

that the moneys authorized to be paid from the county treasury under these sections are for the purpose of aiding the societies under consideration in acquiring and improving fair property. Both from the history of these sections, therefore, as well as from the context thereof, it seems manifest that the appropriations authorized to be made by Section 9394 are in addition to those authorized to be made by Sections 9880 and 9880-1.

Specifically answering your question it is my opinion that Section 9894, General Code, does not in any way abrogate or limit the provisions of Section 9880, General Code, and that the amount of moneys directed and authorized to be appropriated by Section 9394 is to be paid to the agricultural societies specified therein in addition to the moneys authorized to be appropriated by Sections 9880 and 9880-1, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2002.

COUNTY BOARD OF EDUCATION—TRANSFER OF TERRITORY—
SPECIFIC CASE REVIEWED—GENERAL LAW DISCUSSED.

SYLLABUS:

1. *The filing of a single petition with a county board of education for the transfer of territory which lies in more than one school district of a county school district, to another county school district, does not vest jurisdiction in the county board of education to transfer any part or all of the territory sought thereby to be transferred, regardless of the number of petitioners therefor.*
2. *When a petition is filed with a county board of education, signed by seventy-five per cent or more of the electors of a part or all of a school district of the county school district other than a centralized district, asking that such part or all of the district be transferred to a contiguous county school district, it becomes the mandatory duty of the county board of education to make the transfer as requested.*
3. *When a petition is filed with a county board of education signed by seventy-five per cent or more of the electors of a part or all of a school district of the county school district in which the schools have been centralized, asking that such part or all of the district be transferred to a contiguous county school district, the board may make the transfer as requested or not, as in its discretion seems advisable.*
4. *Under no circumstances may school territory be transferred from one county school district to another, unless the territory transferred be contiguous to the county school district to which the transfer is made.*
5. *There is no provision for the filing of remonstrances against the transfer of school territory where petitions have been filed therefor under Section 4696, General Code.*
6. *Petitioners under Section 4696, General Code, may withdraw their names from such petition any time before official action is taken thereon.*
7. *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.

COLUMBUS, OHIO, April 21, 1928.

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

DEAR SIR:—I am in receipt of your letter requesting my opinion in answer to several questions submitted by the Superintendent of Schools of Sandusky County School District. The letter of the Superintendent reads in part as follows:

“Petitioners situated in Rollersville and Helena School Districts, Sandusky County, Ohio, have signed a petition requesting attachment to Wood County School District. That portion of Rollersville which seeks attachment is adjacent to Rising Sun School District but that portion of Helena School District is not adjacent to Rising Sun School District but is adjacent to the Rollersville School District. This petition has been signed by 82% of the qualified electors of both sections seeking transfer.

| | Portion of | Portion of |
|----------------------------|---------------|------------|
| Rising Sun Wood County. | Rollersville. | Helena. |

Hence, the following questions:

- 1st (a) What is a joint petition?
- (b) Would a petition signed by 75% of the electors of both districts on one sheet of paper or under one heading constitute a joint petition?
- 2nd. Under Attorney General's Opinion No. 2917 of March 9, 1922, if 75% of the electors of each district petitioned asking such transfer on separate petition, would the County Board be required to make such transfer?
- 3rd Could the County Board transfer the sections of both districts by one resolution or at the same meeting? (Remember, the Rollersville portion is contiguous to Rising Sun and the Helena portion is not contiguous to the Rising Sun School District but is contiguous to the portion of Rollersville.)
- 4th (In case of negative answer to question three) could the County Board be required to transfer the Rollersville section since it is adjacent to Wood County School District? Then, after such attachment had become effective, attach the Helena portion to Wood County School District which having then absorbed the portion of Rollersville, would be adjacent to the Helena School District?
- 5th Are we correct in supposing that there is no remonstrance to attachments made under Section 4696?
- 6th Under what limit of time may names be withdrawn from such petition requesting attachment under Section 4696 and under what conditions may they be withdrawn?

7th Under 2 of Section 4393, speaking of equitable division of funds 'in which case shall mean the Board of Education of the County School District to which such territory is transferred.' (19 N. P. [N. S.]; 399, where Boards fail to agree, the court has no jurisdiction) is the intention that the division of funds or indebtedness shall be upon the agreement of the County Boards concerned or just as the law states, that it shall be the decision of the County Board receiving such transfer?"

