

applied, present no inconsistency. It is apparent that that section was intended to have a broader application than most of the preceding sections, and to relate to national as well as state banks."

You are therefore advised that section 710-37 G. C. does not apply to national banks, but that such banks must meet and comply with all the requirements of section 710-150 G. C. if they transact a trust business in this state.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2432.

COUNTY BOARD OF EDUCATION—TRANSFER OF TERRITORY—SECTION 4696 G. C. (109 O. L. 65) PASSED UPON.

1. *Under the provisions of section 4696 G. C., for a county board of education to accept a transfer of territory from an exempted village school district, such transfer must be petitioned for by a majority of the electors residing in the territory to be transferred, and a resolution of the board of education of the exempted village district concerned, offering to yield such territory, is not sufficient basis for the county board of education's acceptance.*

2. *Under the provisions of section 4696 G. C., in order to make it obligatory for the county board of education to accept a transfer of school territory from an exempted village school district or a city school district, or another county school district, the petition presented from the school territory to be transferred must contain the signatures of seventy-five per cent of the electors residing in such school territory.*

COLUMBUS, OHIO, September 21, 1921.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

"Your attention is called to the following language in section 4696:

'A county board of education may accept a transfer of territory from any such school district (exempted village, city or county school district) and annex same to a contiguous school district of the county school district.'

"1. For a county board of education to accept a transfer of territory from an exempted village school district, as set forth in the above mentioned section, must such transfer be petitioned for by a majority of the electors residing in the territory to be transferred or is a resolution of the board of education of the exempted village district concerned offering to yield such territory sufficient basis for the county board of education's acceptance?

"2. If a petition of the electors residing in such territory is necessary, does the petition require the signatures of seventy-five per cent of the electors in order to make it obligatory for the county board of education to accept such transfer?"

Section 4696 G. C., as amended in 109 O. L., p. 65, reads as follows:

"A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such 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. When such transfer is complete the legal title of the school property shall become vested in the board of education of the school district to which such territory is transferred."

Under this amended section as it now reads, your first inquiry is whether a county board of education may accept territory from an exempted village school district upon the passage of a resolution of the board of education of the exempted village district concerned offering to yield such territory to the county school district, or whether such transfer from an exempted village school district to the county school district must be petitioned for by a majority of the electors residing in the territory to be transferred.

Section 4696, within the language of which this whole question lies, was amended in 106 O. L., 108 O. L., (Part 1) and 109 O. L.; that is to say, each of the last four legislatures except one (107 O. L.) amended section 4696 in some manner or other, with the possible view in mind all the time to make it more workable under any and all conditions, that the rights existing in one district or a portion of a district might not exceed the rights existing in another district or other school territory. It is pertinent, then, to examine the history of section 4696 G. C., since its amendment in 106 O. L., p. 396, in order to ascertain what the general assembly desired to correct or change, and what may have been the legislative intent in these various amendments.

Section 4696, as amended in 106 O. L., 396, read in part as follows:

"A county board of education may transfer a part or all of a school district of a county school district to an adjoining exempted village school district or city school district, or to another county school district, provided at least fifty per centum of the electors of the territory to be transferred petition for such transfer. Provided, however, that if at least seventy-five per cent of the electors of the territory petition for such transfer, the county board of education shall make such transfer. * * *

Under section 4696 G. C., as it thus appeared in 106 O. L., it was found that

there was no means by which school territory could be transferred from an exempted village school district or a city school district to the county school district, as evidenced by the syllabus of Opinion 796, appearing at page 1468, Vol. 2, Opinions of the Attorney-General for 1919, and reading as follows:

"Prior to the enactment of house bill No. 348, amending section 4696 G. C., there was no provision under the laws of the state for the transfer of territory from an exempted village school district or a city school district of the county school district, and attempted transfers of school territory from an exempted village school district or a city school district to a school district of the county school district prior to September 22, 1919, were without authority of law."

This condition was corrected in 103 O. L., Part 1, by the enactment of House Bill 348, effective September 22, 1919, wherein the language of section 4696 was changed to read in part as follows:

"A county board of education may transfer a part or all of a school district of the county school district to an adjoining exempted village school district or city school district or to another county school district upon a petition of a majority of the freeholders residing in the territory to be transferred and make an equitable division of the funds and indebtedness between said districts; and a county board of education may accept a transfer of territory from an adjoining exempted village school district, city school district or another county school district and annex same to a school district of the county school district. * * *"

It will be noted that this opening sentence of section 4696, as amended in 103 O. L., Part 1, p. 704, contains the provision relative to the petition of the persons in the territory to be transferred, in the middle of the sentence, thus indicating that the last portion of the sentence would be equally governed by the petition feature, as appears in the first part of the sentence, where a transfer is to be made by the county board of education to an exempted village school district or a city school district. It will be noted, too, that in this amendment in 108 O. L., Part 1, to section 4696 G. C., the provision that when seventy-five per cent of the persons in the territory to be transferred petition for the transfer, disappeared. There was still the provision for the petition of the majority, whereupon the county board of education could act if it so desired, but the mandate appearing in the former 4696 G. C. (106 O. L.) no longer was in the section.

"Where seventy-five per cent of the electors, located in territory which it is desired to transfer to an exempted village school district or a city school district or another county school district, petition for such transfer, it is mandatory upon the county board of education to make such transfer." (Opinions of the Attorney-General, page 563, Vol. 1, 1919.)

What followed the amendment of section 4696 G. C., as amended in 108 O. L., Part 1, was that even though a petition of the persons directly concerned in the territory to be transferred was presented to the county board of education and might have had seventy-five per cent or ninety per cent, it was

still a voluntary action on the part of the county board of education as to whether such transfer petitioned for should be made. Thus no direct relief was granted to the persons residing in school territory desired to be transferred, and in fact they had lost one of their rights which they had under former section 4696, as it had existed prior to that time, that is, the right of petitioning for relief, and then by having seventy-five per cent of the electors in the territory proposed to be transferred force the county board of education to make such transfer under the mandates set forth in the law. This led to the amendment again of 4696 G. C. as it appears in 109 O. L., p. 65, heretofore quoted. It will be noted that the first sentence of 4696, as it existed in 108 O. L., Part 1, was divided into three sentences, each complete within itself; that is, the third sentence in section 4696 G. C. (in its first paragraph) is that matter which is the closing language of the first sentence in 4696 as it appears in 108 O. L., Part 1. The first sentence of section 4696, as in effect at the present time, speaks of the transferring of school territory by a county board of education to an exempted village, city, or county school district; the third sentence says that a county board of education *may accept* a transfer of territory from any such school district and annex the same to a contiguous school district of the county school district. In between the first sentence and the third sentence of 4696, as it appears in 109 O. L., is this single sentence standing by itself, to-wit:

"Upon petition of seventy-five per cent of *the electors in the territory proposed to be transferred*, the county board of education shall make such transfer."

It appears that the details necessary to initiate a movement to transfer school territory from a county school district to an exempted village school district, or a city school district, or a county school district, are set forth very clearly, but when the arrangement is to be the other way, as where a county board of education is to accept a transfer from an exempted school district, or a city district, or another county school district, there appears doubt as to whether the provisions relative to a petition, appearing in the first paragraph of section 4696 G. C., would apply.

It does not seem reasonable that persons residing in territory outside of an exempted village district, or a city school district, or a county school district, could by their action in securing a petition signed by seventy-five per cent of the electors in the territory proposed to be transferred, actually force such transfer upon the part of the boards concerned, unless at the same time persons who resided in an exempted village school district or city school district, or another county school district, should also have the right of petitioning to their board of education, as provided in the first instance. The General Assembly has provided for the protection of the electors in the school territory to be transferred, by the remonstrance in section 4692, wherein a majority of the persons affected can stop the action of the board of education; again, in section 4696 the county board of education, under existing law, cannot transfer a part or all of a school district of the county school district to an exempted village, city or county school district until a petition signed by a majority of the electors residing in the territory to be transferred has been properly presented. Formerly the county board of education could do this without the petition, as evidenced by the language appearing in 108 O. L., Part 1 (section 4696 G. C.), but the present legislature inserted the proviso that the county board of education may make the transfers contemplated in section

4696 G. C. "upon a petition of the majority of the electors residing in the territory to be transferred." This is new language occurring in section 4696 General Code, and it is evident that the general assembly inserted these words with a view of protecting the persons in the territory involved. Apparently the general assembly intended that the same rule as regards a petition should obtain in a transfer to the county school district, as well as from the county school district, because it would hardly seem consistent that a rule that works one way would not also work the other way and that the same procedure as regards detail should not be carried out. Thus in the second paragraph of section 4696 G. C., 109 O. L., p. 65, there appears the requirements which are necessary before a transfer "shall be complete," and the first of these requirements is that 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*. Here we have the words "making" and "accepting" appearing so closely together that the intent appears to be that the requirements necessary in the "making" should also be the requirements necessary in the "accepting." The words "as the case may be" are also significant, indicating that whichever the case, whether making or accepting, the same requirements as to detail should obtain.

Bearing further upon section 4696 G. C., construction heretofore has been upon the first paragraph of such section, this being the paragraph in which the language "upon petition of seventy-five per cent of the electors in the territory proposed to be transferred, the county board of education shall make such transfer" occurs. The concluding sentence of the paragraph says that a county board of education may accept a transfer of territory and annex the same to the contiguous school district of the county school district. The provision set forth in the first paragraph of section 4696 G. C. having been carried out, the second paragraph of section 4696 then starts with this language :

*"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 * * * and (3) a map shall be filed with the county auditor of each county affected by the transfer."*

