

1554.

SCHOOL DISTRICT—ANNEXED TO CONTIGUOUS CENTRALIZED DISTRICT—BECOMES CENTRALIZED TERRITORY—UNUSED SCHOOL BUILDINGS MAY BE SOLD IMMEDIATELY.

*SYLLABUS:*

1. *When an entire school district is annexed to a contiguous district, by authority of former Section 4735-1, General Code, or otherwise, the territory so annexed becomes possessed of the legal and political characteristics of the territory of the district to which it is annexed.*

2. *When territory is annexed to a so-called centralized school district, the annexed territory becomes, by virtue of such annexation, centralized school territory.*

3. *School buildings and lots of land attached thereto, not utilized in the plan of centralization of schools and not needed for school purposes, may be disposed of at once by the board of education, in the manner provided by law.*

COLUMBUS, OHIO, February 25, 1930.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“During the year 1929 the West Perkins Special Rural School District constructed a new school building for the accommodation of 4 schools, and then suspended the 4 schools under Section 7730, which suspension was by resolution making said suspension permanent, and the Board now has the 4 school houses and the land.

Under Section 7730-1, said section provides in part that the school building and real estate located in the territory of such suspended school and in which property the board of education has legal title, shall not be sold by the board of education of the district until after four years from such date of suspension of said school, unless, etc. In this particular case the school buildings were not condemned for school use by the Director of Industrial Relations of Ohio, however, at the time said schools were suspended, a new building was in the process of erection to house the children of the territory affected and at the present time said building is completed and being used for the children of the territory effected by the suspension of said schools, but the money, if said buildings and land are sold, will not be used for the payment of the new building, neither will the material of the school house or houses so discontinued be needed in the erection of a consolidated or other school building.

The question now arises as to whether or not the school board can sell said buildings and land affected by the suspension of the said schools, or whether or not the board should wait until four years after the suspension, before selling said buildings and land.

Another question arises in that previous to two years ago there was an East Perkins Board of Education and a West Perkins Board of Education, there being two distinct school districts caused by the separating of the entire district into two school districts by the county board of education.

Later the East side district voted to join the West side district, which carried, and the territory again became joined, which is now the West Perkins Special Rural School District.

Previous to the time that the East side district voted to join the West side district, and during the time they were separated into two districts, the West side district voted to centralize, which carried, and then after said West side had voted to centralize, the East side district joined the West side district by voting themselves annexed to the West side.

Under the present status, is it your opinion that the said district is now centralized?"

In accordance with the holding contained in Opinion No. 129 rendered under date of February 7, 1929, and Opinion No. 485 addressed to you under date of June 6, 1929, school boards are not permitted to sell school buildings and real estate located in the vicinity of schools suspended by authority of Section 7730, General Code, until after four years from the date of the suspension of the school except in certain specified instances noted in Section 7730-1, General Code. The third branch of the syllabus of Opinion No. 485 reads as follows:

"In order to protect the rights of the petitioners mentioned in Section 7730, General Code, the building and real estate located in the territory of a school which has been suspended by authority of said Section 7730, General Code, in which property the board of education has legal title, shall not be sold until after a period of four years has elapsed from the date of such suspension, unless the said building has been condemned for school purposes by the Director of Industrial Relations, or unless a new building is erected or is in process of erection in the immediate vicinity of the suspended school which will serve the territory of the suspended school in substantially the same manner as before suspension of the school, or unless the material of the schoolhouse so discontinued, or its equivalent in value is needed in the erection of a consolidated school or other school building to house the pupils of the suspended school."

In my opinion, however, the question of whether or not the board of education of West Perkins Rural School District may now dispose of the 4 school buildings and school lots referred to in your letter is not controlled by the provisions of Section 7730-1, General Code.

It appears that the territory now embraced within the school district to which you refer as the West Perkins Special Rural School District formerly was embraced in West Perkins Rural School District and East Perkins Rural School District. Some time ago, and before the effective date of the repeal of Sections 4735-1 and 4735-2, General Code, by the 88th General Assembly (113 O. L. p. 688), action was taken, by authority of said Section 4735-1, General Code, by the inhabitants of East Perkins Rural School District, to dissolve the said district and join it to the West Perkins Rural School District. I am advised that the action so taken was held by the Court of Appeals of Erie County to have been regular and that the result was to effectually dissolve East Perkins Rural School District and join it to West Perkins Rural School District. The status of West Perkins Rural School District as a corporate entity was not changed or affected by this proceeding. It did not result in the formation of a new district but simply increased the size of West Perkins Rural School district by adding to it the territory which formerly constituted East Perkins Rural School District.