It appears that the Superintendent's inquiries are prompted by the fact that a petition has been presented to the Sandusky County Board of Education signed by eighty-two per cent of the qualified electors of portions of two school districts of the Sandusky County School District, asking that these parts of districts be transferred to Wood County School District. The portion of one of the districts seeking transfer, viz., the Rollersville School District is contiguous to the Wood County School District, and the portion of the other district seeking transfer, the Helena School District is contiguous to the portion of Rollersville District seeking transfer, but is not contiguous to Wood County School District. The request for transfer of the portions of both districts is made by means of one petition.

Transfers of territory from a school district of a county school district to a contiguous county school district are governed by Section 4696, General Code, which 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."

There is no authority for the transfer of a part or all of a school district of a county school district to another county school district, unless the territory transferred is contiguous to the county school district to which the transfer is made. It is therefore apparent that no action could be taken by the Sandusky County Board of Education to transfer the portion of Helena District seeking transfer to Wood County School District, until after the portion of Rollersville seeking the transfer had been accomplished, even though a proper petition were filed therefor. Moreover, there

is no authority for the filing of single petitions asking for transfers of school territory from more than one district. Each district or part of a district must act independently of others in seeking transfers of territory. This question was decided by the Court of Appeals of Butler County in the case of *Woodrey vs. Board of Education*, 21 O. A. 471. In the course of the opinion in the Woodrey case, the court said at page 474:

"Moreover Section 4692 provides; 'the county board of education may transfer a part or all of a school district of the county school district, etc.'

The section does not say that the school board may transfer a part or all of a school district or two or more school districts. It says a part or all of a school district. This language if it means what it says, means that each school district must be dealt with separately."

While the court in the Woodrey case had under consideration the provisions of Section 4692, General Code, insofar as this question is concerned, the language of said statute, upon which the court rested its conclusion is the same as that of Section 4696, General Code, and in my opinion the conclusions of the court in the Woodrey case may be extended to include transfers made by authority of Section 4696, General Code. I so held in Opinion No. 728 rendered under date of July 12, 1927, a copy of which opinion is enclosed herewith, in which it was held:

"The filing of a joint petition by the electors of more than one or parts of more than one school district seeking the transfer of school territory is not authorized by Section 4696, General Code, and the filing of such a petition vests no jurisdiction in the county board of education to act thereon."

It does not appear from the Superintendent's letter whether or not Rollersville or Helena Districts are rural districts in which the schools have been centralized as provided by Sections 4726, et seq. General Code. If, in the Rollersville District the schools have not been centralized and a petition is filed with the Sandusky County Board of Education signed by fifty per cent of the qualified electors residing in that portion of Rollersville District, contiguous to Wood County School District, which seeks to be transferred to Wood County District, the Sandusky County Board of Education may, if it sees fit, pass the necessary resolution for the transfer, and, if it is signed by seventy-five per cent or more of the electors in said territory, the duty to pass the necessary resolution for the transfer is mandatory, and an action in mandamus will lie to compel it to do so. If, however, schools have been centralized in Rollersville District, the Sandusky County Board of Education has no jurisdiction to make the transfer, until a petition has been filed therefor signed by seventy-five per cent of the electors in the territory, and even then it is discretionary with the board whether it makes the transfer or not. Mandamus will not lie to compel it to do so. *Darby vs. Hadaway*, 113 O. S. 658; *Summit County Board of Education et al vs. State ex rel. Stipe*, 115 O. S. 333.

If, after a proper petition is filed therefor, the Sandusky County Board of Education makes the transfer, the Wood County Board of Education may or may not accept the transfer as made. Under no circumstances can it be compelled to accept it. If the board accepts the transfer, it must manifest that acceptance not only by passing the necessary resolution, but by making an equitable division of the funds and indebtedness between the districts involved, as well, and the acceptance is not complete until the equitable division is made.

In Opinion No. 1033 rendered under date of September 21, 1927, it was held:

“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.”

When a petition has been filed with the county board of education under Section 4696, General Code, the petitioners may withdraw their names from said petition by filing with the county board written notice of said withdrawal any time before the board has acted thereon. It has been repeatedly held in this state that persons who have subscribed their names to petitions may withdraw their names therefrom at any time before official action is taken thereon. *Hays vs. Jones*, 27 O. S. 218; *Dutton vs. Village of Hanover*, 42 O. S. 215; *State ex rel. Kahle vs. Ruppert, Auditor*, 99 O. S. 17.

