the said local school district or districts protesting are concerned.”

The fact that the Legislature made this provision clearly manifests an intent, in my opinion, that it is the intent of the law that county boards of education should provide for carrying through the procedure outlined in the statute for the adoption of a plan of territorial organization of school districts in each county school district as provided for by Section 4831, et seq. of the General Code, even though no change of boundary lines is contemplated and none is adopted. The right to protest is equally as forthright as it may relate to a failure to change boundaries as to the changing of boundaries and it is made manifest

that it was not intended to be a half-hearted informal wordy objection or protest by the terms of Section 4831-3, General Code, wherein it is provided:

“Such protest shall be in writing, signed by the electors setting forth the nature of the protest together with the reasons therefor and shall be in duplicate.”

3. Section 4831-3, General Code, after providing for the filing of protests relating to change of boundaries or failure to change boundaries, provides as follows:

“If such protest so filed be signed by 51% or more of the electors of the local school district or districts so affected, then the county board of education and the superintendent of public instruction shall not have the authority to adopt the plan of reorganization proposed so far as the said local school district or districts protesting are concerned.”

By the terms of the third branch of your inquiry, quoted above, there is raised the question of the import and effect of the language used in the statute, where the expression, “the local school district or districts so affected”, is used with respect to the filing of protests relating to change of boundaries or failure to change boundaries.

A similar expression in almost identical language and relating to a very similar subject matter has been contained in statutory enactments for a number of years. In 1915, Section 4736, General Code, was enacted (106 O. L. 397). It was later amended in 1919 (108 O. L., Pt. I, p. 707) and as so amended, has been in force until its repeal in 1943. At all times since its enactment in 1915, such section has contained provisions for the change of boundaries within county school districts and for the creation of new districts from all or parts of existing districts, subject to objection or remonstrance of a majority of the resident electors of the “territory affected”. The import of the language thus used has been the subject of inquiry in a number of cases and we may safely assume that the effect attributed to the language as used in prior Section 4736, General Code, would no doubt be followed in the interpretation of present Section 4831-3, *supra*. One of the clearest of the cases in which this question was involved is the case of *Durst, et al. v. State, ex rel.*, 119 O. S. 262. In that case it appeared that a new district was created in the Trumbull County School District under and in pursuance

of Section 4736, General Code. The new district was composed of all the territory of what was formerly Bazetta Rural District and contiguous parts of Howland and Warren Township Rural Districts. A written remonstrance was filed with the county board of education against the creation of the new district. This remonstrance contained the signature of a majority of all the qualified electors of the Bazetta District and a majority of all the electors in each of the tracts taken from Howland and Warren Townships, respectively. The remonstrance did not contain the signatures of any electors in those portions of Howland and Warren Townships not included in the newly created district. Neither did the total number of electors whose signatures appeared on the remonstrance constitute a majority of all the electors of the old rural district and the former Howland and Warren Township Districts.

The court held that the remonstrance was insufficient and that in order to defeat the creation of the new district it should have contained the signatures of a "majority of all the electors of the Bazetta Rural School District and of all the electors of Howland and Warren Townships". See also *The State, ex rel. Groes v. Howard, Treasurer*, 101 O. S. 532, and Opinions of the Attorney General for 1924, page 559.

By applying the principles of the Durst case and the findings of the court therein, the following conclusions with respect to the concrete questions submitted will be reached with respect to branches a., b., c., d., and e. of your third question.

a. Where a plan of organization of school district territory as adopted by a county board of education under and in pursuance of Sections 4831, 4831-1 and 4831-2, General Code, provides that a part of the territory of District "A" be transferred to District "B", the "districts affected" by such a proposed transfer, as the term is used in Section 4831-3, General Code, is all the territory embraced within the combined area of present Districts "A" and "B".

