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TRANSFER—TERRITORY——PART OF LOCAL SCHOOL DISTRICT TO ANOTHER—TERRITORY TRANSFERRED MUST BE CONTIGUOUS TO DISTRICT TO WHICH TRANSFERRED—PRIVATELY OWNED LANE FIFTEEN AND ONE HALF FEET IN WIDTH—SEPARATED FROM DISTRICT—TERRITORY NOT CONTIGUOUS TO DISTRICT—SECTION 4830-5 G. C.

SYLLABUS:

Where it is sought to transfer territory forming a part of a local school district to another local school district, the territory transferred must under the terms of Section 4830-5, General Code, be contiguous to the district to which it is to be transferred; and where such territory to be transferred is separated from the district to which it is to be annexed by a privately owned lane fifteen and one-half feet in width, such territory is not "contiguous" to such district, within the meaning of said section.

Columbus, Ohio, October 2, 1951

Hon. Ray Bradford, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

I have before me your letter requesting my opinion, and reading as follows:

> "Our County School Board transferred certain real estate from one local school district to another. In so doing, the County School Board did not transfer property owned by a certain property holder who also is the owner in fee simple of a 15½ feet wide lane, and who has no desire to be transferred to the other district. This lane, in other words, now separates the property which has been transferred from other properties which were supposedly contiguous to the school district into which they were transferred, but this lane separated the properties.
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> "Under Section 4830-5 of the General Code, it states that 'the territory included within the boundaries of a city, local, exempted village or joint vocational school district shall be contiguous except where a natural island or islands forms an integral part of the district,' and my question is whether or not this land being in the position it is, would prevent a transfer of property to another school district, and whether or not this lane separating the property, as stated before, would prevent the property's transfer to the other school district from being called contiguous property."

Section 4831, General Code, provides in part, as follows:

> "A county board of education may, by resolution adopted by majority vote of its full membership, transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. * * *"

Section 4830-5, General Code, provides in part, as follows:

> "The territory included within the boundaries of a city, local, exempted village or joint vocational school district shall be *contiguous* except where a natural island or islands forms an integral part of the district. * * *." (Emphasis added.)

Your question turns upon the legal definition of "contiguous." The definition of this word according to Webster, and other lexicographers, is:

> "In actual or close contact with; touching; adjacent; near; lying adjacent to."

The courts of the various states have not been at all consistent in their interpretation of this word, many holding to the literal and commonly accepted meaning of actual contact, while others, having in mind the general intent and purpose of the law in which the word may be used, prefer to give it a somewhat more liberal meaning. Among the former, giving it a strict construction I note the following:

Coal Company v. Ryan, 48 No. App., 512, holding that lots were not contiguous where three lots were separated from five others by an alley.

Baxter v. Realty Company, 112 N. Y. S., 455, holding:

> "That which is adjacent should be separated by some intervening object. That which is adjoining must touch in some part, while that which is contiguous must touch entirely on one side."

School District v. County Board (Texas Civ. App.), 76 S. W. 2d, 786, holding that lands in order to be contiguous, must not be separated by any other territory.

In re. Sheril, 188 N. Y., 185, holding that:

> "'Contiguous territory' is not territory near by, in the neighborhood or locality of, but territory touching, adjoining, and connected, as distinguished from territory separated by other territory."

To like effect, see Payne v. O'Brien, 101 N. Y. S., 367.

State v. Masters, 207 Ala., 324, holding that under a statute authorizing the transfer of contiguous territory from one school district to another school district, the words, "contiguous territory", meant territory which touches the district to which it is to be attached. To like effect see People v. Young, 309 Ill., 27.

Many other cases might be cited to like effect. There are a number of decisions holding that tracts which corner with one another, are contiguous. Morris v. Gibson, 35 Ga. App., 689; Clements v. Crawford County Bank, 64 Ark., 7; Oregon Mortg. Co. v. Dunbar, 87 Mont., 603; Parsons v. Dils, 172 Ky., 774.