Taking up the Superintendent's questions in the order asked, it is my opinion in answer thereto:

First, the law does not recognize joint petitions for the transfer of school territory under Section 4696, General Code. County boards of education must deal separately with school districts, or parts of districts, in transferring territory from one district to another. There is no authority for the electors of more than one, or parts of more than one, district to join in one petition for the transfer of territory sought by virtue of the authority granted in Section 4696, General Code. The filing of such a petition vests no jurisdiction in the county board to make the transfer as asked for in the petition.

Second, when a petition is filed with a county board of education, signed by at least seventy-five per cent of the electors of territory lying within a school district of a county school district, other than a rural district in which the schools have been centralized, requesting the transfer of said territory to a contiguous county school district, it is the mandatory duty of the county board with whom the petition is filed to make the transfer as prayed for, and mandamus will lie to compel it to do so. If the district from which the transfer is sought is a rural district in which the schools have been centralized, it is discretionary with the county board of education whether or not it makes the transfer.

Third, the county board of education of Sandusky County School District can not transfer parts of Rollersville and Helena School Districts to Wood County School District by one resolution. The school districts must be dealt with separately, and under no circumstances can a transfer be made from a school district of a city school district to another city school district unless the territory transferred is contiguous to the county school district to which the transfer is made.

Fourth, if the Rollersville District is not a centralized district and a petition is filed signed by seventy-five per cent. or more of the electors in a part of the district, which is contiguous to Wood County School District, asking to be transferred to Wood County School District, it is the mandatory duty of the Sandusky County Board of Education to make the transfer as requested. If Rollersville is a centralized district the board may make the transfer or not as it sees fit. If the transfer is made, accepted by Wood County Board of Education and the transfer is completed, and thereafter a petition is filed by the electors of other contiguous territory in Sandusky County School District the same rule applies.

Fifth, there is no provision for remonstrances when petitions are filed under Section 4696, General Code.

Sixth, petitioners under Section 4696, General Code, may withdraw their names from a petition filed by them, in accordance with the provisions of such sections, at

any time before the county board with whom the petition is filed takes official action thereon.

Seventh, the equitable division of funds to be made between the school districts involved, when school territory is transferred under Section 4696, General Code, is to be made by the board of education of the county school district to which the territory is transferred.

Section 4696, General Code, was amended since the decision of the case of *Board of Education of Clinton County vs. Board of Education of Greene County*, 19 O. N. P. (n. s.) 398. At the time of the decision of that case Section 4696, General Code, provided that, when transfers were made by authority of said section, the said transfer should not be effected until an equitable division of the funds or indebtedness between the two districts "be decided upon by the boards of education acting in the transfer." Now, however, Section 4696, provides that the equitable division of funds and indebtedness between the districts involved shall be made by the county board of education to whom the transfer is made.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2003.

ROADS AND HIGHWAYS—STATE AID—WHEN PROCEEDING IS "PENDING"—INTERPRETATION OF "LOWEST COMPETENT AND RESPONSIBLE BIDDER".

SYLLABUS:

1. *Where an application for state aid was filed under the provisions of former Section 1191, General Code, and the state agreed to co-operate in the construction of a new road to the extent of a certain specified sum of money, such procedure constitutes a proceeding that is "pending" within the meaning of Section 26 of the General Code, so that all steps necessary to complete such improvement, including the awarding of a contract as provided in Section 1207 of the General Code and the retaining of a percentage of ten per cent on all contracts as is provided in former Section 1212, General Code, should be taken under former Sections 1191, et seq., General Code, and not under these sections as amended in House Bill No. 67 (112 v. 430), effective January 2, 1928.*

2. *Where the Director of Highways is required to let a contract to the lowest competent and responsible bidder, it is within his power and duty to look not only to the size of the bids, but also the pecuniary ability of the bidders and to their skill, experience, integrity and judgment. If in the exercise of his sound discretion he determines that the lowest bidder is not competent or responsible, or both, it is his right and duty to reject the lowest bid and award the contract to the lowest competent and responsible bidder; and in the absence of fraud or bad faith, his decision upon a matter of this kind is final and not subject to review by the courts.*

COLUMBUS, OHIO, April 21, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date, which reads as follows: