

and sell any additional bonds and notes under said act as affected by the amendment of Section 4 thereof by Amended Senate Bill No. 377 of the first special session of the 91st General Assembly, the money derived therefrom shall not be expended or encumbered until after July 1, 1936, unless prior to January 30, 1936, such county shall have issued more than 85% of the bonds and notes lawfully permitted under Section 2 of said House Bill No. 501 (as estimated and certified by the Tax Commission before the effective date of said Amended Senate Bill No. 377) and shall have expended more than 85% of the total funds derived and derivable therefrom, in which event such money derived from such additional bonds or notes may be expended at any time in such county prior to June 30, 1936, or thereafter, for the purposes set forth in House Bill No. 627 of the first special session of the 91st General Assembly.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5176.

BOARD OF EDUCATION—PROCEDURE IN ADOPTING PLAN
FOR ORGANIZATION OF SCHOOL DISTRICTS OF
COUNTY SCHOOL DISTRICT.

SYLLABUS:

1. *Before a county board of education or the Director of Education may adopt a "plan of organization" of a county school district or modify or change an adopted plan in pursuance of Sections 7600-1 to 7600-8, inclusive, of the General Code of Ohio, hearing must be granted to boards of education within the county school district as well as to interested persons, as provided by Section 7600-3, General Code, after proper notice of such hearing has been published as provided by the statute.*

2. *A plan of organization or reorganization of the school districts of a county school district adopted or modified by a county board of education or by the director of education without first having granted a hearing pursuant to notice as provided by Section 7600-3, General Code, is of no force and effect whatever.*

3. *A county board of education after adopting a plan of organization or modifying such a plan, under the provisions of Sections 7600-3 or 7600-4, General Code, should submit a copy of the minutes of its meeting at which such plan was adopted or modified, to the Director of Education, to the end that it may appear to the Director of Education that the county board of education had jurisdiction to act in the premises, when*

he considers the question of approving the plan as he is directed to do by the provisions of Section 7600-7, General Code.

4. 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 Section 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.

5. When a plan of organization of school districts of a county school district has been adopted by a county board of education or by the Director of Education, and the same has been approved by the Director of Education and a date fixed for it to become effective, no transfers of school territory within said county school district may thereafter be made or school district boundaries therein changed, except in conformity with said plan or modifications or changes in said plan lawfully made.

6. Unless transfers of school territory and the creation of new school districts are made to conform to a legally adopted and approved plan of organization or legally approved change or modification of such plan as provided by Sections 7600-1 to 7600-8, inclusive, of the General Code, a school district, the board of education of which has not conformed thereto, as said plan applies to said districts, shall not participate in the distribution of the State Public School Fund except as provided by Section 7595-1e, of the General Code of Ohio.

COLUMBUS, OHIO, February 20, 1936.

HON. E. L. BOWSER, *Director of Education, Columbus, Ohio.*

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

“The State Department of Education requests your opinion on the following:

Section 4692, states, ‘The county board of education may transfer a part of, or all of a school district of the county district to an adjoining district or districts of the county district.’

Section 4696, reads, ‘A county board shall, upon petition of seventy-five percent of the electors, transfer territory to another district, provided the territory is contiguous.’

Section 4692—the transfer is not obligatory, but Section 4696, makes it mandatory.

Under House Bill 466 the (Foundation Program Law), Section 7600-7 states, 'A county board is obliged by a certain date (October 15, 1935) to organize the school district and submit the plan of organization to the Director of Education for approval. The Director of Education must set a date of approval of said plan, and after the approval has been given, no further transfer of territory may be made, unless such transfer is in accordance with said plan of organization.

1. May a county board continue to make transfers of territory under authority of either Sections 4692 and 4696 after the plan of organization authorized under Section 7600-7 has been approved by the Director of Education. If the county board may continue to transfer territory under these sections, must such transfers be approved by the Director of Education? Must such transfers, if made by the county board, be in accordance with the organization plan made under Section 7600-7?

2. Section 7600-3 requires the county board of education to call a meeting of all members of boards of education within the county district as well as interested persons, and shall lay the proposed plan of organization before them. Also, publication must be made of the time and place of such a hearing.

In the year 1935, the county board, due to the short period of time between the going into effect of the foundation law and the time for submitting the plans of organization, called no meetings and no publication was made. In most instances, no changes were made in the county organization.

Would the plan approved by the Director of Education still be legal? Is it necessary to submit to the Director a copy of the minutes of the meeting of local boards of education called by the county board as a part of the plan of organization? If the county board receives a legal petition for the transfer of territory under Section 4696 and refuses to act, probably due to the fact that the transfer is not in accordance with the approved plan, has the Director under Section 7600-5 authority to make such transfers as he deems in harmony with the principles of economy, efficiency and convenience?"

As early as 1859, the Supreme Court of Ohio, in the case of *Canton Union School District v. Meyer*, 9 O. S., 586, stated:

"It has always been the policy of our school laws to provide for changes in the boundaries of school districts, and thus by

giving flexibility to the system, to adapt it to the ever varying wants of a growing country, in which the convenience of the present can but faintly indicate the needs of the future.”

Citing this case and the principle recognized therein, the Supreme Court in a later case, *Crist v. State ex rel. Wilder*, 21 O. S., 339, stated at page 346:

“In considering questions arising under the school legislation of this state, such construction should be placed on the various enactments, and their several provisions as will give harmony to the school system and secure, as far as practicable the equal benefits and the reasonable facilities for their enactment, to every locality, without doing marked injustice to any.”

In harmony with this principle, the legislature has from time to time enacted legislation providing the manner whereby school district lines might be changed and school district territory transferred from one local unit to another. There have been during the years many changes made in these laws. In each instance where changes have been made in the law, some modicum of local control over the matter has been reposed in the patrons of the schools or the electors residing in territory to be transferred either directly or through their chosen elected representatives.

By act of the Legislature in 1914, county school districts were created (104 O. L., 133). As so created a county school district consists of territory of a county together with territory attached to it for school purposes exclusive of the territory detached therefrom for school purposes and the territory embraced within any city school district within the county and that embraced within any village school district therein exempt from the supervision of the county board of education now known as exempted village school districts. (Section 4684, General Code.) Among the provisions for the administration of the public school system as set up in the Act of 1914, county boards of education were created for each county school district and were vested with quite broad powers with respect to the changing of school district boundaries within the county school district and the transfer of territory from and to school districts within the county school district. Section 4736, General Code, as enacted in the act of 1914 (104 O. L., 138), provided:

“The county board of education shall as soon as possible after organizing make a survey of its district. The board shall arrange the schools according to topography and population in order that they may be most easily accessible to pupils. To this

end the county board shall have power by resolution at any regular or special meeting to change school district lines and transfer territory from one rural or village school district to another. A map designating such changes shall be entered on the records of the board and a copy of the resolution and map shall be filed with the county auditor. In changing boundary lines the board may proceed without regard to township lines and shall provide that adjoining rural districts are as nearly equal as possible in property valuation. In no case shall any rural district be created containing less than fifteen square miles. In changing boundary lines and other work of a like nature the county board shall ask the assistance of the county surveyor and the latter is hereby required to give the services of his office at the formal request of the county board."

By the terms of Section 4692, General Code, as enacted in the act of 1914, school district territory could be transferred from an adjoining county school district or city or village school district by the mutual consent of the boards of education having control of such districts. Section 4696, General Code, as then enacted, provided that when territory was so transferred an equitable division of funds and indebtedness should be made between the districts involved in such transfer. No provision was made in the act of 1914, whereby the patrons of the schools or the electors residing in territory transferred could control the transfer of such territory by means of remonstrance or otherwise. However, the next year, in 1915, the laws were considerably changed, and the right of remonstrance given to the electors residing in school districts against action taken to transfer territory in some instances, and in others the power of a city board of education to transfer territory was withheld unless jurisdiction to do so was first invoked by petition of the electors residing in the territory proposed to be transferred.

At that time Section 4692, General Code, was amended (106 O. L., 397). As so amended, it provided that a county board of education might transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. Before such a transfer would become effective, a map must have been filed with the auditor of the county showing the boundaries of the territory transferred and a notice given of the action taken by posting for ten days in three conspicuous places in the district or districts proposed to be transferred or printed in a paper of general circulation in the county for the same length of time. It was further provided:

"Nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred shall

within thirty days after the filing of such map file with the county board of education a written remonstrance against such proposed transfer.”

Section 4696 of the General Code was amended at the same time (106 O. L., 397). This statute as amended, conferred on county boards of education power to transfer territory within its county school district to an adjoining county school district or to a city school district or exempted village school district to which such territory was contiguous, provided, however, that the jurisdiction of the county board of education must first be invoked by the filing of a petition signed by at least 50% of the electors residing in the territory proposed to be transferred. If the petition contained the signatures of 75% of the electors the duty of the county board of education to make the transfer as requested was made mandatory. It has been held by this office that the filing of a petition for the transfer of territory under Section 4696, General Code, is jurisdictional. That is to say, the county board of education did not possess power to make transfers to a city, exempted village or another county school district by virtue of the statute alone, but only when its jurisdiction to do so was invoked by the filing of a petition according to the statute. See Opinions of the Attorney General for 1928, page 2164.

Section 4736, General Code, also was amended in 1915 (106 O. L., 397). No substantial change was made in the terms of this statute upon its amendment at that time, except that a county board of education was empowered to create new school districts from one or more districts or parts thereof. There was inserted in the statute at that time, after the provision that school districts might be arranged by the county board of education according to topography and population and notice thereof given, the following provision:

“Which said arrangement shall be carried into effect as proposed unless, within thirty days after the filing of such notice with the board or boards of education, a majority of the qualified electors of the territory affected by such order of the county board, file a written remonstrance with the county board against the arrangement of school districts so proposed.”

Both Section 4736, General Code, pertaining to the creation of new school districts by county boards of education, and Section 4692, General Code, pertaining to the transfer of territory within a county school district by a county board of education, have since been amended. In each instance the provision as to remonstrance by the electors affected by the action of a county board of education has been retained. Section 4696, General Code, pertaining to transfers of territory by a city school district

or an adjoining county school district or to an exempted village district has also been amended. No pertinent change has been made in this statute by the subsequent amendments. As the statute now exists, the jurisdiction of the county board must first be invoked by petition of interested electors before the county board has power to make such transfers. If such a petition contains the signatures of 75% or more of the electors residing in territory sought to be transferred the duty of the county board to make the transfer is mandatory unless the proposed transfer is to or from a rural district in which the schools have been centralized by vote of the people, in which event the transfer may be made if the petition contains the signatures of two-thirds of the electors residing in the territory sought to be transferred but that duty is never mandatory regardless of how many petitions ask for it. *State ex rel. v. Hadaway*, 113 O. S., 658; *Board of Education v. State, ex rel. Stipe*, 115 O. S., 333.

On June 12, 1935, the legislature enacted what is commonly referred to as the "School Foundation Bill." By the terms of this act a plan of organization of county school districts and an annual "plan of reorganization" of county school districts through the cooperation of county boards of education and the Director of Education, are provided for. Sections 7600-1 to 7600-8, inclusive, of the General Code of Ohio. Neither at this time nor since, have Sections 4736, 4692 or 4696, General Code, been amended or expressly repealed.

Sections 7600-1 to 7600-8, General Code, read as follows:

"Sec. 7600-1. On or before the first day of September, 1935, and on or before the first days of April, 1936, 1937 and 1938, each county board of education of the state shall prepare a diagram or map of the county showing the then location and position of all school districts therein, the location and character of roads, the location of streams and natural barriers, the location of each school building and of each route over which pupils are transported, together with a statement of the size and condition of each building and the number and ages of children attending the same. The territory in adjoining counties, or in any adjoining city or exempted village school district, which, in the opinion of the county board of education, should be attached to or detached from any such county, city or exempted village school district for the purpose of economy, efficiency and convenience, shall also be shown on such diagram or map. The board of education of each rural and village school district which is located wholly or partially within the county, shall, upon the request of the county board of education, promptly furnish to the board of education, such information as it may require in the preparation or subsequent modification of such diagram or map.

Sec. 7600-2. Upon completion of each of these surveys, the county board of education shall prepare a new diagram or map of the school districts in the county school district prescribing the transfers of territory, eliminations of school districts or the creation of new school districts which will provide a more economical and efficient system of county schools; and on or before June first, annually, shall adopt the same as the plan of school district organization.

Sec. 7600-3. Before adopting the plan of reorganization each year, the county board of education shall call a meeting of all members of boards of education of rural and village school districts within the county school district, as well as of interested persons, and shall lay the proposed plan before them for advice and suggestions. There shall be published for four consecutive times in a newspaper of general circulation in the territory affected, a notice of the time and place of a hearing to consider a plan of organization, or a contemplated change of an adopted plan. Such publication shall be made at regular intervals of not less than one week each within sixty days prior to such hearing.

Sec. 7600-4. In case the county board of education deems it necessary to modify or change the adopted plan, the board shall provide for a public hearing before any change therein shall be made.

Sec. 7600-5. In case the effected boards of education fail to agree on transfers of territory as hereinbefore provided, a complete transcript of all proceedings with respect thereto shall be transmitted to the director, who shall thereafter 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.

Sec. 7600-6. The director shall carry out any steps involved in the formulation of a plan of district reorganization as hereinbefore required, in the event any county or other board of education fails to act. The director, in such case, shall proceed to make the survey, prepare and adopt a plan of county school district organization for such county. For that purpose the director is hereby vested with all the rights, powers and duties, hereinbefore conferred upon the county board of education, relative to the adoption of such plan, with such additional power as will enable the director to procure and furnish such information as he deems necessary.

Sec. 7600-7. 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 modifications 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.

Sec. 7600-8. A county plan of organization may be modified and changed, at any time after adoption, by a county board of education, or by the director, in the same manner as provided for the adoption of such plan."

It will be observed from the foregoing, that the legislature expressly provided in Section 7600-3, *supra*, that before adopting the plan of reorganization each year the county board of education shall call a meeting of all the members of rural and village boards of education and interested persons, for the purpose of considering a plan of organization, or a contemplated change of an adopted plan pursuant to a notice which shall be published as provided by the statute. Similar provision is made in Section 7600-4, General Code. Section 7600-6, General Code, provides that if a county board of education fails to adopt a plan, the Director of Education shall do so, and for that purpose, he is vested with the powers of county boards of education. That means that he, too, in adopting a plan when the county board fails to do so, shall grant the hearing and give notice thereof the same as the county board is required to do. Section 7600-7, *supra*, provides that the Director of Education, in approving a plan shall grant one or more hearings to interested boards of education, if he modifies the plan submitted to him by a county board of education, and Section 7600-8, General Code, provides that if the Director of Education modifies or changes a plan after its adoption by him or by a county board of education, it shall be done "in the same manner as provided for the adoption of such plan," which means that the hearing spoken of must be granted.

From this, it clearly appears that the power reposed in county boards of education to adopt or change a plan of reorganization or in the Director of Education to adopt or change a plan, is dependent upon granting a

hearing of interested boards of education and interested persons as provided by these statutes. In other words, the granting of the hearing, after giving proper notice thereof, is jurisdictional. Neither the board nor the director possesses the power to adopt a plan of organization or change an adopted plan until after the hearing has been granted. Jurisdiction is defined in *Parker v. Wallace*, 3 Ohio, 494, as: "The power to hear and determine a cause." In *Fair v. Specialty Co.*, 228 U. S., 22, 25, it is said that jurisdiction is authority to decide a case either way.

It follows that if a county board of education or the Director of Education should adopt a plan of organization or modify or change a plan after adoption without granting a hearing as provided for by the statute, and thus first acquiring jurisdiction to do so by granting the hearing as provided by the statute, the result would be a nullity, and any orders that might be given to carry out such a plan would be of no force whatever. It is therefore necessary that the minutes of the proceedings taken by a county board of education in adopting a plan of organization should show the facts upon which its jurisdiction was based, which are that the hearing provided for by the statute had been granted and a proper notice thereof given, and these minutes should be submitted to the Director of Education so he may know before approving any plan adopted by a county board of education, that it was properly adopted. Likewise, the record of the action of the Director of Education in adopting or changing a plan should show that he had first granted a hearing after proper notice had been given.

Sections 4692 and 4696, General Code, fixing the manner by which school territory may be transferred from one school district to another, and Section 4736, General Code, providing for the creation of new school districts by county boards of education, were not expressly repealed by the terms of the so-called School Foundation Law, or by any other provision of law. The question arises as to whether or not they were repealed by implication.

As a general rule, when the legislature intends to repeal a statute, it may be expected to do so in express terms or by the use of words which are equivalent to an express repeal. 37 O. Jur., 405. However, when two sections of the General Code contain inconsistent and wholly irreconcilable provisions relating to the same subject matter, the later enactment must prevail, and the earlier is repealed by implication.

State ex rel. Attorney General v. Morris, 63 O. S., 496;
Western, Etc., Ind. Co. v. Chicago Title, Etc., Co., 128 O. S., 422;
Rogers v. State ex rel. Lucas, 129 O. S., 108.

Repeals by implication are not favored, and it will not be held that a statute has been repealed by implication unless the repugnance between a former and a later statute is plain and unavoidable.

Ruling Case Law, Vol. 25, page 918;
Ohio Jurisprudence, Vol. 37, "Statutes," Sec. 140;
Dodge v. Gridley, 10 Ohio, 173;
Cass v. Dillon, 2 O. S., 607.

Courts consistently hold that if by any reasonable construction a later statute can be reconciled with a former one, the former will not be held to have been repealed by implication. See Goff v. Gates, 87 O. S., 142. Such repeals have even been held to be "abhorred." Cleveland v. Purcell, 31 O. A., 495.

The provisions of Sections 7600-1 to 7600-8, General Code, relating to the adoption and the putting into effect of a "plan of organization" of school districts and those of Sections 4696, 4692 and 4736, General Code, 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 later are so repugnant to those of the earlier that they cannot be reconciled. In my opinion, that is not the case except as to the making of transfers contrary to a lawfully adopted plan of organization. It will be noted that nowhere in the School Foundation Law is any authority extended to anyone 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 Section 7600-5, General Code, 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. Sections 4692, 4696 and 4736, General Code, provide the machinery for actually making transfers, and the equitable distribution of funds and indebtedness between districts involved in such transfers. If it should be held that Sections 4692, 4696 and 4736, General Code, are repealed, there is 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 as between the two subdivisions. This principle is stated in Ruling Case Law, Vol. 24, page 566, and is supported by many cases. It is there stated:

"The legislature having plenary power over school districts, may provide for the division of the property and the apportionment of debts, when a portion of the territory of one district is transferred to the jurisdiction of another; but in the absence of

such a provision the rule of the common law obtains and that rule leaves the property where it is found and the debt on the original debtor.”

Pars School District v. Hollywood School District, 156 Calif., 416,
20 Annot. Cas., 87, and note;
Shaw v. Mayfield, 191 Ky., 389, 230 S. W., 338;
Vestal v. Pickering, 126 Oreg., 553, 267 Pacif., 821.

It is a well settled rule of law, evidenced by many cases in Ohio, as well as other jurisdictions, that where statutes deal with the same subject matter and are parts of a homogeneous system, although enacted at different times, the later enactment unless complete in itself and utterly irreconcilable with the earlier, will be considered as supplementary to the preceding enactments on the same subject and such construction must be accorded to them when taken together as a part of such system as to give proper force and effect to each and all of the said statutes.

Manuel v. Manuel, 13 O. S., 458;
Doyle v. Doyle, 50 O. S., 330;
Maxfield, Treas., v. Brooks, et al., 110 O. S., 566.

In Cincinnati v. Conner, 55 O. S., 82, it is said:

“Statutes construing a system should be so construed as to make that system consistent in all its parts and uniform in its operation.”

Of course, if a later statute is complete in itself, which, as pointed out above, does not appear to be the case with Sections 7600-1 to 7600-8, inclusive, of the General Code, as included in the “School Foundation Law,” or is utterly irreconcilable with earlier statutes relating to the same subject, which clearly is not the case here except as noted above, the later must prevail. These rules of law are well stated in Lewis’ Sutherland Statutory Construction, 2nd Edition, Sections 443, 447 and 448, which read in part, as follows:

“Sec. 443. All consistent statutes which can stand together, though enacted at different times, relating to the same subject, and hence called briefly *in pari materia* are treated prospectively and construed as though they constituted one act (Manuel v. Manuel, 13 O. S., 458). This is true whether the acts relating to the same subject were passed at different dates, separated by long or short intervals, at the same session or on the same day. They are all to be compared, harmonized if possible, and if not

susceptible of a construction which will make their provisions harmonize, they are made to operate so far as possible, consistently with the evident intent of the latest enactment. * * * But whether the prior statute is recent or of long standing it must yield if there is a conflict."

"Sec. 447. While it is thus true that statutes relating to the same subject are to be construed together, this rule does not go to the extent of controlling the language of subsequent statutes by any supposed policy of previous statutes, when such language requires such policy to be disregarded. Where the last statute is complete in itself, and intended to prescribe the only rule to be observed, it will not be modified by the displaced legislation, as laws *in pari materia*."

The legislators are presumed to know existing statutes, and the state of the law relating to the subjects with which they deal. Hence, that they would expressly abrogate any prior statutes which are intended to be repealed by new legislation. Where there is no express repeal none is deemed to be intended, unless there is an inconsistency as precludes this assumption; then it yields only to the extent of the conflict. Regard must be had to all the parts of a statute, and to the other concurrent legislation *in pari materia*; and the whole should, if possible, be made to harmonize; and if the same is doubtful, such construction should be given, if it can be, as will not conflict with the general principles of law, which it may be assumed the legislature would not intend to disregard or change.

"Sec. 448. When enactments separately made are read *in pari materia*, they are treated as having formed in the minds of the enacting body parts of a connected whole, though considered by such body at different dates, and under distinct and varied aspects of the same subject. Such a principle is in harmony with the actual practice of legislative bodies, and is essential to give unity to the laws, and connect them in a symmetrical system. Such statutes are taken together and construed as one system and the object is to carry into effect the intention. It is to be inferred that a code of statutes relating to one subject was governed by one spirit and policy and was intended to be consistent and harmonious in its several parts and provisions."

Moreover, the very fact that the legislature amended Section 4692, General Code, at approximately the same time that it enacted the School Foundation Law, throws some light, at least, upon the intention of the legislature with respect to the two laws. House Bill 401, of the 91st General Assembly, which contained the amendment of Section 4692.

General Code, was enacted May 16, 1935, and after being signed by the Governor, was filed with the Secretary of State June 3, 1935 (116 O. L., 441-442). The School Foundation Law (House Bill 466) carrying an emergency clause, was passed by the legislature on May 23, 1935, approved by the Governor and filed with the Secretary of State on June 12, 1935. A check of the legislative journals shows that both bills were introduced in the House on the same day, February 20, 1935. Both bills were passed by the House on the same day, May 15, 1935. Senate amendments were considered and concurred in by the House on approximately the same dates. Both bills were enrolled and signed on the same day, May 23, 1935.

The provisions of Section 4692, General Code, as then amended in House Bill No. 401, are immaterial so far as the questions here involved are concerned, but the fact that it was amended at all at the time when the provisions of House Bill 466 were under consideration, shows quite conclusively that it was not the intention of the legislature to repeal it by the terms of House Bill 466. The legislature must be presumed to have had knowledge of the provisions of both bills and if there had been an intent to render nugatory the provisions of House Bill No. 401 by the provisions of House Bill 466, it would have been easy to have made that fact plain in unequivocal language. In re. 93 O. S., 230. This is equally true as to Sections 4696 and 4736 of the General Code, relating to the same subject.

In one respect, there are irreconcilable provisions in the School Foundation Law with those of Sections 4692, 4696 and 4736, General Code, and to that extent the provisions of the School Foundation Law should prevail. Whereas Sections 4692, 4696 and 4736, General Code, extend power to county boards of education to make transfers of territory and create districts in accordance with their terms, Section 7600-7, General Code, as enacted in the School Foundation Law, contains this provision:

“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.”

It follows that when a plan of organization has been legally adopted and approved by the Director of Education and a date fixed for that plan to become effective, no transfers can be made or boundary lines changed except in conformity with the plan. Of course, the plan may be

changed at any time in accordance with the provisions of Section 7600-8, General Code.

In my opinion, the provisions of Sections 4692, 4696 and 4736, General Code, are necessary to provide a complete system of transferring school territory, as the Director of Education, although empowered to order transfers to conform to a plan of organization, has no power under the terms of the School Foundation Law to carry these orders into effect. That method is supplied by the provisions of Sections 4692, 4696 and 4736, General Code.

If interested boards of education and electors residing in territory affected by the changes in school territory ordered by the Director of Education to carry out a legally approved plan of organization, refuse or fail to carry out those orders by invoking the provisions of Sections 4692, 4696 and 4736, General Code, as the needs of the situation may require, the Director of Education may withhold funds distributable to said boards of education, as provided by Section 7595-1e, which reads in part as follows:

“A school district, the board of education of which has not conformed with all the requirements of the law and the rules and regulations pursuant thereto, including the annual plans of re-organization, in or of the county school district (as they apply to such school district) adopted by the county board of education and approved by the director of education as provided in Sections 7600-1 to 7600-5, and Section 7600-9, shall not participate in any portion of the state public school fund, except for good and sufficient reason established to the satisfaction of the director of education and the state controlling board.”

Respectfully,

JOHN W. BRICKER,
Attorney General.