In order to effectively protest against the transfer under such circumstances, it is necessary that the protest be signed by 51% or more of the electors residing in both Districts "A" and "B", taken as a whole.

b. Where a proposed plan of organization for a county school district provides for the transfer of all the territory of present District "A" to District "B", it is necessary that an effective protest thereto be signed by 51% or more of all the electors residing in the area embraced

within present Districts "A" and "B". It is impossible to categorically answer the concrete question submitted posed in your request numbered "3 b". The answer depends to some extent on the relative number of electors residing in Districts "A" and "B". A protest signed by less than 51% of the qualified electors residing in the territory affected, which is all the territory of both "A" and "B" districts, is not effective to defeat the proposed plan.

c. When a plan of organization for a county school district adopted in pursuance of Section 4831, et seq. of the General Code, provides for the elimination of existing District "A" by transferring a portion of it to District "B", another portion to District "C" and the remaining portion to District "D", the proposed plan may not be defeated except by the filing of a protest signed by 51% or more of the resident electors of the entire area of former District "A", District "B", District "C" and District "D" taken as a whole as each of those districts is affected by the proposed reorganization.

d. When an adopted plan of reorganization for a county school district provides for the creation of a new school district by consolidating all the territory of two local districts, the same principles with respect to an effective protest to defeat the proposal apply as do in cases considered under branches a., b. and c. referred to above. An effective protest to defeat such a proposal must be signed by 51% or more of the resident electors of the combined area embraced in both of the districts which it is proposed to consolidate.

e. Under the terms of Section 4831-3, General Code, a protest relating to a failure to change boundary lines should specifically set forth the "nature of the protest together with the reasons therefor". It ought not to be difficult, upon consideration of such a protest, to determine what districts are affected by a failure to change the boundary lines that the protestants have in mind. Having determined the districts that would be affected by a failure to change boundary lines, if the boundary lines are changed to satisfy the protest, it is only necessary to apply the law to the situation, bearing in mind that in order to defeat a proposed plan of organization or part thereof adopted in pursuance of Section 4831, General Code, it is necessary that a protest signed by 51% or more of the resident electors in the territory affected be filed with the county board of education.

4. After proceedings for the adoption of a plan of school district territorial organization are instituted in pursuance of Section 4831, General Code, and such tentative plan is thereupon adopted by a county board of education, followed by the taking of the proper procedural steps outlined in the succeeding statutes in furtherance of the plan until it is submitted to the Superintendent of Public Instruction, it is then provided with respect thereto by Section 4831-6, General Code, that on or before the second Monday of August in each even numbered year, the Superintendent of Public Instruction shall approve, with such modifications as he deems proper, each such plan of organization so submitted to him, and not later than the first Monday of September of each even numbered year, he shall notify the county board of education in writing of the action taken by him, including any modification of the plan made by him, and his reasons for so doing.

Section 4831-7, General Code, provides, that within fifteen days after the receipt from the Superintendent of Public Instruction of an approved plan, the county board of education shall notify in writing the local boards under its supervision of the decision of the Superintendent of Public Instruction relative to the plans of territorial organization which had been submitted to him, including any modifications he may have made, and his reasons therefor.

From the terms of Section 4831-8, General Code, it appears that if, after the action taken by the Superintendent of Public Instruction, the county board or any interested local board of education has any objection to modifications in the plan that may have been made by the Superintendent of Public Instruction, the county board or any local board may, within fifteen days after receiving notice of such modifications, object thereto and request a hearing thereon. Said Section 4831-8, General Code, provides further:

“If no protest to the plan of territorial organization of local school districts is filed with the superintendent of public instruction within the time provided by this section such plan shall be final and no territory shall be transferred except in accordance with such plan of organization unless such transfer has the approval of the superintendent of public instruction.”

Inasmuch as the statute provides that when no protest is filed to the plan of organization as approved by the Superintendent of Public Instruction at the stage of the proceedings noted above, the plan shall

be final, and, as you state no statutory authority exists for the county board to submit a revised plan, it is somewhat difficult to understand just what the Legislature may have meant by the provisions in Section 4831-8, General Code, to the effect that when no protest is filed and the plan thereupon becomes final, no territory may be transferred thereafter unless it has the approval of the Superintendent of Public Instruction.

