

2362.

APPROVAL, TWO LEASES OF GROUND AND BUILDINGS TO BE USED FOR HIGHWAY PURPOSES, ONE IN EATON, OHIO, THE OTHER IN WEST CHESTER, OHIO.

COLUMBUS, OHIO, July 16, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration two issues granting to the Department of Highways, certain ground and buildings to be used for highway purposes. The first of these leases has been executed by Edward Wysong of Eaton, Ohio, and conveys to the State of Ohio, Department of Highways, a certain plot of ground and a building located thereon in Eaton, Ohio, for the term beginning July 1, 1928, and ending July 1, 1930.

Under the term of the lease, the State agrees to pay \$40.00 per month, payable in four instalments of \$120.00 each, during each year of the term of said lease.

The second of these leases pertains to the leasing of a building on lot No. 92 in West Chester, Tuscarawas County, Ohio, and has been executed by Carl E. Zimmerly, the owner of said premises. The lease is for a term of two years, commencing on the first day of November, 1927, and ending on the first day of November, 1929. Under the terms of the lease the State agrees to pay \$3.00 per month, payable in semi-annual installments of \$18.00 each, from the beginning of the term of the lease.

I have carefully examined said leases and finding them in proper legal form, I hereby approve the same as to form.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2363.

APPROVAL, BONDS OF THOMPSON TOWNSHIP SCHOOL DISTRICT, SENECA COUNTY—\$10,000.00.

COLUMBUS, OHIO, July 16, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2364.

SCHOOL DISTRICT — RURAL — DISSOLUTION — TRANSFER OF TERRITORY—AUTHORITY OF COUNTY BOARD.

SYLLABUS:

1. *By the terms of Section 4735-1, General Code, an entire rural school district, upon favorable vote of the electors residing therein, may be dissolved and joined to a contiguous rural or village school district.*

2. Section 4735-1, General Code, does not authorize the submission to the voters of a rural school district of the question of dissolving the district by its division into several parts and the joinder of these several parts of the district to the several rural or village districts to which said parts may be contiguous. The district must be treated as a whole, and so joined to a single contiguous rural or village school district. A county board of education may however, by, authority of Section 4692, General Code, divide a rural school district and transfer the portions resulting from such division to contiguous districts, and the same results may be obtained by the creation of new districts, as authorized by Section 4736, General Code.

COLUMBUS, OHIO, July 17, 1928.

HON. LYNN B. GRIFFITH, Prosecuting Attorney, Warren, Ohio.

DEAR SIR:—I am in receipt of your request for my opinion as follows:

“A delegation of tax payers of one of the rural school districts of this County have presented to me a petition, which reads as follows:

“The undersigned, constituting at least one fourth of the qualified electors in the new Bazetta Township Rural School District, respectfully petition your honorable board that the question of “dissolving said New Bazetta Rural School District and joining that part of said district lying in Howland Township with the Howland Rural School District; that part of said district lying in Warren Township with the Warren Rural School District and that part lying in Bazetta Township with the Cortland Village School District” be submitted to a vote of the qualified electors of said New Bazetta Rural School District as provided in Section 4735-1 of the General Code of Ohio.’

The question is whether or not they may dissolve the district, and join the territory to *three* separate districts, under and by virtue of the provisions of Section 4735-1 of the Code. This section provides in the singular, ‘joined to a contiguous or rural or village *district*’; whereas it is the desire of some of the electors of the district to join the dissolved district to three distinct and separate school districts.”

The answer to your inquiry is dependent upon the construction to be placed on the language embodied in Section 4735-1, General Code, which is the only section of the Code authorizing the dissolution of a rural school district, and its joinder with a contiguous rural or village district, by vote of the electors of the rural school district seeking to be dissolved and joined to the contiguous district. Section 4735-1, General Code, reads as follows:

“When a petition signed by not less than one-fourth of the electors residing within the territory constituting a rural school district, praying that the rural district be dissolved and joined to a contiguous rural or village district, is presented to the board of education of such district; or when such board by a majority vote of the full membership thereof, shall decide to submit the question to dissolve and join a contiguous rural or village district, the board shall fix the time of holding such election at a special or general election. The clerk of the board of such district shall notify the deputy state supervisors of elections, of the date of such election and the purposes thereof, and such deputy state supervisors shall provide therefor. The clerk of the board of education shall post notices thereof in five public places within the district. The result shall be determined by a majority vote of such electors.”

It will be observed from the terms of the foregoing statute that when a proposition is submitted to the voters by authority of the foregoing statute, either after a petition is filed therefor or upon the initiative of the board of education of the district, the question to be submitted is "to dissolve and join a contiguous rural or village district," that is, not one or more contiguous rural or village districts but "*a contiguous rural or village district.*" By the terms of the next section of the Code, Section 4735-2, it is provided as follows:

"The legal title of the property of the rural school district, in case such rural district is dissolved and joined to a rural or village district as provided in Section 4735-1, shall become vested in the board of education of the rural or village school district to which such district is joined. The school fund of such dissolved rural district shall become a part of the fund of the rural or village school district which it voted to join. The dissolution of such district shall not be complete until the board of education of the district has provided for the payment of any indebtedness that may exist."

