

I find that the same has been executed by you in your official capacity above stated and by The Tide-Water Pipe Company, Limited, the lessee therein named, by the hand of its Vice President acting pursuant to a resolution duly adopted by the Board of Directors of said company under date of July 25, 1938. Assuming, as I do, that the parcel of canal land above described has not been designated by the Director of the Department of Highways for state highway purposes, and that no application for the lease of this property for park purposes has been made by any political subdivision entitled to the lease of the property for such purposes, I find that the provisions of this lease and the conditions and restrictions therein contained are in conformity with the act of the legislature above referred to and with other statutory provisions relating to leases of this kind. I am, accordingly, approving this lease and I am herewith returning the same with my approval endorsed thereon and upon the duplicate and triplicate copies which are likewise herewith enclosed.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2907.

COUNTY BOARD OF EDUCATION — TRANSFER OF SCHOOL PROPERTY TO CONTIGUOUS SCHOOL DISTRICT—NOT EFFECTIVE UNTIL ACCEPTANCE, DIVISION OF FUNDS AND INDEBTEDNESS, AND MAP OF COUNTY AFFECTED, FILED.

SYLLABUS:

The transfer of school property by a county board of education to a contiguous county school district does not become complete or effective until (1) accepted by a majority of the Board of Education of the county school district to which the territory is transferred (2) an equitable division of the funds and indebtedness between the districts involved and (3) a map filed with the county auditor of each county affected by the transfer, all in accordance with the requirements of Section 4696, General Code, notwithstanding the provisions of Section 7600-7, General Code.

COLUMBUS, OHIO, September 1, 1938.

HON. D. H. JACKMAN, *Prosecuting Attorney, London, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

"I would like your opinion on the following school question which seems rather perplexing:

There formerly existed in Union County a school district known as Chuckery Special School District, a part of which was composed of territory from Pike Township in Madison County and Darby Township in Madison County.

The Union County Board of Education in pursuance of a plan of organization as provided in General Code Section 7600-7 has combined portions of their own territory into what is now known as the Chuckery-Darby District. By resolution of the County Board of Education for Union County, dated April 27, 1938, they attempted to transfer a portion of the old school district located in Pike Township, to the Pike Township Madison County Board of Education. A certified copy of this resolution was filed with the Madison County Auditor on June 2, 1938, and it contains a map and accurate description of the property which was attempted to be transferred to the Pike Township Rural School. It is also a portion of the old Chuckery School District and has been under the jurisdiction of the Union County Board of Education for several years.

The Madison County Board of Education did not concur in said transfer nor accept said transfer from the Union County Board and the Pike Township Rural Board of Education has taken no action except to attempt a remonstrance which we are informed was incomplete for lack of legal details.

Our problem now is whether or not the county auditor should accept the certificate from the Union County Board of Education and effect the transfer of the land back to the Madison County Board of Education and the Pike Township Board of Education in their respective capacities when neither of them has joined in or approved this transfer."

From your letter, I assume that the original transfer of school territory from Pike Township in Madison County and Darby Township in Madison County to the Union County School District was by virtue of, and in accordance with the provisions of Section 4696, General Code. This section 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.

Any territory which has been transferred to another district, or any part of such territory, shall not be transferred out of the district to which it has been transferred during a period of five years from the date of the original transfer without the approval of the state director of education to such a transfer."

As stated in the case of *Board of Education vs. Minnich*, 14 Ohio Law Abstract, 651, at page 653:

"Section 4696 G. C. has been recognized as the source of authority for a transfer of territory from a school district within one county district to a contiguous school district within another county school district. *State ex Whartenby vs. County Board of Education of Perry County*, 122 Oh. St., 463, *State ex Board of Education of Swanton Village School District vs. Board of Education of Sharples Village School District*, 114 Oh. St., 603."

From a reading of the provisions of Section 4696, *supra*, it is clear that the county board of education may, upon petition of a ma-

jority of the voters in the territory, and must, upon petition of 75% of the electors therein, transfer a part or all of a school district of the county school district to a contiguous city, exempted village, or county school district; and that *the transfer is not complete until* (1) accepted by a majority of the board of education of the city, exempted village, or county school district to which the territory is transferred, (2) an equitable division of the funds and indebtedness between the districts involved has been made, and (3), a map is filed with the county auditor of each county affected by the transfer.

Your communication states that the Board of Education of the Madison County School District did not concur in, or accept the transfer of that portion of the school territory situated in Pike Township, Madison County.

It is entirely within the discretion of a county board of education to determine whether or not it will accept school territory transferred to it by the board of education of a contiguous county school district.

In an opinion appearing in Opinions of the Attorney General for the year 1928, Volume II, page 966, it was held as follows:

“When school territory lying within one county school district is transferred to a contiguous county school district by authority of Section 4696, General Code, the district to which the transfer is made may or may not accept the transfer. If it is desired to accept the transfer, such acceptance is not complete until the board of education of the county school district to which the territory is being transferred makes an equitable division of the funds and indebtedness between the districts involved in the transfer.”

