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1. PETITION PRAYING FOR TRANSFER OF LOCAL SCHOOL DISTRICT TERRITORY WITHIN COUNTY, FILED PURSUANT TO SECTION 4831-13 G. C.—SIGNED BY 75% OR MORE QUALIFIED ELECTORS—DUTY OF BOARD OF EDUCATION TO INCLUDE PROPOSED TRANSFER IN FORTHCOMING PLAN ON OR BEFORE FIRST MONDAY IN FEBRUARY, NEXT FOLLOWING, IN AN EVEN NUMBERED YEAR—SECTION 4831 G. C.
2. WHEN PROCEDURE DEVELOPED FOR TRANSFER OF SCHOOL DISTRICT TERRITORY, NO OBLIGATION FOR COUNTY BOARD OF EDUCATION WHERE TRANSFER IS TO BE MADE TO TAKE ANY ACTION, UNDER SECTION 4831, G. C., TO CHANGE BOUNDARIES OF ITS OWN DISTRICT.

SYLLABUS:

1. When, pursuant to Section 4831-13 General Code, a petition is filed on or before February first in any even numbered year with the county board of education signed by 75% or more of the qualified electors in a described territory in a local school district within such county, praying for the transfer of such territory to an adjoining county school district, it is the duty of such board to include such proposed transfer in a forthcoming plan to be made and adopted by it on or before the first Monday in February next following in an even numbered year as provided in Section 4831 of the General Code.

2. When a petition for transfer of territory of a local school district is filed as provided by Section 4831-13 praying for transfer of territory in a local school district of any county to another county district, no obligation rests upon the board of education of the county to which such transfer is proposed to be made, to take any action such as is contemplated by Section 4831 General Code, looking to a change in the boundaries of its own districts.

Columbus, Ohio, March 15, 1946

Hon. Earl Henry, Prosecuting Attorney
Cambridge, Ohio

Dear Sir:

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

“The qualified electors in a certain territory in Belmont County desire to file a petition with the County Board of Educa-

tion requesting the transfer of such territory from their local school district to the Londonderry Local School District in Guernsey County, Ohio, under Section 4831-13 and to have the proposed transfer of territory included in a forthcoming plan of territorial organization of the school districts. This of course would now be a forthcoming plan for the year 1948, as this petition has not yet been filed. Under Section 4831 of the General Code, as amended, it does not appear that it would be mandatory for either the Guernsey County Board of Education or the Belmont County Board of Education to adopt a new plan of territorial organization of the respective school districts for the year 1948 which is an even numbered year, but that it would be optional with the County Board of Education.

Will you please render me your opinion as to whether or not under Section 4831-13 of the General Code of Ohio a petition filed by seventy-five per cent of such qualified electors and filed with the Belmont County Board of Education prior to February 1, 1948, will make it the duty of the Belmont County Board of Education to bring up for that year a forthcoming plan of territorial organization of school districts and make it the duty of said Belmont County Board of Education to include the transfer of territory proposed in such petition in such forthcoming plan for the year 1948? In other words, if such a petition is filed under Section 4831-13, based upon such petition, will it then become the mandatory duty of the Belmont County Board of Education to adopt a new plan of territorial organization of the school districts under its supervision and to include the proposed transfer of territory under said petition in such forthcoming plan of territorial organization for the year 1948?

In response to said petition would it then be the mandatory duty of the Guernsey County Board of Education to adopt a new plan of territorial organization and include the territory proposed to be transferred under said petition in such forthcoming plan of territorial organization for the year 1948?"

Section 4831 General Code as amended, effective October 12, 1945, provides as follows:

"On or before the first Monday in February in the year 1946 and on or before the first Monday in February in every even numbered year thereafter each county board of education may, by a majority vote of its full membership, adopt a new plan of territorial organization of the school districts under its supervision. Such plan of organization shall prescribe such transfers of territory, elimination of local school districts, and creation of new school districts which, in the opinion of the county board of education, will provide a more economical or efficient county

school system; and to this end, the county board of education of each county in which there are one or more local school districts which operates no schools, shall take immediate steps for the dissolution of such school districts and for the attachment of the territories thereof to adjoining school districts which do operate schools. The distribution of the territories of such dissolved school districts shall be shown in the plan of district organization which such county boards of education shall adopt in 1946."

It will be noted that the adoption by the county board of education of a new plan of territorial organization in 1946 and biennially thereafter, is permissive and not mandatory, with the exception of the provision in reference to a local district which operates no schools. As originally enacted in 1943 as a part of the new school code the adoption of such new plan biennially was made a mandatory duty.

Section 4831-13 General Code, provides as follows:

"If the county board of education deems it advisable to transfer territory from a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, or if a petition, signed by 75% of the qualified electors residing within the territory proposed to be transferred, requests such a transfer, and such petition is filed with the county board of education on or before February first in an even numbered year, the proposed transfer of territory *shall be included* in a forthcoming plan of territorial organization of the school districts *to be made and adopted* under the provisions of section 4831 of the General Code." (Emphasis added.)