By the plain terms of the foregoing sections of the Code, the only authority contained therein to dissolve a rural district and join it to another by vote of the people is to join it to "a contiguous rural or village district." This language cannot, to my mind, be interpreted to mean several contiguous districts or more than one. The word *district* in each of the above statutes, when used as definitive of the political subdivision to which the dissolved district may be joined, is in the singular. The use of the word "district" in the singular in both Sections 4735-1 and 4735-2, supra, is given additional emphasis by its being modified by the indefinite article *a*, signifying *one* or *any*, or by the singular definite article *the* in the clause: "The legal title * * * shall be vested in the board of education of *the* rural or village school district to which such district is joined."

This conclusion is not at variance with the terms of Section 27 of the General Code, which provides:

"In the interpretation of parts first and second, *unless the context shows that another sense was intended*, * * * words * * * in the plural include the singular and in the singular include the plural number; * * *
(Italics the writer's.)

Section 27, supra, cannot be made to apply in the interpretation of Sections 4735-1 and 4735-2, supra, so as to make the word *district* used in the singular include the plural for the reason that the context, as well as the legislative history of the section under consideration and the absurdity to which such a construction would lead, plainly show that another sense was intended.

Moreover, to interpret the statute so as to permit subdividing the district and joining the separate subdivisions to contiguous districts would lead to the anomalous situation of permitting the voters of each subdivision to vote on questions affecting the welfare of another subdivision, which, if the proposition carried, would become a part of an entirely different political subdivision and taxing unit than the one in which the voter lived. There is no means provided by the statute for the separation of the vote so that the voters of each part or subdivision could vote on the question of its own joinder with a contiguous district. In fact, to do so would defeat the manifest intent of the statute which contemplates the dissolution of the district only upon a majority vote of the entire district and the joinder of no part of the district to another district except upon the dissolution of the district.

The statute treats the district as a whole, both in providing that the petition spoken of should be signed by "not less than one-fourth of the electors residing within the territory constituting a rural school district" and that the "result shall be determined by a majority vote of such electors."

Manifestly it cannot be presumed from the language used in the statute that the Legislature intended the voters of the district as a whole to foist upon a portion of the district, as a separate and distinct entity, a change in its political status independent of and apart from the majority of the voters in that particular portion.

While the Legislature has plenary power to fix the boundaries of school districts and to impose changes in these boundaries, even without the consent of the residents of the district, and may delegate that power to inferior boards or commissions, yet when it enacts a statute purporting to permit the voters of the district to determine the status of that district in its relation to school district government, the statute should not be extended beyond its plain terms in carrying out the spirit of majority rule thereby manifested.

Aside from the plain and obvious meaning to be gathered from the language contained in the statute itself, its history is significant in determining the intent of the Legislature in its enactment and strengthens the construction which the language of the statute imports.

Sections 4735-1 and 4735-2, General Code, were enacted as a part of a school code adopted in 1914 (104 O. L. 138), and have not since been changed. At that time no provision was made for the transfer of an entire rural school district so as to effect the abolishment of the district except in the manner provided in said Sections 4735-1 and 4735-2, *supra*.

Section 4692, General Code, as enacted at that time (104 O. L. 135), provided in part as follows:

"Part of any county school district may be transferred to an adjoining county school district or city or village school districts by the mutual consent of the boards of education having control of such districts. * * *"

The above Section 4692, General Code, obviously did not authorize the transfer of an entire school district, but only a part thereof. Section 4736, General Code, as enacted in 1914 (104 O. L. 138), provided in part as follows:

"The county board of education shall as soon as possible after organizing make a survey of its district. The board shall arrange the schools according to topography and population in order that they may be most easily accessible to pupils. To this end the county board shall have power by resolution at any regular or special meeting to change school district lines and transfer territory from one rural or village school district to another. * * *"

The terms of said Section 4736, General Code, are not so clear as to permitting county boards of education to abolish a district by including its entire territory in a new district which, by the terms of the statute, they were permitted to create. However, the question was passed upon in several opinions of the Attorney General, the first of these being an opinion reported in Annual Reports of the Attorney General for 1914, at page 1687, wherein it was said:

"There is absolutely no mention of the power or authority to entirely dissolve or abrogate a school district in said Section 4736, *supra*. The methods provided for dissolving rural districts and joining same to other contiguous districts are provided for in Sections 4735-1 and 4735-2 of the General Code, respectively, as amended in 104 O. L. p. 138. * * *

Therefore, in answer to your questions, I am of the opinion that a county board of education has not the power to dissolve a rural township school district and attach the territory of the same to a village district lying within such rural township school district, but that such dissolution must be accomplished in the manner provided for in Sections 4735-1 and 4735-2."