It might be urged that it was the intent of the General Assembly to give the county board of education the right to reconsider the plan of organization which it had adopted under authority of Section 4831, General Code, even after its submission to the Superintendent of Public Instruction under authority of Section 4831-4 of the General Code, at any time prior to the actual transfer of territory as provided in Section 4831-12 of the General Code, and to permit such alteration of the plans, as approved or modified by the Superintendent of Public Instruction, provided that such alteration of plans has the approval of such Superintendent of Public Instruction. Whatever may have been the intention of the General Assembly by the use of such phrase, it is patent that the change of plans may not be made unless approved by the Superintendent of Public Instruction.

If a reconsideration of the action of the county board should be brought about as mentioned above, and a change in the plan is made, it should be submitted to the Superintendent of Public Instruction for his approval or disapproval, as the case may be, and the same proceedings taken as are authorized in the first instance.

It is impossible to state categorically what changes may be made by the county board after the original approval of the plan of reorganization by the Superintendent of Public Instruction inasmuch as such question can only be determined by a consideration of specific facts, including the notice given as to such changes to affected electors and afford to them an opportunity for protest. I am unable, with the information presently available, to form or express any opinion thereon.

5. By virtue of Section 4831, et seq. of the General Code, as enacted in House Bill No. 217 of the 95th General Assembly, power is extended to county boards of education to adopt and consummate plans of organization for school district territory within each county school district. It is provided in Section 4831, General Code, that:



“Such plan of organization shall prescribe such transfers of territory, elimination of local school districts and creation of new districts which in the opinion of the county board of education will provide a more economical and efficient county school organization.”

In carrying out a plan thus provided for, it is possible that the plan may become final as mentioned in Section 4831-8, General Code, in the latter part of August or near the first of September, 1944, or each succeeding even numbered year. If objection is made to a plan approved by the Superintendent of Public Instruction under and in pursuance of Section 4831-6, General Code, and a hearing demanded and held as provided by the statute, the plan may not become final until some time later. When such a hearing is demanded, it is possible that the hearing may not take place until as late as the third Monday in November (Section 4831-9, General Code) and final approval of the Superintendent of Public Instruction may not be for sixty days later. Such a finally approved plan, with respect to which no changes may be thereafter made (Section 4831-11, General Code), may not be made effective and proper notices given, resolutions adopted and maps filed until the early part of 1945, or in the next succeeding year to an even numbered year when the proceedings were first begun. It is apparent that when a plan of organization provides for the creation of a new district, such a district may not come into being until the beginning of the next calendar year after the plan is first started and in no case earlier than September of the same year in which the plan was initiated.

In providing for or authorizing the creation of new districts no express provision is made for the appointment of officials or governing boards for such new districts that may be so created or established. Section 4832, General Code, provides that boards of education in districts, other than city districts, shall consist of five members who shall be electors residing in the territory comprising the district and elected at large therein, for a term of four years. Section 4785-4, General Code, provides that general elections for members of boards of education shall be held in the odd numbered years. A school district that was created in September of an even numbered year or in the early part of an odd numbered year could not be provided with a board of education by election until the next election held in an odd numbered year as no provision is made for a special election for the purpose.

When a new school district comes into existence in an even num-

bered year or before an election in an odd numbered year it must, of necessity, be without a governing board of its own until after the annual election occurring in the odd numbered year at which a new board is to be elected. Since a school district may be operated only by a board of education, we must examine the provisions of statute to determine whether the Legislature has made provision for the appointment of a temporary board, and if not, whether authority has been granted to any other person or board to act in lieu thereof until a board of education therefor may be elected and qualified.

Section 4832-10 of the General Code authorizes a board of education to fill a vacancy in its membership by a vote of the majority thereof. Such section is clearly inapplicable to your inquiry for if no board has yet come into existence, no majority thereof can exist.

