

1091.

BOARD OF EDUCATION—CENTRALIZATION AND CONSOLIDATION OF SCHOOLS—TRANSFER OF NON-CENTRALIZED AND CENTRALIZED TERRITORY—MANDATORY AND DISCRETIONARY ACTION DISCUSSED.

SYLLABUS:

1. *A board of education of a rural or village school district may consolidate the schools of the district without a vote of the people, by authority of Section 7730, General Code. Centralization of schools in a rural school district can be effected only by a vote of the people, as provided by Section 4726, General Code.*

2. *When a petition is filed with a county board of education whereby it is sought to transfer all or a portion of the territory of a non-centralized school district of a county school district to a contiguous city, exempted village, or county school district, which petition is signed by three-fourths of the electors residing in the territory sought to be transferred, it becomes the mandatory duty of the county board of education to make the transfer as prayed for in the petition, unless some part of the territory sought to be transferred had been transferred within five years from the date of the filing of the petition, in which case the duty to make the transfer is mandatory only when it is approved by the state director of education. If the territory sought to be transferred is all or a part of a centralized rural school district, the duty devolving upon the county board to make the transfer is not mandatory. The transfer may however, be made by the county board of education if the petition seeking the transfer is signed by two-thirds of the electors residing in the territory to be transferred.*

3. *The duty to transfer territory to or from a rural school district in which the schools are centralized by authority of Section 4726, General Code, is never mandatory. Such transfer may be made only after a petition signed by two-thirds of the electors residing in the territory to be transferred, has been filed with the county board of education, whether the proposed transfer is to be made by authority of Section 4692, General Code, or by that of Section 4696, General Code.*

4. *There is no authority for the filing of petitions for the transfer of school territory under and by virtue of Section 4692, General Code, except when a proposed transfer involves territory lying within a centralized school district. Transfer of territory between school districts of a county school district, except when a centralized district is involved in a proposed transfer, may be made as seems in the judgment of the county board of education to be for the best interest of the schools, subject to the filing of remonstrances by the electors residing in the territory affected. Under no circumstances is the making of such a transfer mandatory, no matter how many resident electors petition therefor.*

5. *Transfer of school territory, in the manner provided by statute, may be made, regardless of whether or not a vote on a contemplated bond issue or tax levy is authorized to be taken at the next ensuing election in one of the districts involved in such transfer.*

COLUMBUS, OHIO, October 22, 1929.

HON. DEANE M. RICHMOND, *Prosecuting Attorney, London, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion with reference to the following:

“A certain school district consists of an entire township under one

school board. There are a number of outlying schools and this board decided it was more economical to discontinue these schools, rather than repair them, and build an addition to one of said school buildings. The board takes the necessary steps to have the question of the bond issue for the addition to the school brought before the electors, but no question of centralization of the school is to be presented to the voters.

First question: Can the board of education, without a vote of the people, centralize the schools of this district?

Upon the question of a bond issue being advertised giving the increase in taxation outside the 15 mill limitation as 1.47 mills, about one-fourth of the school district, under G. C. 4696, present a petition to the county board of education, signed by 75% of the voters of the said affected territory, asking to be transferred to a contiguous district.

Second question: Can the board of education by virtue of the second paragraph of G. C. 4696, stop this transfer, by refusing to consent?"

With respect to your first question, it is necessary to distinguish between "centralization" of schools accomplished by authority of Section 4726, General Code, and "so-called consolidation" of schools by action taken under Section 7730, General Code.

Centralization of schools can be effected only by a vote of the people in accordance with Section 4726, General Code. Consolidation of schools, however, may take place by action of a board of education under Section 7730, General Code, without a vote of the people. In Opinion No. 129, rendered by me under date of February 27, 1929, and addressed to the prosecuting attorney of Hardin County, after discussing questions relating to centralization of schools under the statute, I said:

"Practically the same result may be obtained, however, in any school district by so-called consolidation of schools in accordance with the terms of Section 7730, General Code.

This question has been considered in a great number of opinions rendered by former attorneys general. See Opinions of the Attorney General for 1916, page 498; for 1917, page 305; for 1919, pages 796, 1536, 1593 and 1597; for 1928, page 1281.

