

therein provided of a notice by the Superintendent of Public Works of his intention to receive applications for the purchase or lease of such abandoned canal lands. It does not appear from the transcript of your proceedings relating to the proposed sale of that parcel of abandoned canal land here in question, above described, that any publication of the required notice has been made by you or by any of your predecessors in office, dating back to the time of the act above referred to. However, upon inquiry, I find that publication of such notice was made after the enactment of said act; and inasmuch as it does not appear that responsive to said published notice, or otherwise, any application was made for the purchase or lease of the parcel of land here in question, or that any such application other than that of Mr. Swisher is now pending, I am of the opinion that you are authorized to effect a sale of this property to Mr. Swisher upon this transcript, which appears to contain a recital of all other facts necessary to your authority to sell this property.

I am accordingly approving as to legality and form this transcript relating to the proposed sale of the above described canal property as is evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1805.

EXEMPTED VILLAGE SCHOOL DISTRICT—METHOD BY WHICH VIL-
LAGE SCHOOL DISTRICT MAY BECOME EXEMPTED—FAIRVIEW
VILLAGE NOT ENTITLED TO EXEMPTION.

SYLLABUS:

The only way a village school district with a population of three thousand or more, which contains within its boundaries a village from which some territory has been detached for school purposes, may become an exempted village school district, is by taking a census within the district and having that census approved by the director of education and due notice thereof given to the county board of education, as provided by Section 4688-1, General Code.

COLUMBUS, OHIO, November 2, 1933.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

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

"Fairview Village, Ohio, by the census of 1930, contains thirty-six hundred and eighty-nine (3,689) inhabitants, of which number forty-five (45) are located in the Rocky River, Ohio, school district. Recently Fairview Village applied to the Cuyahoga County Board of Education for exemption, which was granted. However, the Prosecuting Attorney of Cuyahoga County has ruled that since a portion of this village is located in another district, exemption must be made under Section 4688-1 of the General Code.

Will you kindly give me a ruling at an early date, as the Cuyahoga County Auditor is withholding the set-up of figures for the distribution of the 2.65 mills, pending your opinion."

The transition of a village school district which is a part of a county school district, to an exempted village district, is controlled by Sections 4688 and 4688-1, General Code, which read as follows:

"Sec. 4688. The board of education of any village school district containing a village which according to the last census had a population of three thousand or more, may by a majority vote of the full membership thereof decide to be exempted from the supervision of the county board of education. Such village school district by notifying the county board of education of such decision before May first in any year, shall be exempt from the supervision of the county board of education for the following school year which begins September first thereafter. The village once so exempted shall be styled an exempted village school district and shall remain so until the board of education thereof by a majority vote of the full membership determines that it desires to be supervised by the county board of education and notifies the county board of education on or before May first in any year to that effect."

"Sec. 4688-1. The board of education of a village school district shall, upon the petition of one hundred or more electors of such district, or upon its own motion, duly passed by a majority vote of the entire board, order a census to be taken of the population of such district. One or more persons may be appointed by the board to take such census. Each person so appointed shall take an oath or affirmation to take such census accurately. He shall make his return under oath to the clerk of the board, and certified copies of such return shall be sent to the county auditor and superintendent of public instruction. If the census shows a population of three thousand or more in the village school district, and such census is approved by the superintendent of public instruction, such district shall be exempted from the supervision of the county board of education after due notice is given as is provided in section 4688."

By the terms of Section 4679, General Code, school districts in this state are either city school districts, exempted village school districts, village school districts, rural school districts or county school districts. The only authority for a village district to become an exempted village school district is that contained in Sections 4688 and 4688-1, General Code, *supra*, and the procedure there outlined, must be followed to establish an exempted village school district.

It is apparent upon consideration of the terms of these statutes, that before a school district may become an exempted village school district it must first be a village school district. It is equally apparent that to become an exempted village school district the district must contain a village with a population according to the last federal census of three thousand or more, or have a population within the entire district of three thousand or more, which fact can only be officially determined for the purpose by taking a census within the district, as provided by Section 4688-1, *supra*.

A former Attorney General, in an opinion found in Opinions of the Attorney General for 1930, at page 1004, held:

"For a village school district to become an exempted village school district, it is necessary that it contain a village that had a population of three thousand or more, as shown by the last Federal census, or that the procedure outlined in Section 4688-1, General Code, be complied with."

A village school district is defined by Section 4681, General Code, as follows:

"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."

Fairview Village School District referred to in your inquiry, comes within the definition of a village school district provided the territory within its boundaries has a tax valuation of \$500,000 00. I am informed that that is the case. It does not, however, contain an entire village. Apparently some of its territory has been detached from the village for school purposes. It can not, therefore, become an exempted village school district by virtue of Section 4688, General Code. The only village districts that may become exempted village districts by force of this statute are those districts that contain an entire village with a population according to the last census of three thousand or more.

In an opinion of this office found in the Opinions of the Attorney General for 1930 at page 1428, it was held:

"By the term 'last census' as used in Section 4688, General Code, is meant the last federal census."

A federal census does not show the population of parts of municipalities or of school districts. There is no way to tell the population of a part of a municipality or a school district, so far as a federal census is concerned. The only way this can be done is by an actual count of the persons residing in the territory. For that reason, the legislature provided in Section 4688-1, General Code, a way to determine the population of village school districts which do not contain within their boundaries entire villages and those which contain entire villages of less population than three thousand but which may have a population of three thousand by reason of their embracing territory added to the village for school purposes, so that all village school districts with the requisite population may become exempted village school districts. The procedure outlined by the legislature must, however, be followed in determining that population.

Inasmuch as Fairview Village School District did not contain an entire village at the time it applied to the Cuyahoga County Board of Education for exemption, I am of the opinion that the only way it could then have become an exempted village school district was by complying with the procedure therefor as outlined by Section 4688-1, General Code. I understand that this was not done, and therefore the application for exemption should not have been granted. The granting of it was entirely unauthorized and of no effect. Fairview Village School District, therefore, in my opinion, is not now an exempted village school district as I understand no action has been taken pursuant to Section 4688-1, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.