

2092.

## APPROVAL, NOTES OF HANOVER TOWNSHIP RURAL SCHOOL DISTRICT, BUTLER COUNTY—\$50,000.00.

COLUMBUS, OHIO, May 12, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

2093.

## CITY SCHOOL TERRITORY—NOT TRANSFERABLE OUT OF CORPORATE LIMITS.

*SYLLABUS:**Territory embraced within the corporate limits of a city cannot be transferred from the city school district of said city for school purposes.*

COLUMBUS, OHIO, May 14, 1928.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“Upon request from the clerk of the Zanesville Village School District, Muskingum County, I am submitting to you certain facts and questions relative to annexation of village district territory by Zanesville city, and the probability of transfer of any part of such annexed territory back to the village school district.

The South Zanesville Village School District comprises an area of approximately three miles square with a tax duplicate of more than \$3,000,000. The district has 550 children of school age. One school building is located at Norval Park and one in South Zanesville. The debt of the district is approximately \$100,000.

April 12, 1928, an ordinance of the city of Zanesville became effective which ordinance annexed certain territory to said city and included in that territory a part of South Zanesville Village School District. This annexed territory represents in property valuation more than one-half the tax duplicate of the original village school district and includes one building and approximately 100 children of school age. As a result of the loss of this territory the South Zanesville Village District still has a debt of \$100,000, a school population of about 450 children, and a tax duplicate of approximately \$1,500,000.

Fifty per cent or more of the voters of Norval Park, that part of the village school district which was annexed to Zanesville city, have petitioned to be transferred to the South Zanesville Village District for school purposes only.

Question: Can territory be transferred from the Zanesville City School District back to the South Zanesville Village School District for school purposes only, and, if so, what is the necessary procedure to effect the same?"

Sections 4680 and 4690, General Code, read as follows:

Sec. 4680. "Each city, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a city school district."

Sec. 4690. "When territory is annexed to a city or village, such territory thereby becomes a part of the city or village school district, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city or village school district. \* \* \*\*"

It will be observed from a reading of Section 4690, supra, that where territory is annexed to a city or village the annexed territory thereby automatically becomes a part of the city or village school district constituted by reason of the fact of the existence of the city or village as provided by Section 4680, supra. Therefore, when the ordinance of the city of Zanesville annexing territory which prior thereto had comprised a part of South Zanesville School District became effective on April 12, 1928, said territory thereby automatically became attached to and thereafter formed a part of Zanesville City School District.

A cursory reading of Section 4680, General Code, would seem to indicate that there is contemplated the existence of means of detaching a portion of the territory embraced within the corporate limits of a city for school purposes and such was in fact the case at the time of the enactment of said Section 4680, General Code.

Section 4680, General Code, was enacted in substantially its present form in 1904, as Section 3886 of the Revised Statutes of Ohio (97 v. 335), included within an act entitled:

"An act to provide for the organization of the Common Schools of the State of Ohio, and to amend, repeal, and supplement certain sections of the Revised Statutes and laws of Ohio herein named."

Said Section 3886, Revised Statutes, as there enacted, read as follows:

"Each incorporated city, now existing or hereafter created, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a city school district."

As a part of the same act there were included Sections 3894, 3895 and 3896, Revised Statutes (97 v. 336, 337), setting forth the manner by which territory might be transferred from one school district to another.

Sections 3894 and 3895, Revised Statutes, as then enacted, read in part as follows:

Sec. 3894. "A part or the whole of any school district may be transferred to an adjoining school district by the mutual consent of the boards of education having control of such district; \* \* \*

Sec. 3895. "Territory can also be transferred from one school district to another in the following manner: A petition signed by not less than one-half of the qualified male citizens who are electors residing in the territory sought to be transferred and accompanied by a correct map of said territory, shall be filed with the clerks of the boards of education interested and if such boards of education fail or refuse to transfer such territory by mutual consent, as provided for in Section thirty-eight hundred and ninety-four of the Revised Statutes of Ohio, within sixty days after the filing of said petition and map, the petitioner shall file a copy of said petition and map in the Probate Court of the county in which such territory is situated, or if the territory be in two or more counties, in the Probate Court of the county containing the largest proportionate share of the territory to be transferred; the petitioners shall be required to give satisfactory security for the costs in the sum of one hundred dollars, conditioned that the sureties shall pay all the costs in case the transfer is not granted; the probate judge shall thereupon fix a day for the hearing of said petition and shall cause to be published for four consecutive weeks, in two newspapers of opposite politics, printed and of general circulation in the county, a notice of the filing of such petition and of the time of the hearing, and he shall also notify the clerks of the boards of education interested of the filing of the petition and the time of hearing; the probate judge is authorized and empowered to hear and determine the case and give judgment for or against such transfer and his judgment shall be final. \* \* \*"

