

The word "renewal", as used in Section 7829-1, General Code, includes not only all certificates issued by authority of law as renewals, for a limited period of time, of certificates which had formerly been granted, but also includes all certificates which are issued when provisional or limited certificates previously granted are converted into life certificates by authority of Sections 7806-6, 7806-7 and 7806-11, General Code.

Second, a provisional high school certificate heretofore granted by authority of Section 7807-4, General Code, may be converted into a life certificate as provided by Section 7807-6, General Code. You state in your inquiry that a provisional high school certificate granted on the completion of certain college courses is limited to subjects mentioned therein as college majors or minors, and the question has arisen whether or not, when such provisional certificate is converted into a life certificate, this life certificate must be limited in scope to the same subjects as appear as majors and minors on the original provisional certificate.

It will be noted that Section 7829-1, supra, provides:

"The director of education shall specify minimum requirements for the inclusion of branches in state provisional and life high school certificates."

In specifying the requirements for the granting of life certificates, upon the conversion of provisional high school certificates which have been granted by virtue of Section 7807-4, General Code, upon the applicant's having completed certain college courses, the director of education may specify that what has been designated in the original provisional certificate as college majors and minors is sufficient justification for the granting of a life certificate for teaching these particular branches, or he may specify other or additional requirements for the inclusion of branches in the life certificate. These requirements may be in the form of an examination, or additional training if the applicant has less than twelve years teaching experience.

Third, the issuing of life high school teachers' certificates under Sections 7807-11, General Code, is governed by the same rules as is the conversion of provisional certificates into life certificates under Section 7807-6, General Code, so far as the inclusion therein of branches which the certificate authorizes the recipient thereof to teach is concerned.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1258.

BOARD OF EDUCATION—CONCERNING TRANSFER OF PART OF
SCHOOL DISTRICT TO ANOTHER DISTRICT.

SYLLABUS:

1. *The filing of a proper petition is the only means by which a county board of education may be vested with jurisdiction to transfer a part or all of a school district of the county school district to an adjacent city, exempted village or county school district. The filing with a county board of education of a petition which asks for the transfer of a part or all of the territory of a school district of the county school district to an adjacent rural or village district which lies in an adjoining county school district vests no jurisdiction whatever in the county board of education to act in the premises.*

2. *When a petition is filed with a county board of education, signed by 75% or more of the resident electors of a part or all of a school district of the county school district wherein the schools are not centralized, asking for the transfer of such part or all of the school district to an adjacent exempted village, city or county school district, mandamus will lie to compel the county board of education, to act in accordance with the petition, irrespective of the financial condition of the districts affected or the status of their schools and obligations connected therewith.*

3. *The mandatory duty of a county board of education to make transfers of school district territory upon petition of 75% or more of the resident electors of the territory sought to be transferred must be performed within a reasonable time under all the circumstances after the petition has been filed. Such transfer can not be made to take effect in the future, or upon condition, or the happening of certain contingencies.*

4. *When territory is transferred to a county school district the county board of education of the district to which such transfer is made, in its discretion, may or may not accept such transfer.*

COLUMBUS, OHIO, November 14, 1927.

HON. GEORGE C. SHEFFLER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you request my opinion with respect to certain matters submitted to you by the Superintendent of Schools of Sandusky County. The letter of the Superintendent of Schools to you follows:

"The County Board of Education is requesting me to submit several questions in regard to the petition requesting transfer from Scott Helena and Scott Rollersville to Rising Sun School District. You already know the facts in the matter, but it would probably be pertinent to explain the situation. A section of Rollersville School District adjacent to the Wood County line is seeking transfer by a petition of more than 75% of its electors to Rising Sun in Wood County, Ohio. Centralization has never been voted in this district.

The first question which has risen is: Is the County Board of Education required to make this transfer if it should so seriously cripple the remaining district as to make it impossible for them to operate efficiently and effectually a school in Rollersville?

Second: Schools are already started; auditor's books are made up; hack drivers are employed; and teachers are employed. Could the County Board be mandamused to make this transfer at once, thereby leaving legal contracts for one teacher and one van driver and also leaving Rollersville without funds to pay these contracts?