In the case of *State, ex rel. Whartenby, vs. County Board of Education of Perry County, et al.*, 122 O. S., 463, it was held:

“Section 4696, General Code, as amended in 1929 (113 Ohio Laws, 296) imposes a mandatory duty upon a county board of education to order a transfer of territory from one school district to another where seventy-five per cent. of the electors in the territory proposed to be transferred petition therefor. *By the same statute the county board of education of the district to which such transfer is sought to be made, in its discretion may or may not accept such transfer.*” (Italics, the writer’s.)

By virtue of the provisions of Section 4696, supra, the failure of the Board of Education of Madison County to accept the transfer of the portion of school territory in Pike Township, Madison County School District, rendered ineffective the resolution of the Board of Education of Union County School District that was filed with the Auditor of Madison County, and which attempted to transfer the school territory in Pike Township Rural School District, Madison County, back to the Board of Education of the Madison County School District.

Section 7600-7, General Code, provides as follows:

“On or before the 15th day of October, 1935, and on or before the first day of July, 1936, 1937 and 1938, the county board of education shall transmit such adopted plan of organization to the director, who shall approve the same, with such modifications and additions thereto as he deems desirable, and shall certify his approval to the county board of education: Provided, however, that the director shall grant one or more hearings to the county board of education, to any affected board of education and to any interested persons affected, with reference to any such modification or additions. Upon approval of the director, such plan of organization within any county shall take effect upon a date to be fixed by the director, and thereafter no school district or parts thereof shall be transferred or the boundary lines thereof changed unless such transfer or change of boundary lines is in accordance with such adopted plan of organization. Nothing in this act shall be construed as a delegation of authority to the county board of education or the director to create a debt in any school district for any purposes.”

Although your letter does not clearly so state, I assume that the Board of Education of the Union County School District in its plan of organization prepared in conformance with the provisions of Section 7600-7, supra, showed the transfer of the school territory in Pike Township to Madison County School District. However, including or showing such transfer in the plan of organization would not in and of itself dispense with the necessary proper procedure of transferring said school territory situated in the Pike Township Rural School District, Madison County to the Madison County School District, in conformity with the provisions of Section 4696, supra.

In the recent case of *State, ex rel. Johnson vs. Board of Education of Hancock County*, 24 Ohio Law Abstract, 193 (appeal dismissed in 132 O. S., 452), it was held as follows:

"Secs. 4692, 4696 and 4736 G. C. were not repealed by implication by the School Foundation Law (Secs. 7600-1 to 7600-8 G. C.) except insofar as the powers that may be exercised thereunder are limited by the provisions of Sec. 7600-7 G. C."

At page 200, the Court said:

"The provisions of Secs. 7600-1 to 7600-8 G. C., inclusive, and those of Secs. 4692, 4696 and 4736 G. C., all relate to transfers of school territory and are therefore said to be in *pari materia*, that is to say, they relate to the same subject matter and must be read together unless the provisions of the latter are so repugnant to those of the earlier that they cannot be reconciled. It will be noted that nowhere in the School Foundation Law is any authority extended to any one to actually make a transfer of territory nor is any machinery provided for therein for the actual making of a transfer of territory. The Director of Education is authorized by Sec. 7600-5, G. C., 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.

Secs. 4692, 4696 and 4736, G. C., provide the machinery and the only machinery for actually making the transfers and the equitable distribution of funds and indebtedness between districts involved in such transfers contemplated by the provisions of Secs. 7600-1 to 7600-8 G. C. If Secs. 4692, 4696 and 4736, G. C., had been repealed, there would be left no means of equitably dividing the funds and indebtedness between districts from and to which territory has been annexed. It is a well settled principle of law that in the absence of statute, where territory is annexed to another political subdivision there can be no division of funds and indebtedness between the two subdivisions. Ruling Case Law, Volume 24, page 566."

The conclusion reached in *State ex. rel. Johnson vs. Board of Education*, supra, appears also in an opinion rendered prior to this decision by my predecessor in office, on February 20, 1936, No. 5176, wherein, in the fourth branch of the syllabus it was held:

“Sections 4692, 4696 and 4736, General Code, were not repealed by implication by the provisions of the so-called School Foundation Law (Secs. 7600-1 to 7600-8, inclusive, of the General Code) except to the extent that the authority granted to county boards of education to transfer school territory and create new school districts by the terms of said Sections 4692, 4696 and 4736, General Code, is limited by the terms of Sections 7600-7, General Code, to the transfer of school territory and the creation of new school districts to conform to a legally adopted and approved plan of organization of their several county school districts.”

Therefore, in specific answer to your question it is my opinion that, the county auditor is not authorized to accept the certificate from the Union County Board of Education and effect the transfer of the land back to the Madison County Board of Education and the Pike Township Board of Education.

Respectfully,

HERBERT S. DUFFY,

Attorney General

2908.

POLICEMAN—INJURED IN LINE OF DUTY—ON PENSION LIST—CIVIL SERVICE STATUS ONE YEAR—STATUS WHEN REEXAMINED AND FIT TO RETURN TO PERFORMANCE OF DUTIES.

SYLLABUS:

1. *A policeman who was injured in the line of duty and upon his application was placed on the pension list by the Board of Trustees of the Police Pension Board of his city, retained his civil service status for one year thereafter and no longer, under virtue of Section 486-12, General Code of Ohio.*

2. *A policeman who was placed on the pension list by the Board of Trustees of the Police Pension Fund of his city on June 10, 1935,*