There are, however, some decisions which hold that to touch merely at the corners, does not render tracts of land contiguous. Wild v. People, 227 Ill., 556, holds that under a statute authorizing the incorporation of contiguous territory into a village, lands merely cornering were not contiguous.

To like effect, Griffin v. Denison Land Company, 18 N. D., 246.

There are a number of cases holding that actual contact of lands is not necessary to make them "contiguous."

Under a constitutional provision, declaring that each representative district shall consist of convenient and contiguous territory, held, that the word "contiguous" did not necessarily mean that the territory was convenient of access. Thus, territory might be "contiguous" within the meaning of the Constitution, though it be separated by wide stretches of deep and navigable waters. Houghton County Sup'rs v. Secretary of State, 92 Mich., 638. To like effect, Blanchard v. Bissell, 11 Ohio St., 96. In the opinion in this case, the court laid stress on the fact that the river was provided with several bridges crossing into the territory proposed to be annexed to the municipality.

In Opinion No. 2820, Opinions of the Attorney General for 1948, page 103, the following conclusion was reached as shown by the syllabus:

> "Where territory within a school district is proposed to be transferred to an adjoining school district under the provisions of Section 4831-13, General Code, such district is an 'adjoining district' notwithstanding only a corner of the territory proposed to be transferred is in contact with the boundary of such other district."

It was pointed out in the opinion last referred to, that there is an essential difference in principle in the annexation of territory to a municipality from that involved in the change of territorial boundaries of a school district. It was said in the opinion:

> "It appears to me that there would be strong reason in the case of annexation of territory to a municipality to hold that such territory must do more than merely touch corners. The idea of municipal boundaries contemplates a degree of physical unity such as would produce a homogeneous municipality, not merely from the standpoint of its government, but from the viewpoint of its physical use and improvement. This idea is expressed by McQuillin on Municipal Corporations, Section 294, where it is stated: * * *
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> "However, the conditions that might apply to annexation of territory to a municipality do not appear to me to be pertinent when we come to consider the purpose of annexation or transfer of school territory. The control by boards of education of school territory does not involve in any degree the improvement of the physical surface, such as the building of connecting streets and other improvements or the installation of public utilities, but consists strictly in the maintenance and government of the schools, with the primary purpose in view of the better education of the children, and for such purpose the physical shape of the district is of no particular importance. In my opinion the only purpose the General Assembly could have had in mind in specifying adjoining districts was to prevent the union of territories which were isolated from one another."

The then Attorney General relied upon the case of Holmes v. Carley, 31 N. Y., 289, in which it was held that two towns, although touching only at their corners, were contiguous, within the provisions of a statute giving a justice of the peace authority to try a case in a town "adjoining" that in which the defendant lived. The court said:

> "To pass diagonally from Marathon to Virgil, from the northwest corner of the former to the southeast corner of the latter, the towns are next to each other and at the corners they actually touch each other, and we have no legal definition to show what distance the junction between the two towns must continue, in order to adjoin. A person standing at the nearest point of proximity of Marathon and Virgil could step, and without an effort at a stride, *stand with one foot in Marathon, where both parties reside, and the other in Virgil where the justice resides.*" (Emphasis added.)

However, I feel we can hardly extend the reasoning of that case to the present situation, where there is a strip of land of 15½ feet in width separating the territory which the county board of education undertook to transfer, from the district to which it was to be annexed.

The strong weight of authority appears to lead to the conclusion that when two tracks of land are separated by privately owned territory, they cannot be said to be contiguous. If we should concede the territory mentioned in your letter to be contiguous when divided by a strip of land 15½ feet in width, we would have to concede that it would still be contiguous if divided by a strip twice, or ten, or twenty times that width.

It is therefore my opinion that where it is sought to transfer territory forming a part of a local school district to another local school district, the territory transferred must, under the terms of Section 4830-5, General Code, be contiguous to the district to which it is to be transferred; and where such territory to be transferred is separated from the district to which it is to be annexed by a privately owned lane fifteen and one-half feet in width, such territory is not "contiguous" to such district, within the meaning of said section.

Respectfully,

C. WILLIAM O'NEILL
Attorney General