While it perhaps is not material to this inquiry, I might suggest that there existed at that time no authority for changing the name of West Perkins Rural School District and, as special school districts were abolished upon the adoption of the school code of 1914, the calling of the district, after dissolution of the East Perkins district and its being joined to West Perkins district, West Perkins Special Rural School Dis-

tract is misleading, in that it signifies that both East Perkins Rural School District and West Perkins Rural School District were dissolved at the time of the joinder and an entirely new district formed, which was not the case. The West Perkins District was not dissolved at the time of the joinder with it of the East Perkins District, its legal existence continued as before and its board of education was not at that time abolished. It simply absorbed the East Perkins District and the changing of the name was not only not authorized, but signified a misconception of the effect of the action taken by the East Perkins District in voting to dissolve and join the West Perkins District.

Sometime prior to the dissolution of the East Perkins District and its joinder to the West Perkins District action had been taken by the West Perkins District to centralize its schools under and by authority of Section 4726, General Code, and at the time of its acquiring the territory formerly embraced within the East Perkins District it was functioning as what is commonly called a centralized school district; that is to say, that the centralization of the schools had been authorized by vote, and the board of education possessed the power whether they had at that time exercised it or not, to centralize the schools, as provided by law. When the territory embraced within the East Perkins School District became attached to the West Perkins School District, that territory came under the jurisdiction of the board of education of West Perkins School District and thereby became centralized school territory, and the board of education was empowered to centralize the schools which had formerly been in East Perkins School District to the same extent that it possessed the power to centralize the schools which had formerly been in the West Perkins School District. That being the case, the power existed in the board of education to centralize the four schools mentioned by providing for the conduct of those schools in a school building at some central point without taking action suspending the schools in accordance with the provisions of Section 7730, General Code, and that right still exists. It is not necessary when centralizing the schools of a district by authority of Section 4726, General Code, that the schools be centered in one place.

It was held by the Attorney General in 1916, following the case of *State ex rel. Haynes vs. Board of Education*, 15 O. C. D. 424, that a board of education may lawfully resolve to centralize the schools in more than one place. In the Opinions of the Attorney General for 1916, at page 496, it is held as stated in the syllabus of the opinion, as follows:

"Where the qualified electors of a rural school district vote in favor of centralization under the provisions of Section 4726, General Code, the board of education in proposing to centralize the schools of said district, may, in the exercise of its sound discretion, secure sites at different points in such district and erect suitable buildings thereon for the accommodation of its pupils."

It has been held that where in the plan of centralization certain school buildings are abandoned, the board of education need not wait for the four year period provided by Section 7730, General Code, to elapse before disposing of the school buildings and school lots thus abandoned. See *Feasel vs. Board of Education*, 24 O. N. P. N. S. 329. In this case the Common Pleas Court of Seneca County, in a well reasoned opinion, reached the conclusion that where schools are centralized in a rural school district, in accordance with Section 4726, General Code, an action does not lie to prevent the school board from selling the school properties not utilized in the plan of centralization adopted and not needed for school purposes.

The case was not carried higher, but seems to have been recognized by the legal profession as sound in principle and has been frequently cited by former attorneys general in support of the principle there decided.

In conclusion, therefore, I am of the opinion that authority exists in the board

of education of the West Perkins Rural School District as it is now constituted, to centralize all the schools of the district; that the schools need not necessarily be centralized in one place within the district; and that any school buildings and lots of land upon which the buildings are located not utilized in the plan of centralization and not needed for school purposes may be disposed of at once.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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1555.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN  
CUYAHOGA COUNTY.

COLUMBUS, OHIO, February 25, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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1556.

TEMPERANCE SOCIETY.—PROPERTY EXEMPT FROM TAXATION, IF  
USED EXCLUSIVELY FOR CHARITABLE PURPOSES.

*SYLLABUS:*

*The property of a corporation not for profit organized as a temperance society is exempt from taxation under Section 5353, General Code, only if used exclusively for charitable purposes.*

COLUMBUS, OHIO, February 25, 1930.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The K. Temperance Society, incorporated December 15, 1902, Articles of Incorporation being found in Volume 92, at page 110 of the Records of Incorporations, own some real estate in Ashtabula County, and have been under the impression for a great many years that the same was exempt from taxation.

I recently have had under consideration an action in foreclosure to collect the taxes, a considerable amount of taxes and interest having accrued over a period of a number of years. The purpose of the society as set forth in their Articles of Incorporation is as follows:

‘To promote temperance among the members of the society and the public at large, to combat the evils of the liquor traffic, to work for the betterment of society in general and to hold meetings for the purpose of carrying out the purposes above set forth.’

I would like your opinion as to whether or not, in your opinion, this real estate is exempt from taxation under Section 5353 of the General Code or any other provision of law now in effect.”