Here it says that before a transfer "shall be complete" in any case, three concluding things shall be done, as above stated. If all that was necessary to make a transfer of school territory, either to or from the county school district, was the carrying out of the three things mentioned in the concluding paragraph of section 4696 G. C., then there would be no occasion for the mention of the petition occurring in the first paragraph of section 4696 G. C. That is to say, the second paragraph of section 4696, speaking of the "completing" of a transfer of school territory, carries a clear inference that something must have been done before, in the "starting" or initiating of such transfer. Completion carries with it the idea of successive steps taken towards completion, and the second paragraph of 4696 G. C. names the three final things that are necessary before a transfer of school territory, under section 4696 G. C., is finally finished. If the things mentioned in the second paragraph of 4696 G. C. were all that was necessary to bring about a transfer of school territory, then there would be no occasion for the provision occurring in the first paragraph

of 4696 in its opening sentence, that a petition of a majority of the electors residing in territory to be transferred is first necessary before a county board of education may transfer a part or all of a school district to the county school district of an exempted village, city or county school district, the territory of which is contiguous thereto. From a practical viewpoint contiguous territory is frequently transferred back and forth between school districts by proper authority, and it is not to be contemplated that the general assembly had in mind that it should be made more difficult for it to be transferred from an exempted village, city or county school district to a county school district than it was for it to be transferred from the county school district to an exempted village, city or county school district. It is believed that the general assembly meant that the petition rights conferred upon the electors in the school territory should obtain in one case as well as in the other. Formerly, as pointed out heretofore, school territory attached to an exempted village or a city had no method under the law of getting back into the county school district, and this was the very thing which the general assembly attempted to correct in its amendments to section 4696 G. C. If the section is to be construed that the petition rights of persons in attached territory to a city school district or an exempted village school district no longer obtain, then these persons in rural territory attached to the city school district, or the village school district, have lost a right which it is believed the law-making body intended to protect, for they will always remain in the exempted village school district, the city school district or the county school district to which they are attached until the board of education in charge of that district may see fit to move in the matter. A hostile board of education in charge of such territory and not desiring to give it up for taxation purposes or other reasons, could permanently prevent the transfer of such school territory back to the county school district, even though the electors in such school territory were unanimous in the belief that the educational needs of their particular community might be better cared for by being attached to the county school district.

Referring to your second question you desire to know whether a petition, submitted by the electors residing in school territory desired to be transferred from an exempted village district or a city district or a county district to the county school district, or to another county school district, requires seventy-five per cent of the electors in such territory in order to make it obligatory upon the county board of education to accept such transfer. Having already held that it is necessary for the board of education of the district, in which the territory lies, to make such transfer upon petition of seventy-five per cent of the electors residing therein, it is at once apparent that such transfer could be stopped by the county board of education merely refusing to accept or to act in the matter. It must be considered that what the general assembly had in mind was the giving to the electors living in the school territory the right to have some views as to which school district and what kind of a school district they should be attached to. Thus the petition provisions of section 4696, in its first paragraph, were inserted, being a parallel provision to the provision in section 4692 G. C., where a remonstrance from the electors in the district can prevent an attempted transfer. In other words, if the seventy-five per cent is to run against the board of education making the transfer and compel action on its part, then the seventy-five per cent should also run against the accepting board in causing it to accept such transfer, for otherwise the entire proceeding would come to naught when the accepting board refused to recognize such petition even though signed by all the electors in the transferred

territory, and what was apparently desired by the general assembly in conferring privileges upon electors in school territory desiring to be transferred, would not obtain at all.

You are therefore advised, in answer to your questions, that:

1. Under the provisions of section 4696 G. C., for a county board of education to accept a transfer of territory from an exempted village school district, such transfer must be petitioned for by a majority of the electors residing in the territory to be transferred, and a resolution of the board of education of the exempted village district concerned, offering to yield such territory, is not sufficient basis for the county board of education's acceptance.

2. Under the provisions of section 4696 G. C., in order to make it obligatory for the county board of education to accept a transfer of school territory from an exempted village school district or a city school district, or another county school district, the petition presented from the school territory to be transferred must contain the signatures of seventy-five per cent of the electors residing in such school territory.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2433.

INHERITANCE TAX LAW—SAID TAX NOT ASSESSABLE IN THIS STATE ON SUCCESSION TO STOCK OWNED BY NON-RESIDENT DECEDENT IN CORPORATION ORGANIZED AND EXISTING UNDER LAWS OF ANOTHER STATE BUT WHICH DOES BUSINESS AND OWNS REAL ESTATE IN OHIO.

Inheritance tax cannot be assessed in this state on a succession to stock owned by a non-resident decedent in a corporation organized and existing under the laws of another state but which does business and owns real estate in Ohio.

COLUMBUS, OHIO, September 21, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You request the opinion of this department upon the following question:

“Will you kindly advise whether or not inheritance tax can be assessed in this state on the succession to stock owned by a non-resident decedent in a corporation organized and existing under the laws of the state of New Jersey but which does business and owns real estate in Ohio?”

The inheritance tax law of this state contains the following provisions:

“Sec. 5331. As used in this subdivision of this chapter:

1. The words ‘estate’ and ‘property’ include everything capable of ownership, or any interest therein or income therefrom, whether tangible or intangible, and except as to real estate, whether within or without this state, which passes to any one person, institution or corporation, from any one person, whether by a single succession or not.