Section 4846 of the General Code provides in part that:

“ \* \* \* If the board of education of any local school district fails to perform the duties imposed upon it by law or fails to fill a vacancy in such board within a period of thirty days after such vacancy occurs, the county board of education in which such district is located, upon being advised and satisfied of such failure shall act as such board of education and perform all duties imposed upon such board by law.”

Former Section 7610-1 of the General Code authorized county boards of education to perform certain functions on behalf of local boards of education, including that of filling vacancies in local boards, and performing other functions of the board in the event of its inability to act. It appears significant that in the amendment or recodification of the school laws, the General Assembly has not given to county boards of education specifically the right to appoint boards of education, but has granted to them the right to “act as such board of education and perform all duties imposed upon such board by law”. There is a well established rule of law that when the Legislature amends or recodifies a statute and in so doing changes the language thereof, the amended statute shall be so construed as to reflect an intended change of meaning to the extent of the change of language therein. See *Kiefer v. State*, 106 O. S. 285; *County Board of Education of Hancock County v. Boehm*, 102 O. S. 292; *Board of Education v. Board of Education*, 112 O. S. 108.

By reason of such change of language in the enactment of Section

4846 of the General Code, it would appear to me to indicate a legislative intent to require the county board of education to perform the duties of the board of education of a newly created district until its members are elected and qualified in the manner provided by law and not to grant to such county board any rights of appointment.

6. It is a well settled principle of law, evidenced by many authorities, that, in the absence of constitutional inhibition or statutory direction providing otherwise, when two political subdivisions are consolidated or merged into one, they thereby lose their individual identity as separate subdivisions and the consolidated subdivision succeeds to all the rights and liabilities of the former subdivisions which had existed before the merger. *McQuillin on Municipal Corporations*, Section 330; *Gigandet v. Brewer, County Treasurer*, 134 O. S. 86; *Rapp v. Bethel-Tate School District*, 58 O. App. 126.

The questions submitted by you in your sixth interrogatory were the subject of inquiry with respect to a levy of taxes when two special school districts had been consolidated under and in pursuance of former Section 4736, General Code, in the case of *Gigandet v. Brewer, County Treasurer*, supra. It appears in that case that one of the school districts involved in the consolidation had, some time prior thereto, contracted a bonded indebtedness for the construction of school buildings and had voted tax levies outside the ten mill limitation for the retirement of the said bonds. The bonds had not all been retired at the time of the consolidation of the districts and it was sought to enjoin the collection of taxes for the retirement of said bonds to the extent that the said levy became the obligation of that part of the consolidated district which had not participated in the vote—the said debt having been spread over the whole consolidated district at the time of the merger. The injunction was refused, and it was held:

“When a school district is created by a county board of education by the consolidation of two districts under the provisions of Section 4736, General Code, and after an equitable division of funds is made, a levy of a tax outside the one per cent limitation prescribed by Article XII, Section 2 of the Ohio Constitution as amended in November 7, 1933, on all the property in the new district, for the retirement of bonds issued for the erection of a school building by a vote of the people in only one of the districts in 1926, is not violative of the aforesaid constitutional provision.”

See also *Rapp v. Bethel-Tate Consolidated District*, *supra*, where it was held:

“1. Where two school districts are consolidated by a county board of education under Section 4736, General Code, the consolidated district assumes the obligations of the old districts.

2. In such a case, where one of the old districts, previous to the consolidation, had issued bonds for the payment for a school building therein, it is not necessary, after the consolidation, that there be a separate vote in the other district for the purpose of exceeding the ten-mill limitation in order to pay the indebtedness. A vote in the consolidated district, as such, is sufficient.”

