

all possession and sale of agricultural seeds is for the production of food. To illustrate, alfalfa seed (contained in the definition of section 5805-1 as agricultural seed) is sold for seeding purposes, when harvested to be fed to fatten cattle, with the ultimate purpose of producing beef. In this case it is suggested that the first purpose of the sale is seeding and that the food purpose, as used in this act, may be said to exist when the question of its disposition or consumption is decided, which occurs after its planting and harvesting. On the other hand, an illustration of the sale of such agricultural seeds for "food purposes only" may be given in the sale of wheat, the immediate use of which is for food, through the process of milling into flour. In this case there is no intermediary commercial use or purpose between the sale and its use and consumption as food. In the case stated in your letter, a seed company sells vegetable seed to "gardeners over the state and they in turn raise them for the food they sell" and it is noted that because of this use to which the purchaser puts such seeds, your correspondent is of the opinion that they should be classed as agricultural seeds sold "for food purposes only." Here it is to be noted that the seeds are not themselves used for food purposes only, but are used for seeding in order that, when planted, the food thereby produced may be sold.

In view of the term of this exemption, it is concluded that such seeds as are contained in the definition of this act and which are sold for seeding purposes in the manner set out in your letter, are not sold for "food purposes only" as contemplated by this act.

Respectfully,

JOHN G. PRICE,
Attorney-General.

919.

SCHOOLS—VILLAGE SCHOOL DISTRICT CREATED IN RURAL DISTRICT—WHEN TERRITORY OUTSIDE OF VILLAGE IS LESS THAN SIXTEEN SQUARE MILES AND WHERE TERRITORY IS SIXTEEN SQUARE MILES OR MORE—WHERE FORMER TERRITORY ATTACHES TO VILLAGE DISTRICT LATTER IS A RURAL SCHOOL DISTRICT.

When a village school district is created in a rural district, the territory outside of the village is annexed to such village district for school purposes, provided such annexed territory has less than sixteen square miles. Where the territory remaining in the rural district, after the creation of the village, is sixteen square miles or more, such territory retains its identity as a rural school district.

COLUMBUS, OHIO, January 6, 1920.

HON. FRANK B. PEARSON, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your request for an opinion upon the following question:

"What is the meaning of the words in the statute 'provided such territory has an area less than sixteen square miles'? Does it mean the territory of what was originally the rural district before the village was formed,

or does it mean the territory left outside the corporate limits of the newly created village which is also the part of the rural school district not included in the village district formed according to the provisions of section 4687 G. C.?"

Section 4687 G. C. (104 O. L., 133) reads as follows:

"Upon the creation of a village, it shall thereby become a village school district, as herein provided, and, if the territory of such village previous to its creation was included within the boundaries of a rural school district and such rural school district included more territory than is included within the village, such territory shall thereby be attached to such village school district for school purposes, provided such territory has an area of less than sixteen square miles."

Section 4681 G. C. reads:

"Each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district."

Section 4679 G. C. reads as follows:

"The school districts of the state shall be styled, respectively, city school districts, village school districts, rural school districts and county school districts (104 O. L. 133)."

It will be noted that under section 4679 G. C. there are four kinds of school districts in Ohio and that the special school district which was formerly in existence and whose confines were usually within the territory of a township, is no longer in existence. The special school districts are in many cases later passed to village school districts, become village school districts upon such transition, or, on the other hand, become a rural school district with a board of education of its own, although it might technically be located in the township rural school district.

At the time of the passage of section 4687 G. C., there were a number of special school districts in the state and the general assembly had these special school districts in mind when section 4687 G. C. was enacted, as well as the township rural school district which was also created at that time in the enactment of the present school code of Ohio (104 O. L., 133). It will thus be seen that section 4687 G. C. could operate in two instances where the question of surrounding territory was involved: First, a rural school district which was formerly a special school district could become, under the statutes, a village school district, and second, a village could be incorporated from certain territory in a township rural school district, though such village, prior to its incorporation, might have been a part of the township school district and not at any time a special school district. Thus we come to a condition in which a township, which might have 36 square miles in territory, would contain a village which was not incorporated but was one of the former subdistricts in the townships rural school district.

In the section under consideration the word "territory" occurs several times

and your question is, whether the words "such territory," as last used in such section have reference to the original rural school district before the village was formed or the territory left outside the corporate limits of the newly created village, which territory is also part of the rural school district not included in the village district. The latter part of the section is speaking of the territory that is to be attached to such village school district when newly formed, and says:

"Such territory shall thereby be attached to such village school district for school purposes, provided such territory has an area of less than sixteen square miles."

The antecedent of the words "such territory" last occurring above, is "such territory" first mentioned, that is, the territory that is to be attached, and the section therefore means the territory that is left in the former rural school district after the village was incorporated, because, if it meant the whole of the territory of the school district, the section would have ended

"provided such district has an area of less than 16 square miles."

The idea here is that if this territory in the former rural school district be more than 16 square miles after such village had been incorporated, then such territory remaining should have the privilege of retaining its identity as a rural school district until such time as it might care to become a part of the village school district created. The section means that if the territory remaining in the rural school district after the formation of the village school district is 16 square miles or more, and it might be nearly 36 square miles if the rural school district was a township school district, then such remaining territory thereby becomes or remains a rural school district, but if the remaining territory situated in the old rural school district is less than 16 square miles, then the remaining territory is mandatorily attached to the newly created village school district for school purposes. But, if the remaining territory has an area of sixteen square miles, it is a school district of its own right and not attached to the newly created district, unless by later proceedings through the county board of education, or by voluntary action taken by the electors of such territory in becoming annexed to the village corporation.

It is therefore the opinion of the attorney-general that, when a village school district is created in a rural district, the territory outside of the village is annexed to such village district for school purposes, provided such annexed territory has an area of less than sixteen square miles. Where the territory remaining in the rural district, after the creation of the village, is sixteen square miles or more, such territory retains its identity as a rural school district.

Respectfully,

JOHN G. PRICE,
Attorney-General.