By this provision it is clear that if 75% of the electors residing in territory within a local district file a petition with the county board of education of the county in which such district is situated, requesting such transfer, then there is cast upon that board the duty to incorporate such proposed transfer in a plan and submit it as provided in Section 4831 supra. At least the statute says that the board *shall* include such transfer in a forthcoming plan. Does this language compel the board to produce and adopt a "forthcoming plan?" It appears to me that it does, particularly when we give effect to the words, "to be made and adopted." Certainly, the general assembly would not give the electors this right to petition, and leave the board with authority to nullify their petition by inaction. I have no difficulty in arriving at the conclusion

that the filing of this petition of 75% of the electors places on the board a mandatory duty to take the steps outlined in Section 4831 et seq. I am strengthened in that conclusion by the fact that in the same act by which Section 4831 was amended to its present reading, Section 4831-13 was also amended, by changing the date for filing the petition from March first to February first.

As to the effect of such a petition by the electors upon the board of education of the county to which the petitioners desire to be transferred, a more difficult question arises. There is certainly nothing in the statute which requires such board to accept the territory in question.

Prior to the enactment of the new school code in 1943, Section 4696 was in effect, and governed transfer of part of a county district to a contiguous exempted village, city or county district. Its provisions were in part similar to those now contained in Section 4831-13 supra, in so far as it provided that upon the filing of a petition of 75% of the electors in the territory proposed to be transferred, the county board must make the transfer. But that section continued with the following provisions for which no counterpart is found in said Section 4831-13:

“A county board of education may accept a transfer of territory from any 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.” (Emphasis added.)

The general assembly in enacting the new school code may have thought it was continuing the procedure last above noted as to the transfer generally of territory from one county to another by enacting Section 4831-14 General Code, which reads as follows:

“If the board of education of a *city school district or of an exempted village school district* deems it advisable to transfer

territory from such district to an adjoining city or exempted village school district or to a county school district, or if a petition, signed by 75% of the qualified electors residing within that portion of a *city or exempted village school district* proposed to be transferred, requests such a transfer, the board of education of the district in which such proposal originates shall file such request, together with a map showing the boundaries of the territory to be transferred, with the superintendent of public instruction on or before the first Monday in May. The superintendent of public instruction shall hold a hearing in any suitable place in any of the school districts affected by such proposed transfer of territory.

Within thirty days after the holding of such hearing the superintendent of public instruction shall either approve or disapprove *such proposed transfer* of territory or any modification thereof. The superintendent of public instruction shall notify, in writing, the boards of education affected by *such transfer* of territory of his decision, which shall be final

If the proposed transfer of territory affects a county school district, the resolution or petition shall be filed in even numbered years only and the superintendent of public instruction shall approve or modify such change at the same time that his approval is given to the plans of territorial organization of such county school district.

Within thirty days after any plan of territorial transfer *affecting school districts under the administration of city or exempted village boards* of education has become final: (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 require; (2) an equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the superintendent of public instruction, whose decision shall be final; 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 be vested in the board of education of the school district to which the territory is transferred. (Emphasis added.)

Here, it will be noted, is found substantially the same language contained in old Section 4696 as to the hearing before the superintendent and also as to (1) the resolution of acceptance (2) an equitable division of funds, and (3) the filing of a map. But, as will readily be seen, the whole section is limited in its application to transfers *from a city or*

exempted village school district, although the section does contemplate that the transfer may be *to a county district*.

Accordingly, the procedure outlined in this section can not be made to apply in any respect to the situation you present when it is sought to transfer territory from a local school district in one county to a local school district in another county, nor is there any provision of law, so far as I can discover, which would require the county board of Guernsey county to adopt and submit a plan of territorial organization in view of the proposed transfer. In this connection I note from your letter that the petition asks the transfer to the "Londonderry Local School District in Guernsey county." According to the opinion of a former Attorney General, found in 1936 opinions Attorney General, page 298, this petition would be invalid, as the law only permits a petition to transfer to "an adjoining *county school district*" and not to a designated local district in another county.

An examination of Sections 4831 to 4831-12 inclusive, of the General Code, which governs the procedure of a county board of education and of the superintendent of public instruction leading to the final approval of a plan of territorial organization, leads one to the conclusion that the entire procedure is confined to the arrangement of *local district* boundaries *within a single county*. There is nothing in this prescribed procedure which appears to contemplate the filing with another county board of any petition or notice which would advise it of any proposition to add territory to its district or set in motion any action on the part of the board of such other county. Accordingly, any action on the part of such board would be voluntary, and it might, if it saw fit to meet the desires of the electors of any adjoining county and the order of the superintendent of public instruction based thereon, take some action on or before February 1 in the next following even numbered year looking to the adoption and submission of a plan of reorganization of its own county local districts. On the contrary, it might apparently block the whole plan by inaction. The entire system of territorial reorganization of school districts is, in my opinion unclear and unworkable and in need of legislative clarification.

In specific answer to your questions it is my opinion :

1. When, pursuant to Section 4831-13 General Code, a petition is filed on or before February first in any even numbered year with the

county board of education, signed by 75% or more of the qualified electors in a described territory in a local school district within such county, praying for the transfer of such territory to an adjoining county school district, it is the duty of such board to include such proposed transfer in a forthcoming plan to be made and adopted by it on or before the first Monday in February next following in an even numbered year as prescribed in Section 483I of the General Code.

2. When a petition for transfer of territory of a local school district is filed as provided by Section 483I-13 praying for transfer of territory in a local school district, of any county to another county district, no obligation rests upon the board of education of the county to which such transfer is proposed to be made, to take any action such as is contemplated by Section 483I General Code, looking to a change in the boundaries of its own districts.

Respectfully,

HUGH S. JENKINS,
Attorney General.