While both of the cases mentioned above involved bond issues and the levy of taxes outside of constitutional limitations to retire the bonds, the same principle would apply when a levy outside the ten-mill limitation is made for current operating purposes. I am, therefore, of the opinion:

a. Where a county board of education, by authority of Section 4831, et seq., of the General Code, created a new school district by combining into one district all the territory of two existing districts, one of which had an unexpired voted tax levy outside the ten-mill limitation, the taxing authority of the newly created district may lawfully spread the entire voted levy over all the territory of the combined district.

b. When two school districts are consolidated in pursuance of a plan for school district territorial reorganization, as provided by Section 4831, et seq. of the General Code, tax levies which had been made outside the ten-mill limitation for the retirement of bonds in one of the districts may be spread over the entire combined district even though the debt had been contracted in one of the districts only.

7. Section 4831-13, General Code, provides as follows:

“If the county board of education deems it advisable to transfer territory from a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, or if a petition, signed by 75% of the qualified electors residing within the territory proposed to be transferred, requests such a transfer, and such petition is filed with the county board of education on or before March first in an even numbered year,

the proposed transfer of territory shall be included in the forthcoming plan of territorial organization of the school districts to be made and adopted under the provisions of section 4831 of the General Code."

From the foregoing statute it appears in definite and clear language that when a petition is filed with a county board of education on or before March 1st of any even numbered year, requesting a transfer of territory from a local district of a county school district to an adjoining county school district signed by 75% of the qualified electors residing in the territory proposed to be transferred, the proposed transfer shall be included in the forthcoming plan of organization which, under the terms of Section 4831, General Code, which is to be adopted on or before the first Monday in March in every even numbered year. The provision, that when a petition as described is filed at the time and in the manner prescribed, the requested transfer in accordance with the petition shall be included in the forthcoming plan, is couched in mandatory language and we have no reason for thinking or saying that it means anything other than what its plain language imports. It is true that under some circumstances, where the contest calls for such a construction, the word "shall" is construed as permissive rather than mandatory. In Crawford on Statutory Construction, Section 262, it is stated:

"Ordinarily the words 'shall' and 'must' are mandatory, and the word 'may' is directory, although they are often used interchangeably in legislation. \* \* \* Nevertheless, it will always be presumed by the court that the legislature intended to use the words in their usual and natural meaning."

See also: Lewis' Sutherland Statutory Construction, 2nd Edition, Section 640; and 37 Ohio Jurisprudence, pages 326, 328.

Nothing appears in the context or use of the word in Section 4831-13, General Code, to indicate or raise an inference that the word "shall" as used with respect to the inclusion within a county plan of organization adopted in pursuance of Section 4831, General Code, of a request for transfer of territory upon the filing of a proper petition should be regarded as meaning anything less or different than what the ordinary use of the word imports.

The fact that under the terms of Section 4831, General Code, each county board of education is directed to adopt a plan of territorial organization of the school districts under its supervision "on or before

the first Monday in March in every even numbered year” does not preclude the county board from changing a plan that may be adopted any time prior to the closing date fixed by the law even though the plan might have been adopted earlier. If it were possible for a county board to do that, a plan might be adopted any time at least after the first of January of the proper year and the board, itself, as well as petitioners, would be unable to make any changes thereafter. In the light of the language used it would be held, in my opinion, that the plan is not adopted until the period immediately preceding the first Monday in March had expired and that any time in that period and up to the end of the period a plan proposed to be adopted is subject to change. Support will be found for this conclusion where a similar conclusion was reached by the Supreme Court of Ohio with reference to the filing of remonstrances by affected electors when a new school district was created in pursuance of former Section 4736, General Code. See Board of Education v. Board of Education, 112 O. S. 108, 113. The law at that time provided that new school districts might be created by county boards of education from all or parts of other districts. The action so taken, however, should not take effect if a majority of the electors residing in the territory affected, within thirty days from the date of the action creating the district should have been taken, file a written remonstrance thereto with the county board of education. The Supreme Court, in commenting on the efficacy of such a remonstrance, said:

“It is only when the thirty day period has elapsed that the number of names on 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 the creation of the new school district by the county board, but the remonstrance cannot be considered as filed until the thirty 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 cancellation were made by the original signers.”

Board of Education v. Board of Education, 112 O. S. 108, supra.

I am of the opinion that if a proper petition is filed with a county board of education requesting the inclusion in a forthcoming plan of territorial organization, of certain proposed transfers of territory from a local school district within the county school district to an adjoining county school district, under and in pursuance of Section 4831-13,

General Code, and the same is filed on or before March first in an even numbered year, it is the duty of the county board of education to include such proposed transfer of territory in the said forthcoming plan of territorial organization, even though the county board of education may have previously adopted its proposed biennial plan of organization, and it may, therefore, be necessary in some instances to call a special meeting of the board and reconsider, amend and re-adopt the plan of organization which had theretofore been adopted.

8. Where a county board of education includes in its plan of territorial organization adopted in pursuance to Section 4831, General Code, a transfer of territory requested in a petition filed with the county board of education signed by 75% of the electors residing in territory sought to be transferred, or of its own volition as provided by Section 4831-13, General Code, the right of protest provided for by Section 4831-3, General Code, is not foreclosed nor is it affected in any way. Section 4831-3, General Code, expressly and definitely fixes the right of protest as therein provided for and that right exists and is preserved even though a petition signed by 75% of the electors residing in the territory seeking the transfer may, at the proper time in the course of the procedure for adopting a plan of organization, be filed requesting a transfer of territory which had not been included in a proposed plan as originally conceived and adopted.

As a matter of fact, the protest afforded may, in some instances, have the effect of entirely neutralizing and overriding a petition which the law provides may be filed for the reason that the territory affected may be entirely different. It will be observed that the petition which the law authorizes the petitioners to file is to contain a request for the inclusion in a plan of organization for the transfer of such territory as is proposed thereby to be transferred, signed by 75% of the electors residing in the "territory proposed to be transferred", whereas, a protest which the law speaks of in Section 4831-3, General Code, is to be signed, in order to be effective, by 51% or more of the electors in the "districts affected".

The "districts affected" and the "territory proposed to be transferred" may be entirely different and 51% of the electors residing in the territory of the former may be entirely different from 75% of the electors residing in the territory of the latter. The "districts affected" in

such a case would include the territory in the entire district from which it is proposed to transfer territory, as well as all the territory of other districts to which it might be proposed to transfer territory, which would be entirely different than the "territory proposed to be transferred", which the law authorizes to be covered by such a proposed petition. 51% of the former would most likely be an entirely different set of electors and an entirely different number of electors than would be 75% of the electors residing in the territory proposed to be transferred in such a case.

In specific answer to the question submitted, I am of the opinion that:

1. A transfer of territory from one school district to another school district may not lawfully be made until it may be done in pursuance of plans for territorial organization of school districts as provided for by Section 4831, et seq. of the General Code, which became effective on September 16, 1943.

2. Since the effective date of House Bill No. 217, of the 95th General Assembly, no authority exists for the transfer of school district territory or the creation of new districts or the abolition of former ones, until the adoption and consummation of plans for organization of school district territory as provided for by Section 4831, et seq. of the General Code, and thereafter no change in school district territory may be made except in compliance with the directions therein contained.

3. Even though a county board of education may not contemplate making any changes in territorial organization of school districts upon the adoption of its bi-annual plan of territorial organization as provided by Section 4831, et seq. General Code, it is the duty of the board to carry out the procedural steps provided for by the pertinent statutes for the adoption and consummation of such plan if for no other reason than for the preservation and protection of the right of protest as provided by Section 4831-3, General Code.

4. Where a plan of organization for school district territory adopted by a county board of education provides for the transfer of a part of district "A" to district "B", the "districts affected" by such a transfer, as that term is used in Section 4831-3, General Code, is all the territory of district "A" and all the territory of district "B". In order that a protest which might be filed against such a transfer would be effective,



it should be signed by 51% of the electors residing in the area taken as a whole, comprising all the territory of both districts "A" and "B".