Question number three: Could the County Board of Education make such transfer the same to become effective in May or June of 1928? Is there any section that would provide for such a delayed transfer? If there is would there be any difference between a transfer delayed for five months and for a transfer delayed for five years?

Question number four: The petition states—requested to transfer from Rollersville, Sandusky County, Ohio. Section 4696 provides that a Board may transfer from a County District to a County District such adjacent territory. It does not, however, provide that they transfer to a particular district, but the County Board of Education receiving such transfer shall

assign such transferred territory to an adjacent district within its county school boundaries. Does the fact that the petition asks the Sandusky County Board of Education to transfer to Rising Sun School District and not to Wood County invalidate the petition?

I would be extremely glad if you would submit these questions together with your personal opinions to the Attorney General and ask that he give us an opinion in writing answering each question number one, two, three and four indicating the number in each case as the answer is given if possible within the next ten days."

Section 4696, General Code, 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 percent 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."

By virtue of Section 4692, General Code, boards of education of county school districts are vested with jurisdiction to rearrange the geographical boundaries of rural and village school districts within their county school districts by the transfer of territory from one to another. No jurisdiction exists to make transfers to city, exempted village or county school districts, except when a petition is filed therefor as provided by Section 4696, *supra*. The filing of the petition is a prerequisite of the vesting of jurisdiction in the county board of education, to act with respect to such transfers. That is to say, county boards of education can not make transfers of territory to city, exempted village or county school districts until authority is given to them by the filing of a petition therefor, in accordance with the statute, and then only in so far as jurisdiction is extended to them by the petition.

It will be noted by the provisions of Section 4696, *supra*, that when a petition is filed with a county board of education asking for the transfer of a part or all of the territory of a school district of the county school district (that is, a rural or village school district,) to an exempted village, city or county school district, the territory of which is contiguous thereto, such board of education *may* make the transfer if the petition is signed by at least a majority of the electors residing in the territory to be transferred, but if the petition is signed by 75% or more of such electors, the county board of education *shall* make the transfer.

Our courts have consistently held that the language of the statute, wherein it states that the board of education *shall* make a transfer to an exempted village, city or county school district, when petitioned for by 75% of the electors residing in the territory sought to be transferred, is mandatory, unless the schools in the territory¹ seeking to be transferred are centralized. A number of cases might be cited to this effect. One case, in particular, to which your attention is directed, because it contains other features pertinent to your inquiry, is the case of *State ex rel Brenner et al., vs. County Board of Education of Franklin County, et al.*, 97 O. S. 337, in which the court in a per curiam opinion states:

“ * * * by the provisions of Section 4696, General Code, as amended 106 O. L., 396, whenever 75 per cent, of the electors residing in the territory sought to be transferred, petition for such transfer, the county board of education is vested with no discretion in the premises, but is required under the provisions of that section to transfer such territory in accordance with the prayer of the petition filed with it. * * * ”

Section 4696, General Code, now in force, is the same with respect to the duty of a county board of education to make transfers of territory, upon petition of 75% of the resident electors of the territory to be transferred, as appears in 106 O. L. at page 396, referred to and in force at the time of the rendition of the opinion in the case of *State ex rel Brenner et al. vs. County Board of Education of Franklin County, et al., supra*.

When a petition is filed with the county board of education, signed by three-fourths of the resident electors of the territory sought to be transferred, asking for a transfer of all or part of a school district of the county school district wherein the schools are not centralized to an exempted village, city or another county school district, it becomes the mandatory duty of the county board of education with whom the petition is filed, that is the board of the county school district of which the territory sought to be transferred is a part, to pass a resolution making the transfer as petitioned for. The statute makes no exception on account of the financial condition of the district affected by the transfer, or on account of the district being burdened with obligations nor does it provide for any different action to be taken if the petition is filed at the beginning, in the middle, or at the end of a school year, or if filed when school is in session or not in session, or after the auditor's books are made up for the year and contracts for teachers and for transportation of pupils have been made.