In the 1928 opinion above referred to, it is held:

"1. Consolidation of schools by the suspension of certain schools, and the transportation of the pupils residing in the territory of the suspended school, to other schools may be accomplished by virtue of the provisions of Section 7730, General Code, without submitting the same to a vote of the electors residing in the territory affected by such consolidation.

2. There is no authority for submitting the question of consolidation or centralization of schools to a vote of the electors residing in the territory affected by such centralization or consolidation, except as contained in Sections 4726 and 4726-1, General Code.

3. The practical difference between the centralization of schools as authorized by Sections 4726 and 4726-1, General Code, and consolidation of schools by suspension of certain schools and transportation of pupils to other schools, as authorized by Section 7730, General Code, is that in centralization of schools the question must be submitted to a vote of the electorate, and the centralization must include all the schools of a rural

school district, or all the schools of several districts either rural or village, located within a civil township, and the further difference that when centralization is effected, it must be continued for a period of three years, and then may not be discontinued except by a vote of the people, as is provided for centralization in the first place; whereas, consolidation may be effected by combining two or more schools of a district, and cannot be made absolute so long as a suitable school building exists in the territory of any suspended school involved in the consolidation."

The question was again considered and previous opinions with reference thereto reviewed in Opinion No. 485, rendered by me under date of June 6, 1929, and addressed to the prosecuting attorney of Erie County. For your information a copy of said opinion No. 485, is inclosed herewith.

Coming now to your second question, it does not appear in your inquiry whether or not the school district from which the petitioners seek to have territory transferred is the same district referred to in your first question, or whether or not, if it is not the same district, it is a district wherein schools have been centralized by vote of the people in accordance with Section 4726, General Code.

Transfer of school territory, whether made by authority of Section 4692, General Code, from a school district of a county school district to another school district of the same county school district, or by authority of Section 4696, General Code, from a rural or village school district to a city, exempted village or another county school district, can only be made, if any district involved in the transfer is a centralized district, after a petition therefor has been filed with the county board of education signed by two-thirds of the qualified electors of the territory petitioning for the transfer. In no case, under those circumstances, is it the mandatory duty of the county board to make the transfer as prayed for, no matter how many electors signed the petition. See Section 4727, General Code.

If, however, a petition is filed with a county board of education seeking to have territory transferred from a non-centralized rural or a village school district in the county school district to a contiguous city, exempted village, or county school district, which petition is signed by seventy-five per cent or more of the electors residing in the territory which they seek to have transferred, it becomes the mandatory duty of the county board of education to make the transfer as prayed for, in accordance with Section 4696, General Code. See *State ex rel. Darby vs. Hadaway, et al.*, 113 O. S. 658; *Summit County Board of Education, et al. vs. State ex rel. Stipe*, 115 O. S. 333; *Opinions of the Attorney General for 1919*, page 1195.

In the *Opinions of the Attorney General for 1927* at page 739, it is held:

"When a petition is filed with a county board of education for the transfer of a part or all of a school district, other than a centralized school district, to an exempted village, city or county school district the territory of which is contiguous thereto, signed by seventy-five per cent of the qualified electors residing within the territory sought to be transferred it is the mandatory duty of the county board of education to make such transfer in accordance with the petition. If however, the territory sought to be transferred is from a centralized school district to another district the county board of education may, but is not required, to make such transfer in accordance with the petition although the petition therefor be signed by seventy-five per cent of the qualified electors residing within the territory sought to be transferred."

Again in *Opinions of the Attorney General for 1927*, at page 1255, it is held:

"1. County boards of education may be vested with jurisdiction to transfer school district territory to or from a centralized school district by the filing with it of a petition signed by two-thirds of the qualified electors residing in the territory petitioning for the transfer.

2. Upon the filing of a petition for the transfer of territory to or from a school district in which the schools have been centralized, the county board of education with whom the petition is filed may use its discretion to either make the transfer as asked for, or not, as may in its opinion be for the best interests of the district to be affected by the transfer."

