

Ohio State University, and Electric Construction and Maintenance Company, of Columbus, Ohio. This contract covers the construction and completion of Electrical Contract Item 19, as set forth in the specifications for "Pharmacy and Bacteriology Building," and calls for an expenditure of seven thousand and thirty-six dollars (\$7,036.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent of the Controlling Board to the expenditure has been obtained, as required by Section 11 of House Bill No. 510 of the 88th General Assembly. In addition you have submitted a contract bond, upon which the Globe Indemnity Company, of Newark, N. J., appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,
Attorney General.

786.

SCHOOL DISTRICTS—TRANSFER OF TERRITORY UNDER SECTION
4696, GENERAL CODE—DIVISION OF FUNDS AND INDEBTEDNESS
—NO APPEAL THEREFROM.

SYLLABUS:

Where a transfer of school territory is made by authority of Section 4696, G. C., and an equitable division of funds is made between the districts involved in the transfer, there is no method provided by statute for review of the action of a County Board of Education in making a division of funds and indebtedness, and there is no method provided by statute for an appeal therefrom. If the County Board of Education abuses its discretion in making an equitable division of funds and indebtedness between two school districts involved in a transfer of school territory such abuse of discretion may be remedied by proper action in court.

COLUMBUS, OHIO, August 23, 1929.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

"Holmes County Board of Education transferred territory (contiguous) from the Glenmont Rural School District to the Brink Haven School District in Knox County, upon a petition of 75% of the electors of the territory sought to be transferred which we consider was O. K. and no dispute about, under G. C. 4696.

The Knox County Board of Education being the county board of education to which the territory was annexed, made a distribution or rather a division of the funds and indebtedness between the districts involved.

The Glenmont Rural School District Board of Education and the Holmes County Board of Education think that the division of the funds and indebtedness was not equitably divided.

Question:

Is the division of the funds and indebtedness made by a county board of education when territory is transferred under G. C. 4696 subject to review or appeal and how? Or does the division made stand regardless of how unequitable and unjust?"

Section 4696, General Code, under which the division of school territory was made in the case about which you inquire provides, with reference to the division of funds and indebtedness between the districts involved in a transfer, as follows:

" * * * 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, * * * ."

There is no statutory provision authorizing a review of the action of the county board taken in making an equitable division of funds by authority of said Section 4696, nor is there any method provided for an appeal from the decision of the county board of education with reference to matters acted upon in making a division of funds and indebtedness between two districts involved in such transfer.

Of course, the same rule applies to a county board of education under these circumstances as applies to any administrative board. That is, where discretion is vested in an administrative board, that discretion must not be abused. Where no method is provided by statute for review or appeal from an administrative board in matters where it exercises discretion the only method of questioning this discretion is in the courts.

I know of no case where the discretion of a board exercised in making a transfer of funds between two school districts upon a division of territory in which the districts are involved has been directly attacked by an action in court, but it is my opinion that the same may be done. The action would be an action in equity to enjoin carrying into effect the action of the county board of education because of the board's having abused its discretion.

Respectfully,

GILBERT BETTMAN,

Attorney General.

787.

SCHOOL DISTRICT—CONDITIONS FOR PARTICIPATION IN STATE EDUCATIONAL EQUALIZATION FUND DISCUSSED—HOW PAYMENTS MADE TO SUCH DISTRICT—JUDGMENTS CONSIDERED.

SYLLABUS:

1. *The determination of whether or not a school district may lawfully be permitted to participate in the State Educational Equalization Fund in any year, be-*