

responsible to the mayor for his appointment, and as such an official, is fully amenable to the provisions of the General Code which prohibits him from deriving any personal benefits or having any interests other than official in the contracts made by the corporation, hence it is not thought that the provisions of section 12912 G. C. were intended as a limitation upon the qualifications of the office of director of public service, and under such circumstances as your inquiry indicates, no reason can be seen why a city councilman whose term of office has expired, may not be appointed director of public service in the same municipality as that in which he served as member of council, provided of course that he is qualified in other respects for the holding of such an office.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3234.

COUNTY SCHOOL DISTRICT—VILLAGE SCHOOL DISTRICT THAT IS SITUATED IN TWO DIFFERENT COUNTIES AND WHICH IS PART OF COUNTY SCHOOL DISTRICT IN WHICH GREATER PART OF TERRITORY COMPRISING VILLAGE DISTRICT IS SITUATED MAY BE TRANSFERRED TO AN ADJOINING SCHOOL DISTRICT.

A village school district that is situated in two different counties, and which is a part of the county school district in which the greater part of the territory comprising the village district is situated, may be transferred from the county school district, of which it is a part, to an adjoining county school district, under the provisions of section 4696 G. C.

COLUMBUS, OHIO, June 17, 1922.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

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

“Section 4684 of the General Code is as follows:

‘Each county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the supervision of the county board of education by the provisions of sections 4688 and 4688-1, and territory detached for school purposes, and including the territory attached to it for school purposes, shall constitute a county school district. In each case where any village or rural school district is situated in more than one county such district shall become a part of the county school district in which the greatest part of the territory of such village or rural district is situated.’

“Can a village district that is situated in two different counties and which is a part of the county school district in which the greatest part of the territory comprising the village district is situated, according to section 4684, be transferred from the county district of which it is a part, to an adjoining county district under the provisions of section 4696 G. C.?”

In considering this question it is proper to consider first the history of section 4684 G. C., which you quote in your inquiry. This section as it now appears was enacted in 104 O. L., 133, and is a part of what is generally known as the Ohio School Code of 1914. The section clearly describes what shall constitute a county school district, mentioning "the territory detached for school purposes, and including the territory attached to it for school purposes." This language is intended to cover all future transfers of school territory to or from the county school district, whether attaching or detaching school territory. It is apparent that at the time 4684 was enacted, which section describes the territory which shall constitute a county school district, the law-making body had notice of those village school districts and rural school districts which were situated in more than one county, as is the case in a number of instances throughout the state. The question then arose as to which county these districts, lying on both sides of a county line, should be attached when the new school code went into effect. Thus the closing sentence of section 4684, upon which your inquiry rests, was enacted to take care of the situation as it existed at that time, for clearly it was necessary that these districts, composed of territory on both sides of a county line, should immediately function with one county school district or the other. This provision in question reads:

"In each case where any village or rural school district is situated in more than one county, such district *shall become a part* of the county school district in which the greatest part of the territory of such village (district) or rural district is situated."

It is noted in the above the language is that the district in question "shall become" a part of a certain county school district at the time of the starting off of the new system. The sentence in 4684 does not say that a district of this type "shall remain" a part of the county school district, thus carrying the clear inference that the General Assembly was legislating for that condition which existed at that particular time, leaving to future authority the right to attach or detach a district of this kind in later years, as those directly concerned might care to do, but it was necessary that at that time a district of this type should immediately *become* a part of a definite county school district for administrative purposes. The contemplation would be, too, that the district would keep that status until it should at a later time be detached from one county school district and attached to the contiguous county school district. It must be remembered that the county school district is not coterminous with the county itself, the policy being that county lines or township lines should be no hindrance to the establishment of proper school districts, that is, districts with contiguous territory where the best interests of the community could be served from the same school, regardless of established county lines or township lines. Under the school code of 1914, authority has been given to county boards of education to change the lines of their county school districts at will, the only requirement being that there shall be a union of action between different county school boards, where the territory lies near to the county line.

Sections 4696 G. C., 109 O. L. 65, is a law of uniform operation throughout the state and it reads 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. 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."

The above section provides that a county board of education may, after a petition has been filed by 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 * * * a county school district, the territory of which is contiguous thereto." The section further provides that if this petition contains the names of seventy-five per cent of the electors in the territory proposed to be transferred, the county board of education is required to make such transfer. For a very full discussion of this matter, see Opinion 2434, issued to you September 21, 1921, and appearing at page 857, Vol. II, Opinions of the Attorney-General for 1921.

A further discussion of these petitions which may be prepared and presented under 4696 G. C., is found in Opinion 2917, issued on March 9, 1922, to Hon. J. E. Ladd, prosecuting attorney, Bowling Green, Ohio, and the following excerpts are taken therefrom:

"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."

"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."

It can hardly be conceived that the General Assembly, in special session in 1914, in enacting the Ohio school code intended or desired that any school district in the state should forever after be arbitrarily and permanently attached to a certain county school district without giving the electors in those districts described in the closing sentence of 4684 G. C. the right to later say to what county school system they would prefer to be attached. If an arbitrary view were taken of this matter, a village district or rural school district, lying on both sides of a county line, would always be attached to a certain county school system when possibly a petition might show that the electors residing in the school district might be unanimous in their desire to be attached to the other county school system. Situations such as these are covered in section 4696, which says that the county board of education may transfer "all of a school district." The language here is "a school district" and this means any school district which might have occasion to use 4696 G. C., and among

these districts are those of the kind which you describe in your question, that is, a village district that is situated in two different counties and which became for administrative purposes in 1914 a part of the county school district in which the greater part of the territory comprising the village district was located. The rights which flow to the electors in one school district of the state as regards school privileges belong to the electors resident in any other district of the state, and one of these rights is the right to petition to what school system the local district desires to belong.

You are therefore advised, in answer to your inquiry, that a village school district that is situated in two different counties, and which is a part of the county school district in which the greater part of the territory comprising the village district is situated, may be transferred from the county school district of which it is a part to an adjoining county school district, under the provisions of section 4696 G. C.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3235.

APPROVAL, CONTRACT OF STATE OF OHIO WITH THE NORTHERN ELECTRIC COMPANY, COLUMBUS, OHIO, FOR ELECTRIC WIRING DORMITORY FOR COLORED GIRLS AT OHIO STATE REFORMATORY FOR WOMEN, MARYSVILLE, OHIO, AT A COST OF \$2,395—SURETY BOND, THE MARYLAND CASUALTY COMPANY.

COLUMBUS, OHIO, June 17, 1922.

HON. LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted to me for approval a contract (five copies) between the State of Ohio, acting by the Department of Highways and Public Works, and the Northern Electric Company, of Columbus, Ohio. This contract is for the electric wiring for dormitory for colored girls, at Ohio State Reformatory for Women, Marysville, Ohio, and calls for an expenditure of two thousand, three hundred and ninety-five dollars (\$2,395.00).

Accompanying said contract is a bond to insure faithful performance, executed by the Maryland Casualty Company.

I have before me the certificate of the director of finance that there is an unencumbered balance legally appropriated sufficient to cover the obligation of this contract.

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

Respectfully,

JOHN G. PRICE,
Attorney-General.