Transfers of territory among districts of a county school district, that is from one rural or village school district to another in the same county school district, are controlled by Section 4692, General Code, subject of course, to the provisions of Section 4727, General Code, if either one or both districts involved in a proposed transfer is a rural district wherein the schools have been centralized in accordance with Section 4726, General Code.

A county board of education has authority to make such transfers without a petition being filed therefor, if a centralized district is not involved in the transfer. In fact, the filing of a petition in such cases has no effect.

In an opinion of my predecessor reported in Opinions of the Attorney General for 1927 at page 1151, General Code, it is held:

"Under no circumstances are county boards of education charged with the mandatory duty of transferring territory from one village or rural school district to another village or rural school district within the same county school district as authorized by Section 4692, General Code, even though a petition be filed therefor signed by seventy-five per cent of the electors residing within the territory sought to be transferred."

To the same effect are the holdings in two opinions reported in Opinions of the Attorney General for 1928, at pages 966 and 995. See also Opinions of the Attorney General for 1919, page 1195.

In this connection it should be noted that since the amendment of Section 4696 by the 88th General Assembly (113 O. L. 296) transfers of school territory made by authority of said Section 4696 are limited to the transfer of such territory as had not been involved in a transfer during a five year period immediately preceding the present proposed transfer unless it be with the consent of the state director of education. Said section as amended, contains the following clause:

"Any territory which has been transferred to another district, or any part of such territory, shall not be transferred out of the district to which it has been transferred during a period of five years from the date of the original transfer without approval of the state director of education to such a transfer."

In specific answer to your questions therefore, I am of the opinion:

(1) A board of education of a rural or village school district may consolidate the schools of the district without a vote of the people by authority of Section 7730, General Code. Centralization of schools in a rural school district can be effected only by a vote of the people as provided by Section 4726, General Code.

(2) When a petition is filed with a county board of education whereby it is sought to transfer all or a portion of the territory of a non-centralized school district of a county school district to a contiguous city, exempted village, or county

school district, which petition is signed by three-fourths of the electors residing in the territory sought to be transferred, it becomes the mandatory duty of the county board of education to make the transfer as prayed for in the petition unless some part of the territory sought to be transferred had been transferred within five years from the date of the filing of the petition, in which case the duty to make the transfer is mandatory only when it is approved by the state director of education. If the territory sought to be transferred is all or a part of a centralized rural school district, the duty developing upon the county board to make the transfer is not mandatory. The transfer may, however, be made by the county board of education if the petition seeking the transfer is signed by two-thirds of the electors residing in the territory to be transferred.

It appears from your inquiry that a proposed bond issue and tax levy to meet the demands of such issue will be voted on at the coming election in the school district from which it is proposed to detach certain territory. This fact, in my opinion, does not affect the right to transfer the territory. The law relative to transfers of school territory contains no exceptions or qualifications applicable to cases where proposed bond issues or other propositions are pending. Even though arrangements have been made to submit a question of issuing bonds to the voters of the school district, there appears to be nothing in the law to suspend the operation of the laws relating to transfers of school territory.

I am of the opinion that transfers of school territory may be made, in accordance with the rules hereinbefore discussed, even though a vote on a proposed bond issue has been authorized and will be submitted at the next election to the electors of one of the districts involved in the transfer.

If, under those circumstances, a proposal of that kind should carry at an election in a district from which territory had been detached after the vote had been authorized, it is probable the marketability of bonds issued by authority of the vote might be somewhat affected, but that fact would not prevent transfers of territory in pursuance of the statutes relating thereto.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1092.

APPROVAL, ONE GAME REFUGE LEASE.

COLUMBUS, OHIO, October 23, 1929.

HON. J. W. THOMPSON, *Chief, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—I have your letter of October 22, 1929, in which you enclose the following State Game Refuge lease, in duplicate, for my approval:

<i>No.</i>	<i>Lessor</i>	<i>Acres</i>
2055	Frank C. Medick, Franklin County, Sharon Township-----	86.19

I have examined said lease, find it correct in form, and I am therefore returning the same, with my approval endorsed thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.