In an opinion of the Attorney General reported in Opinions of the Attorney General for 1915, at page 336, it was held:

"The county board of education has no authority under Section 4736, G. C., as amended, 104 O. L. 138, to discontinue a rural school district and join it to a rural or village school district contiguous thereto.

* * *

It is necessary, in order to abolish a rural school district, that the question be submitted to a vote of the qualified electors of such district under the provisions of Section 4735, G. C., as amended, and supplemented by Section 4735-1 and 4735-2, G. C., 104 O. L. 138.

* * *"

In a later opinion reported in Opinions of the Attorney General for 1915, at page 487, it was held:

"The board of education of a county school district has no authority under the provisions of Sections 4735 and 4736, G. C., as amended, 104 O. L. 138, to dissolve a rural school district and join it with a contiguous rural or village school district, within said county district. An election for this purpose must be held under authority of Section 4735-1 and 4735-2, G. C., as found in 104 O. L. 138, resulting in a vote favorable to the dissolution of such rural school district and to its union with the contiguous rural or village school district, before the question of centralization can be submitted to the electors of the rural or village school district resulting from such union.

* * *"

To the same effect is a still later opinion, reported in Opinions of the Attorney General for 1915, at page 1011.

Thus it will be seen that at the time of the enactment of Sections 4735-1 and 4735-2, General Code, in 1914, the procedure outlined therein was the only means by which an entire rural school district could be dissolved and transferred to an adjoining district, although ample means were provided by the procedure outlined in either Section 4692 or 4736, General Code, as then enacted, for the transfer of parts of districts to adjoining districts. It therefore seems apparent that the Legislature did not contemplate in the enactment of Section 4735-1, General Code, that the district might be divided and joined to other districts piecemeal, but should be treated as a whole, and joined to a contiguous district as such.

Later, in 1915, and subsequent to the rendition of the Opinions of the Attorney General above referred to, both Sections 4692 and 4736, General Code, were amended apparently with the idea of placing more power over school district boundaries in the county board of education so that entire rural or village school districts might be transferred to adjoining school districts by county boards of education, either by including them within newly created districts or by transferring them in their entirety to a contiguous district. Sections 4692 and 4736, General Code, as amended in 1915 (106 O. L. p. 397), provide as follows:

Section 4692. "The county board of education may 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 4736. "* * * The county board of education is hereby authorized to create a school district from one or more school districts or parts thereof. * * *"

By virtue of the authority vested in county boards of education by either Section 4692 or 4736, several transfers may be made or new districts created by the county board of education in such a manner as to effect the accomplishment of the ends sought by the petitioners residing in New Bazetta Rural School District without an election.

The county board of education of Trumbull County School District may, if it feels that it would be for the best interest of the schools, transfer the territory of the New Bazetta Township Rural School District as requested by signers of the petition you speak of, but they cannot be compelled to do so.

In the light of the foregoing discussion, it is my opinion, in answer to your question, that the electors residing within the territory which now constitutes Bazetta Rural School District are not empowered, by virtue of Section 4735-1, General Code, to dissolve said district and join parts thereof to Howland Rural School District, Warren Rural School District and Cortland Village School District; and that there is no authority for calling an election and submitting to the voters of said school district the proposition of dissolving said district and joining portions thereof to contiguous districts as mentioned above. This may be done, however, by action of the county board of education by authority of Section 4692, General Code, and the same result might be obtained by the creation of new districts, as authorized by Section 4736, General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2365.

PUBLICATION OF ADVERTISEMENTS UNDER SECTION 6251, GENERAL CODE—WHEN PROOF OF PUBLICATION MUST BE PAID FOR.

SYLLABUS:

1. *Publishers of newspapers in which are published the advertisements, notices and proclamations described in Section 6251 of the General Code, may not charge in excess of the maximum rate prescribed in such section for such publication.*
2. *Where the statute specifically provides that proof of publication be furnished by the publisher, such proof constitutes an essential part of the publication and must be furnished and no additional payment may be demanded therefor.*
3. *Where the statute makes no provision as to proof of publication, no liability is imposed upon the subdivision in the event that proof is furnished by the publisher, but, where in such case proof is demanded by any public authority and the publisher furnishes the same, a contractual relationship arises separate and apart from that incident to the publication itself and the publisher may refuse to furnish such proof unless he be reimbursed for the expense incident to the execution of such affidavit.*

COLUMBUS, OHIO, July 17, 1928.

HON. CHARLES P. TAFT, 2ND., *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge your letter dated February 20, 1928, which reads as follows: