

capacity in conducting the affairs of the society from one who is employed as a laborer in the preparation of the grounds. In the first instance, the member occupies a managerial capacity, requiring supervisory and executive ability, and in the second instance there is no supervisory or managerial requirements. Such an employe undoubtedly would take orders and directions from some authority of the board authorized to direct such work.

In view of this situation, it is my opinion that a laborer employed under the state of facts you present, would not be included within the first sentence of the rule about which you inquire, and would not come within the class of those conducting the affairs of the society. Inasmuch as the remainder of the section specifically says that no fees or expenses other than the sums mentioned in the first sentence shall be paid any member "as a share, gift or dividend," I am inclined to believe that there is no inhibition in said rule which prohibits the employing of a laborer who is a member of the board of directors for the preparation of the grounds.

Therefore, your second question is answered in the negative.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

3698.

SCHOOLS—TRANSFER OF CENTRALIZED SCHOOL TERRITORY—WHEN SAID TRANSFER BECOMES EFFECTIVE—SECTIONS 4727 AND 4692 G. C. CONSIDERED—EFFECT OF SECTION 4727 G. C. (108 O. L. 235).

1. *The transfer of centralized school territory authorized under section 4727 G. C. becomes effective in the manner mentioned in section 4692 G. C. where the transfer is in the same county, that is, within thirty days after the filing of the map unless during that period a written remonstrance signed by a majority of the qualified electors residing in the territory to be transferred is filed against such proposed transfer.*

2. *The effect of section 4727 G. C. as amended in 108 O. L., Part 1 (p. 235) is to extend over centralized school territory the general powers of transferring school territory vested in a county board of education by sections 4692 and 4696 G. C., as the case may be.*

HON. JONATHAN E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your letter in which you request the opinion of this department upon the question as to whether a remonstrance will lie in the matter of a proposed transfer of centralized school territory within the county school district.

You indicate that a petition was presented to the county board of education of Wood County signed by more than two-thirds of the qualified electors residing in the territory petitioning for transfer, such territory being the Bloom Township Centralized Rural School District. The transfer desired was to the Cygnet Village School District and under authority of section 4727 G. C. such petition was granted.

Section 4727 G. C. reads in part as follows:

“* * * Nothing in this or the foregoing sections, namely, sections 4726 and 4726-1, shall prevent a county board of education upon the petition of two-thirds of the qualified electors of the territory petitioning for transfer, from transferring territory to or from a centralized school district, the same as to or from a district not centralized.”

A careful analysis of sections 4727, G. C. shows that it contains no mandate to the county board of education to transfer centralized school territory or to do any of the other things which a county board of education must do when transfers are made. Apparently section 4727 G. C. takes notice that there are already existing sections of the General Code under which school territory may be transferred (4692 and 4696) for 4727 says that nothing in that section or the two foregoing sections (4726 and 4726-1 G. C.) shall prevent a county board of education from transferring centralized school territory “the same as to or from a district not centralized.” This use of the words “the same as to or from” clearly refers to a regular transfer and to sections of the General Code, namely, 4692 and 4696. These sections were in existence at the time that 4727 G. C. was amended in 108 Ohio Laws, Part 1, (1919). It would appear that at the time of the amendment of 4727 G. C. it was generally granted that authority existed to transfer school territory but the question was raised in the light of sections 4726, 4726-1 and 4727 G. C. (as the latter then existed) as to whether a transfer could be made from centralized school territory because section 4727 said that “such centralization shall not be discontinued within three years.” In order to cure this situation and provide that centralized territory can be taken and transferred to a school district “same as” other school territory (not centralized), section 4727 was amended in 108 O. L. Part 1, by adding the last sentence, which is the quotation from 4727 given above; so that the effect of 4727 is merely this, that when transfers are to be made the regular transfer sections 4692 and 4696 must be used because of the various things required of the county board of education in the transfer and *which do not appear in 4727 at all*. Thus, in all school transfer proceedings in the same county (4692) there must be a map prepared and filed with the auditor showing the boundaries of the territory transferred; a notice of the transfer posted in three conspicuous places, or printed in a paper of general circulation in the county for ten days; there must be an equitable division of the school funds of the transferred territory; there must be an equitable division of the indebtedness of the transferred territory; and legal title to the property of the board of education lying in the transferred territory vests in the board of education of the school district to which such territory is transferred. The provisions of section 4727 G. C. are saving in their nature in that “nothing in this section shall prevent,” etc. Where school territory is to be transferred to another county or to a city school district or an existing village school district (4696 G. C.), the following things must obtain:

- (1) A resolution shall be passed.
- (2) An equitable division of the funds.
- (3) An equitable division of the indebtedness.
- (4) A map shall be filed with the county auditor of each county affected by the transfer.
- (5) The school property situated in the territory transferred shall become vested by authority of section 4696 in the board of education of the school district to which such territory is transferred.

None of these absolutely necessary things appear in section 4727 G. C., hence under that section standing alone, a transfer of school territory cannot be accomplished in its fullest sense by using only section 4727 G. C.

Transfers of school territory must be *consummated* under either sections 4692 or 4696 G. C.; if the territory is wholly within the same county school district then section 4692 G. C. applies, and all that appears in that section must be noticed; if the transfer of school territory in the same county happens to be composed in whole or in part of centralized school territory, then *authority to transfer centralized school territory is gotten from section 4727 G. C.* That is to say, centralized school territory can be transferred under section 4692 G. C. *because of the amendment in section 4727 G. C.* but no transfer can be consummated by 4727 G. C. alone, for that section as indicated heretofore, does not provide for the many things that are necessary in order to complete the transfer of school territory.

Where territory lies within the same county school district, section 4692 G. C. governs, and this section permits of the presentation of a remonstrance against *any transfer of school territory in the county school district whether centralized or not.* If the transfer of school territory involves section 4696 G. C., then all the things that appear in that section must be noticed among which is that there must be a petition before any action is taken, and again it is mandatory when seventy-five per cent of the electors residing in the territory to be transferred petition for such transfer. In your case no attention need be paid to section 4696 G. C. for it is understood that your question lies wholly within the confines of Wood County.

By reference to volume II, Opinions of Attorney General, 1919, you will find on page 1195 an opinion of this department upon questions largely similar to the one which you present, and the syllabus of that opinion reads as follows:

"1. Under section 4727 G. C., as amended by House Bill 163, the county board of education may transfer territory to or from a centralized school district upon the petition of two-thirds of the qualified electors of the territory petitioning for transfer. But there is nothing mandatory in such section that the county board of education shall make such transfer.

2. In transfers of school territory under section 4692 G. C., there is no provision for any petition on the part of the electors, the only provision in such section being that a remonstrance and not a petition can be filed with the county board of education."

In reply to your inquiry then you are advised that the transfer of school territory from Bloom Township Rural School District to the Cygnet Village School District, all in the same county, must be made in compliance with section 4692 G. C., such transfer of centralized school territory being authorized by section 4727 G. C. The provisions of section 4692 G. C. must be carried out and one of these provisions is the right of remonstrance within thirty days against such transfer.

That section 4727 G. C. must be read in conjunction with either 4692 or 4696 G. C., as the case may be, appears from recent decisions of the supreme court, to-wit:

"The provisions of section 4727 General Code, *at that time* (97 O. S., 259) as held in the Goul case, negated the authority of the county board under the circumstances presented in that case to transfer territory from such district, and as the court there stated constituted an exception to *the general powers then conferred by Section 4696 General Code.*"

* * * * *

"It is clear that *if the proceedings* thus far taken by the Benton Township rural school district *had not effected the centralization of the schools any portion of the territory thereof could be transferred by the board of education under authority of the provisions of section 4692 General Code, and if centralization thereof had been effected, the same authority is conferred upon the county board of education by section 4727, General Code, provided the necessary petition be filed with such board.*"

County Board of Education of Paulding County School District, et al., vs. Board of Education of Benton Township Rural School District of Paulding County, Decided January 10, 1922, Supreme Court.

"Prior thereto and at the time this action was taken the matter of transferring territory from a centralized district *was necessarily governed by the provisions of the statute then existing* as previously interpreted and applied by this court in the case of *State ex rel. Goul v. Sapp, 97 Ohio St., 259.*"

State ex rel. Board of Education Wood County vs. Board of Education of Bloom Twp. Rural School District, et al., decided Jan. 10, 1922, Supreme Court.

It is pointed out, however, that if two-thirds of the electors in centralized school territory sign a petition to be transferred, it is not clear how a majority can sign a remonstrance because if two-thirds sign in favor of same this would be approximately sixty-seven per cent., leaving only thirty-three per cent. opposed.

A remonstrance must have fifty-one per cent. in order to be effective and a remonstrance cannot be secured in that same territory unless the thirty-three per cent. opposed would be increased to fifty-one per cent.; and if that took place, eighteen per cent. (the difference between thirty-three per cent. and fifty-one per cent.) would have to leave the sixty-seven per cent. petition in order to sign the remonstrance, and it is clear that *there would not be then a petition of sixty-seven per cent. asking for the transfer.* In other words, there is only one hundred per cent. in anything, and if you take sixty-seven per cent. and then try to get fifty-one per cent. you have one hundred and eighteen per cent.; this is eighteen per cent. more than what exists in the entity itself; so that *in the same territory, there cannot be a fifty-one per cent. remonstrance against and at the same time a sixty-seven per cent. petition in favor of.* However, this is rather an arithmetical proposition, for if the two-thirds petition was depleted in its list of names below two-thirds (or sixty-seven per cent), it would no longer be a two-thirds petition as mentioned in section 4727 G. C., and in the case at hand (completing the transfer under section 4692 G. C.) a remonstrance would lie and would be effective if fifty-one per cent. signed the remonstrance. But, if fifty-one per cent. did sign and file the remonstrance in the allotted thirty days, what happens to the sixty-seven per cent. appearing on the petition which brought about the action? The sixty-seven percent. becomes forty nine per cent. and the petition does not comply with 4727 G. C., requiring two-thirds to be effective; the courts having held that electors can withdraw their names from a petition. The transfer of centralized school territory authorized under section 4727 G. C. becomes effective in the manner mentioned in section 4692 G. C. where the transfer is in the same county, that is, within thirty days after the filing of the map unless during that period a written remonstrance signed by a majority of the qualified electors is filed against such proposed transfer.

Respectfully,

JOHN G. PRICE,
Attorney-General.