Upon the codification of 1910, Section 3886, Revised Statutes, was slightly but not materially changed by the codifying commission and carried into the Code as Section 4680, General Code. It has so remained without amendment or change until the present time. Section 3894, Revised Statutes, was codified without change as Section 4692, General Code. Section 3895, Revised Statutes, was subdivided and codified without material change as Sections 4693, 4694 and 4695, General Code. Section 3896, Revised Statutes, was also subdivided and codified without material change as Sections 4696 and 4697, General Code.

Upon the adoption of the School Code of 1914, Section 4680, General Code, was left unchanged. Sections 4692 and 4696, were amended (104 v. 135), and Sections 4693, 4694, 4695 and 4697, were repealed (104 v. 225).

County school districts were created by the terms of the so-called school code of 1914 under the supervision and control of a county board of education. A county school district as thus created consisted of a county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the jurisdiction of the county board of education by the provisions of Sections 4688 and 4688-1, General Code, and territory detached from the county for school purposes, and including the territory attached to the county for school purposes (Section 4684, General Code), and the district was subdivided into rural and village school districts.

By the terms of Section 4692 and 4696, General Code, as enacted in 1914, (104 v. 135) provision was made for the transfer of a part of any county school district to an adjoining county school district, or to a city or village school district, by the mutual consent of the boards of education having control of such districts, but no

provision was made for the transfer of territory from a city or exempted village school district, they being no part of a county school district.

Section 4692, General Code, was later amended to read as it now does (106 v. 397). As amended, authority is given to county boards of education to transfer territory between school districts of the county school district, subject to remonstrances by the electors residing in the territory affected by such transfer. Section 4696, General Code, was also later amended (109 v. 65), providing the manner by which school territory of a county school district may be transferred to a city, exempted village or another county school district, upon petition of the electors residing in the territory to be transferred, but there has not been any legislation since the repeal of Section 4693, General Code, and the last amendment of Section 4692, General Code, authorizing boards of education by mutual consent or otherwise to transfer territory embraced within a city from such city for school purposes.

It sometimes happens in the incorporation of a new city or village, or upon the extension of the city or village limits, that territory may be included within the corporate limits of a city or village which had previously been attached for school purposes to a school district of an adjacent city or exempted village school district. In such cases provision is made by Section 4696-1, General Code, whereby such territory may be transferred to the school district of the municipality in which said territory is located. But the provisions of said Section 4696-1, are not pertinent to your present inquiry.

Boards of education being creatures of statute and therefore vested with only such authority as is given them by statute, it follows that inasmuch as there is no authority given or means provided by statute for the transfer of territory from a city school district to another school district other than that contained in Section 4696-1, General Code, it cannot be done.

In specific answer to your question, therefore, it is my opinion that the territory now embraced within the Zanesville City School District cannot under the present state of the law be transferred to the South Zanesville Village School District for school purposes.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2094.

OHIO BOARD OF CLEMENCY—NO AUTHORITY TO TERMINATE SENTENCE OF PRISONER VIOLATING PAROLE—SECOND SENTENCE NOT BEGUN UNTIL TERMINATION OR ANNULMENT OF FIRST.

**SYLLABUS:**

1. *The Ohio Board of Clemency is without authority to terminate the sentence of a prisoner confined in the Ohio Penitentiary, who had been paroled and while on parole had been convicted of another felony and sentenced to the Ohio Penitentiary in order that such prisoner might begin serving the second sentence before the maximum term of the first sentence has been served.*

2. *By the terms of Section 2175, General Code, a second sentence to the Ohio Penitentiary, imposed upon a prisoner for a new crime committed while such prisoner was on parole, does not begin to run until the termination of such prisoner's service under the first sentence or the annulment thereof by a court of competent jurisdiction*