

lease executed to The Ohio Fuel Gas Company under date of December 21, 1931, leasing and demising to said company the right to use a portion of the Kirkersville Feeder of the Ohio Canal for natural gas pipe line purposes.

The cancellation of this lease was directed by the Superintendent of Public Works upon an application therefor filed by the lessee under the provisions of House Bill No. 467, 115 O. L., 512, which provides, among other things, for the cancellation of leases of canal lands upon application of the lessee setting out the reasons for the requested cancellation of the lease. It appears from the application in this case that the natural gas pipe line that was laid in and upon the lands covered by this lease was removed therefrom August 1, 1934, and that the premises have not since been used for this purpose. Acting upon this application, you have directed the cancellation of the lease and the same is hereby approved by me subject to the payment by the lessee of any delinquent rentals that may stand against the lessee under the terms of the lease.

I am, therefore, approving said resolution, as is evidenced by my approval endorsed thereon and upon the copies thereof, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5663.

SCHOOL FOUNDATION FUND—SCHOOL DISTRICT MAY NOT BE REFUSED SHARE THEREIN FOR REFUSING TO AGREE TO PLAN OF REORGANIZATION—AUTHORITY OF DIRECTOR OF EDUCATION OVER SUCH FUND.

**SYLLABUS:**

1. *The Director of Education is not, by virtue of the provisions of Section 7595-1e, General Code, empowered to withhold from a school district funds distributable to it from the public school fund as provided by law, simply because the electors residing in the district, or some portion of those electors, refuse or fail to cooperate in the making of transfers of school territory to conform to a plan of organization for the county school district of which it is a part or to which it is contiguous.*

2. *The electors residing in a school district or any part thereof, are not foreclosed from exercising their right of remonstrance with respect to transfers of school territory sought to be made under Section 4692, General Code, or the proposed creation of new school districts under Section 4736, General Code, or from failing or refusing to invoke the*

*jurisdiction of the county board of education where transfers are sought to be made by authority of Section 4696, General Code, where such transfers or the creation of such new school districts are necessary to conform to a plan of organization for a county school district made and adopted by authority of Sections 7600-1, to 7600-8, inclusive, of the General Code, under pain of forfeiting the right of the school district in which they reside, to its proper distributive share of the public school fund as provided by Sections 7595-1 and 7595-1b, of the General Code of Ohio.*

COLUMBUS, OHIO, June 2, 1936.

HON. E. L. BOWSHER, *Director of Education, Columbus, Ohio.*

DEAR SIR: It has come to my attention that the impression has become widely current throughout the state that under the terms of Section 7595-1e of the General Code, the Director of Education is empowered to withhold from any school district its proper share of the state public school fund as provided by Sections 7595-1 and 7595-1b of the General Code of Ohio, if the board of education of any school district or *the electors residing therein* do not cooperate in putting into effect an adopted plan of organization for the county school district of which the said district is a part or to which it is contiguous, by acquiescing in any projected transfer of territory to conform to the plan. I am also advised that certain language contained in the body of my opinion No. 5176 rendered under date of February 20, 1936, and addressed to you, has been construed to support this impression, although the conclusion of the opinion and the syllabus thereof clearly indicate the contrary.

It is to supplement that opinion and to clarify the language referred to and to correct the erroneous impression which this language has been used to advance that I am addressing this opinion to you.

In the course of said opinion No. 5176 it is said:

“The Director of Education is authorized by Section 7600-5, General Code, to ‘order’ such transfers of territory or the creation of such new school districts as he shall deem in harmony with principles of economy, efficiency and convenience in case affected boards of education fail to agree on transfers of territory in accordance with a plan of organization that is adopted, but ordering transfers to be made and actually making them are entirely different. Sections 4692, 4696 and 4736, General Code, provide the machinery for actually making transfers, and the equitable distribution of funds and indebtedness between districts involved in such transfers. \* \* \*

In my opinion, the provisions of Section 4692, 4696 and

4736, General Code, are necessary to provide a complete system of transferring school territory, as the Director of Education, although empowered to order transfers to conform to a plan of organization, has no power under the terms of the School Foundation Law to carry these orders into effect. That method is supplied by the provisions of Sections 4692, 4696 and 4736, General Code."

Section 7595-1e, General Code, provides as follows:

"A school district, the board of education of which has not conformed with all the requirements of the law and the rules and regulations pursuant thereto, in concluding the annual plans of reorganization, in or of the county school district (as they apply to such school district) adopted by the county board of education and approved by the director of education as provided in sections 7600-1 to 7600-5 and section 7600-9, shall not participate in any portion of the state public school fund, except for good and sufficient reason established to the satisfaction of the director of education and state controlling board; provided further, that no school district wherein the total of the annual salaries paid the teachers of the district is less than seventy-five per cent of the total cost of the foundation program of such district, exclusive of transportation and tuition costs, shall participate in any portion of the state public school fund."

It will be observed that the above statute does not confer power on the Director of Education to withhold funds from a school district because the electors residing in the school district who have the power of remonstrance in cases of the creation of new school districts under Section 4736, General Code, and transfers made by authority of Section 7692, General Code, exercise that right and thereby prevent transfers that must be made to carry out a plan of organization for a county school district or fail to file petitions to enable county boards of education to make transfers that must be made under Section 4696, General Code, to carry out such a plan. It does provide that where a board of education does not conform to a plan of organization funds may be withheld from the district by the Director of Education in his discretion, which discretion, of course, cannot be abused, but that is quite different from a provision which would give that power to the Director of Education if the electors residing in the district do not conform to the plan of organization. The fact that the legislature did not include the electors with the board of education in the statutory provision mentioned, clearly shows that it did not so intend.

In the body of Opinion No. 5176, referred to above, it is stated :

“If interested boards of education and electors residing in territory affected by the changes in school territory ordered by the Director of Education to carry out a legally approved plan of organization, refuse or fail to carry out those orders by invoking the provisions of Sections 4692, 4696 and 4736, General Code, as the needs of the situation may require, the Director of Education may withhold funds distributable to said boards of education, as provided by Section 7595-1e.”

It was not intended by the language used in the above paragraph to change the law or to extend the law as contained in Section 7595-1e, General Code, and that fact clearly appears from the language of the sixth branch of the conclusion of the opinion. This fact seems to have been entirely overlooked by persons interested in spreading the erroneous impression that distribution of the public school funds may be withheld from any school district the electors of which do not acquiesce in any and all plans of organization of school districts that may be adopted. The said sixth paragraph of the conclusion of the said opinion correctly states the law, as follows :

“Unless transfers of school territory and the creation of new school districts are made to conform to a legally adopted and approved plan of organization or legally approved change or modification of such plan as provided by Sections 7600-1 to 7600-8, inclusive, of the General Code, a school district, the board of education of which has not conformed thereto, as said plan applies to said districts, shall not participate in the distribution of the State Public School Fund except as provided by Section 7595-1e of the General Code, of Ohio.”

I am of the opinion that the Director of Education, by virtue of Section 7595-1e, General Code, is without power to withhold from a school district funds distributable to it from the public school fund, as provided by law, simply because the electors residing in the district, or some portion of those electors, refuse or fail to cooperate in the making of transfers of school territory to conform to a plan of organization for the county school district of which it is a part or to which it is contiguous.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*