5. Where an adopted plan of organization for school district territory provides for the incorporation in district "A" of all the territory of district "B" and it is desired to effectively protest against such an arrangement, it will be necessary that the protest filed in pursuance of Section 4831-3, General Code, be signed by at least 51% of all the electors residing in the combined area of both districts "A" and "B".

6. Where an adopted plan of organization provides for the transfer of a part of district "A" to district "B", another part to district "C", and still another part to district "D", thereby entirely eliminating district "A" by providing for the transfer of all its parts to adjoining districts, an effective protest thereto should be signed by not less than 51% of the resident electors residing in the area comprising all the territory of districts "A", "B", "C" and "D" taken as a whole.

7. When a new school district is created by consolidation of two or more existing districts, a protest thereto filed in pursuance of Section 4831-3, General Code, signed by less than 51% of the resident electors in the area included in such consolidation is not effective to defeat the action taken creating the new district.

8. When, upon the adoption of a plan of school district organization by a county board of education in pursuance of Section 4831, et seq. of the General Code, which does not provide for changes in school district boundaries and a protest thereto is filed for failure to change boundary lines as authorized by Section 4831-3, General Code, the protest, in order to be effective, should be signed by at least 51% of the resident electors in the area comprising each and all of the school districts which would be affected if the boundary lines were changed as desired by the protestants.

9. When a plan of territorial organization is adopted by a county board of education in pursuance of Section 4831, General Code, proper procedural steps thereafter taken and the plan is submitted to the Superintendent of Public Instruction and approved by him with or without modification and no protest is made to the action of the Superintendent of Public Instruction, whereupon the plan becomes final as provided by Section 4831-8, General Code, so far as the procedure thus far taken is concerned, no changes involving transfers of territory may

thereafter be made in said plan of organization by reconsideration on the part of the county board of education, or otherwise, without the approval of the Superintendent of Public Instruction.

10. When a new local school district is created in the process of consummating plans of organization for county school district territory as provided by Section 4831, et seq. of the General Code, the county board of education in which such district is located must perform the duties of the board of education of such new district so created until a board of education therefor is duly elected at the next regular election for members of boards of education held in an odd numbered year and its members have qualified, at which time a board of five members shall be elected for such district.

11. Where a county board of education, by authority of Section 4831, et seq. of the General Code, creates a new school district by combining into one district all the territory of two existing districts, one of which had an unexpired voted tax levy outside the ten-mill limitation, the taxing authority of the newly created district may lawfully spread the said voted levy over all the territory of the consolidated district.

12. When two school districts are consolidated in pursuance of plans for school district territorial reorganization, as provided by Section 4831, et seq. of the General Code, tax levies which had been made outside the ten-mill limitation for the retirement of bonds in one of the districts may be spread over the entire combined district even though the debt had been contracted in one of the districts only.

13. If a proper petition is filed with a county board of education requesting the inclusion in a forthcoming plan of territorial organization of certain proposed transfers of territory from a local school district within the county school district to an adjoining county school district, under and in pursuance of Section 4831-13, General Code, and the said petition is filed on or before March first in an even numbered year, it is the duty of the county board of education to include such requested transfer of territory in the said forthcoming plan of territorial organization, even though the county board of education may have previously adopted its proposed biennial plan of organization and it may, therefore, be necessary, in some instances, to call a special meeting of the county board of education and reconsider, amend and re-adopt the said biennial plan of organization.

14. Where a county board of education includes in its plan of territorial organization adopted in pursuance of Section 4831, et seq. of the General Code, a transfer of territory requested in a petition filed with the county board of education signed by 75% of the electors residing in the territory sought to be transferred, or of its own volition, as provided by Section 4831-13, General Code, the right of protest provided for by Section 4831-3, General Code, is not foreclosed, nor is it affected in any way. The right of protest must be preserved.

Respectfully,

THOMAS J. HERBERT  
Attorney General