Questions relating to the financial affairs of the two districts before and after the transfer are matters to be considered in making the equitable division of the funds and indebtedness between the two districts, which, if the district to which the transfer is made accepts the same, shall be made, in the case of territory transferred to a county school district, by the board of education of the county school district to which the territory is transferred. In the absence of fraud or abuse of discretion on the part of the board making an equitable division of funds and indebtedness, its decision in the matter is final.

It will be observed that the statute does not impose a mandatory duty upon the board of education to which a transfer is made to accept the same. The language of the statute is:

“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 an opinion rendered by my predecessor, with which I concur, which opinion may be found in Opinions of the Attorney General for 1924, at page 720, it is held:

“ * * * the words ‘may accept,’ as used in the third sentence of Section 4696, do not make it mandatory upon the county board of education to accept territory transferred to it by another county board of education.
* * * ”

Questions arising in connection with the transfer of funds between two school districts, when transfer of territory from one to the other has been effected, are discussed in a former opinion of this department, being Opinion No. 1033, rendered September 21, 1927, and addressed to the Honorable Herman F. Krickenberger, Prosecuting Attorney, Darke County, in which it was held:

“1. Transfers of territory from a school district in one county to a contiguous county school district of another county are not complete until the board of education of the county school district to which the transfer is being made makes an equitable division of the funds and indebtedness between the two districts involved and if such county board of education neglects or refuses to make such equitable division of funds as is contemplated by the statutes the transfer will never become effective.

2. In making a division of the funds and indebtedness between two school districts involved in the transfer of territory from one to the other, consideration should be given not solely to the comparative tax valuation of the property located within the territory transferred and that of the entire districts before transfer but to other factors bearing on the situation as well.”

There is no time fixed by statute, within which a county board of education must act upon the filing with it of a petition for the transfer of territory by 75% of the electors residing within the territory to be transferred, in accordance with Section 4696, *supra*. In such a case a reasonable time under the circumstances would be implied. There is no authority for the board to delay action or to make a transfer to become effective at some future date. To comply with the mandatory terms of the statute action should be taken as soon as circumstances permit.

In the case of *State ex rel. Brenner, et al., vs. Board of Education of Franklin County, et al., supra*, it was sought to compel, by mandamus, the Franklin County Board of Education to transfer territory from the village school district of Canal Winchester, Franklin County, Ohio, to the Fairfield County School District, as petitioned for by 75% of the electors residing in the territory sought to be transferred. The court after determining that the Franklin County Board of Education had no discretion in the matter and was required to make the transfer as provided by law, made the following order:

“* * * it is ordered, considered, and adjudged by this court, that a peremptory writ of mandamus issue, as prayed for in relators’ petition, commanding the respondents, The County Board of Education of Franklin County, Ohio, and each individual member thereof, *within ten days* from the service of such writ, to order and make transfer from the village school district of Canal Winchester, Franklin County, Ohio, to the Fairfield county school district of the territory described in the petition filed with it. * *”
(Italics the writer’s.)

In the specific case which you have presented, it appears that a petition bearing the signatures of more than 75% of the resident electors of a portion of the Rollersville Rural School District in Scott Township, Sandusky County, Ohio, filed a petition with the board of education of the Sandusky County School District asking for

a transfer of the territory within which they reside to the Rising Sun Village School District. Rising Sun Village School District is a village district, the boundaries of which are contiguous to those of that portion of Rollersville Rural School District sought to be transferred, but lies in Wood County School District.

County boards of education it will be observed have no jurisdiction to make transfers between village or rural districts unless such districts lie within the county district over which the board has jurisdiction, nor is there any authority to confer such jurisdiction by petition.

The only authority for conferring jurisdiction to make transfers of school district territory by petition, is that contained in Section 4696, supra. The only authority therein contained is to make transfers, after being vested with jurisdiction therefor by petition, of "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." Rising Sun Village School District is not an exempted village, city or county school district, but is one of the districts of the Wood County School District. Before the territory sought to be transferred could become annexed to the Rising Sun Village School District, it would first be necessary that the Sandusky County Board of Education have jurisdiction to make the transfer. No jurisdiction can be conferred on this board, by petition or otherwise, to make a transfer of territory to other than an adjacent city, exempted village or county school district.

In this case, the Sandusky County Board of Education, if properly vested with jurisdiction, might and would be required to, if a three-fourths petition were filed, make the transfer to the Wood County School District, the county board of education for which may accept the transfer and attach the territory transferred to the Rising Sun Village School District if it sees fit so to do. Inasmuch as the petition does not request a transfer which is authorized by statute, it confers no jurisdiction on the Sandusky board to act in the premises at all.

Specifically answering the questions submitted by the Superintendent of Schools of Sandusky County in the order asked, I am of the opinion.

First, if the resident electors of a part or all of Rollersville Rural School District had filed with the county board of education of the Sandusky County School District a petition signed by 75% of their number residing in the territory to be transferred, asking for a transfer of such territory to the Wood County School District, the board of education of the Sandusky County School District would be required to make the transfer, no matter how seriously the portion of Rollersville District not transferred might be crippled thereby with respect to the conduct of its school. The condition of what would remain of the Rollersville District after the transfer would have to be taken care of by the Sandusky County Board of Education by transfer to some adjacent district or otherwise, as might be for the best interests of the schools in said territory.

Second, the fact that schools are in session in a school district of a county school district, tax levies made therein and distributed thereto, auditor's books made up or contracts entered into with teachers and for transportation of pupils, does not serve to suspend the mandatory duty of the county board of education of the county school district of which such district is a part, to transfer a part or all of such district to an adjacent exempted village, city or county school district when there is filed a proper and sufficient petition therefor.

If such petition asking for a transfer of a part or all of a school district of a county school district, wherein the schools are not centralized, to an adjacent exempted village, city or county school district, be signed by 75% of the resident electors in the territory sought to be transferred, mandamus will lie to compel the county board of education to act in accordance therewith, irrespective of the financial condi-

tion of the districts affected or the status of their schools and obligations connected therewith.

Third, there is no provision for delayed transfers of school territory or for transfers to become effective in the future. When circumstances are such that there devolves upon a county board of education the mandatory duty to make a transfer of school territory from one district to another, such transfer should be made within a reasonable time after the mandatory duty attaches.

Fourth, inasmuch as the petition filed with the Board of Education of the Sandusky County School District by 75% of the resident electors of a portion of Rollersville Rural District asks that said territory be transferred to Rising Sun School district which, is a village district of an adjacent county, and which transfer the Sandusky County Board of Education would have no authority to make in any case, the filing of said petition vests no jurisdiction in the Sandusky County Board of Education to act and it not only could not be required to make such transfer by an action in mandamus but might be enjoined from making such transfer if it attempted so to do.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1259.

REAL ESTATE BROKER'S LICENSE—NOT REVOKED—MAY BE RENEWED UPON APPLICATION AND FEE OF FIVE DOLLARS.

SYLLABUS:

A real estate broker's license, not suspended or revoked, may be renewed after the expiration thereof, upon application therefor, accompanied by the fee of five dollars.

COLUMBUS, OHIO, November 14, 1927.

HON. CYRUS LOCHER, *Director, Department of Commerce, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of November 9, 1927, as follows:

“The real estate license law, Section 6373-38, provides that ‘each license issued under this act shall expire on the 31st day of December of the year in which it is issued; but each license shall be renewed upon application therefor, without recommendation, examination or inquiry. * * * ’

Section 6373-39 provides that the fees for real estate broker's license shall be \$10.00 for the first year and \$5.00 for each renewal thereof, etc.

In response to our request, you gave us Opinion No. 774, saying that the section is plain and unambiguous and clearly demonstrates that each license expires annually and that the bond required by Section 6373-35 must be executed for the period of one year and a new one for each renewal of a license.

The question now has arisen as to when application for a renewal of a license must be made. The holder of a broker's license makes application on January 15, 1928, that is subsequent to the time of the expiration of his 1927 license. May the Board of Real Estate Examiners renew his 1927