

2298.

APPROVAL, BONDS OF PERRYSBURG VILLAGE SCHOOL DISTRICT,
WOOD COUNTY, OHIO—\$14,000.00.

COLUMBUS, OHIO, September 6, 1930.

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

2299.

APPROVAL, BONDS OF WASHINGTON TOWNSHIP RURAL SCHOOL
DISTRICT, LUCAS COUNTY, OHIO—\$20,000.00.

COLUMBUS, OHIO, September 6, 1930.

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

2300.

APPROVAL, BONDS OF GUERNSEY COUNTY, OHIO—\$26,833.61.

COLUMBUS, OHIO, September 6, 1930.

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

2301.

SCHOOL DISTRICT—CREATION OF NEW DISTRICT—ACTION OF
COUNTY BOARD OF EDUCATION NOT SUBJECT TO ATTACK EX-
CEPT BY REMONSTRANCE—NOTICE NOT REQUIRED—COUNTY
BOARD MAY NOT CONCEAL ITS ACTION FROM RESIDENTS OF
TERRITORY AFFECTED.

SYLLABUS:

1. *Where a new school district is created by authority of Section 4736, General Code, the only right of the residents of the territory affected to control the action so taken, is the right of remonstrance preserved by the statute.*

2. *When a county board of education creates a new school district by authority of Section 4736, General Code, it is not required to publish a notice of its action so*

taken. It must, however, act in good faith and not conceal its action in creating new school districts so as to affect the right of remonstrance as provided by the statute.

COLUMBUS, OHIO, September 6, 1930.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

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

“Section 4736 gives to the county board of education power to create new districts by combining all or parts of contiguous districts of the county school district.

First: Where the school board has created a new school district under Section 4736, is there any provision for a referendum by the electors in the territory affected, in view of the fact that said Section 4736 seems to require no notice of the action of the board in creating a new district?

Second: If your answer to the above question is in the affirmative, does the right of referendum extend to the electors of the territory affected as within the meaning of the term in Section 4736?”

The control over the boundaries of political subdivisions and the power to create new political subdivisions or annex the territory of one to another, is vested primarily in the state legislature. It is oftentimes delegated by the legislature to subordinate agencies such as boards of education and municipal legislative authorities. This general principle is stated in Abbott on “Public Securities,” Section 28, as follows:

“The boundaries of public corporations as agents of the sovereign come within the doctrine of absolute control by the legislature. Ordinarily possessing the right to create these agencies and sub-agencies, it can exercise the lesser power of changing or altering their boundaries. The right of the people within the district affected to consent to such change or alteration may be given as a matter of favor.”

See also Ruling Case Law, Vol. 24, p. 566. The legislature of Ohio has, by virtue of Section 4736, General Code, delegated to county boards of education the power to create a school district from one or more school districts of the county school district, or parts thereof. By the terms of the said section, the qualified electors residing in the territory affected by an order of the county board of education creating a new school district, are preserved the right of remonstrance to such order. It is provided in said Section 4736, General Code, inter alia, “such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it.” The power of a county board of education with respect to the changing of the boundaries of school districts or the creation of new districts is purely statutory, as well as the power of the residents of the district to control or modify the action of a county board of education with respect to such matters. The statute, Section 4736, makes no provision for the publication of any notice when a county board of education creates a new school district by virtue of said section, nor is there any general statute requiring a county board of education to publish a notice of action taken under the said statute.

There are no general provisions of law extending the right of referendum to the residents of a school district with reference to matters affecting the district and

the only power the residents of the district have to control the action of its officers in the management of the schools or in the changing of district boundary lines is that specifically set forth in the statutes pertaining to the subject. The only power given to the residents of a district to control the action of a county board of education in creating a new district by authority of said Section 4736, General Code, is the right of remonstrance, as set forth above.

The legislature has reposed in a county board of education the discretion to determine the necessity for the creation of new school districts and authorizes those boards to create such districts as may in the board's opinion be for the best interests of the schools, and has not seen fit to require the board to publish any notice of action so taken, thus imposing upon the residents of the district who are given the right of remonstrance, the obligation to be diligent in following the actions of its county board of education. This discretion, however, like all discretion reposed in public officers or boards; must not be abused or exercised otherwise than in good faith. While no statutory limitation upon the power of a county board is written into the section, there is an implied limitation always operating against an administrative board to the effect that its power must be exercised "in the absence of fraud, bad faith or the taking of such arbitrary, whimsical and unreasonable action by the board as amounts to an abuse of discretion." *Board of Education vs. Boehm*, 102 O. S. 292. The provisions of Section 4736 are to be taken as a whole. The county board is, of course, obliged to act in good faith, to the end that the power of remonstrance may be preserved. That is to say, a county board of education may not secretly create a new school district by authority of Section 4736, General Code, and not give the residents of the district an opportunity to learn of its action so taken, without subjecting itself to the implication of bad faith and having its action reversed or voided by a court of equity in a proper proceeding therefor.

The only case so far as I know where this question was considered is in the unreported case of *Groh, et al. vs. Board of Education of Scioto County School District*, decided by the Court of Appeals of Scioto County about six weeks ago. It appears in this case that the County Board of Education of Scioto County created a new school district in such a manner as to abolish an entire existing district. There, action was taken by resolution, the passage of which was concealed from the residents of the district until the period for remonstrances had expired. Action was then instituted to enjoin the carrying into effect the action of the board and the injunction was granted. In the course of an able opinion written by Judge Mauck, it is said:

"The evidence in this case, however, shows that the members of the county board were more than secretive. They actually and affirmatively concealed the fact that the resolution had been passed upon March 15, and that concealment continued until the thirty day period for a remonstrance had passed. While the public press on other occasions had been given news items of the official acts of the county board by Mr. ———, so that the people generally had a right to believe that the press would advise them of the board's more important actions at least, there was no item given out as to the resolution of March 15, which was unquestionably the most interesting and important action taken by the board during the whole year: The president of the board, moreover, was asked on cross examination how he figured that the people were going to get up a remonstrance if somebody did not tell them about the resolution against which they would remonstrate. His answer is vitally significant. He said:

'Well, I will tell you. We did it at Harrison Township one time and they stopped it on us—stopped it. We didn't want to take any chances this time when we undertook it.'

This is a square admission on the part of the president of the board that he and those for whom he was speaking when he testified had resolved on a policy of concealment for the purpose of defeating the people's power of remonstrance. * * * We consequently hold the whole transaction void and enter a decree in accordance with the prayer of the petition."

The above case has not been officially reported and I have no means of knowing whether it will be so reported.

In the light of the foregoing discussion, I am of the opinion in specific answer to the question submitted that when new school districts are created by a county board of education by authority of Section 4736, General Code, the only power given to the residents of the territory affected is the power of remonstrance, as stated in the statute, and that inasmuch as the statute does not impose on the county board of education the duty to publish any notice of its action by way of creating a new school district, as authorized by the statute, the residents of the district are required to use due diligence in keeping themselves informed of the action of the board of education under and by authority of said Section 4736, General Code; on the other hand, the county board of education, although not required to publish a notice of action taken by it under and by authority of Section 4736, General Code, is required to exercise the power so given to it in good faith and cannot lawfully conceal action taken by it under and by authority of said statute and thus defeat the right of remonstrance given by the statute to the residents of the territory affected.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2302.

APPROVAL, BONDS OF MADISON TOWNSHIP RURAL SCHOOL DISTRICT, BUTLER COUNTY, OHIO—\$25,000.00.

COLUMBUS, OHIO, September 6, 1930.

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

2303.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS EXAMINER IN THE BUILDING AND LOAN DIVISION IN THE DEPARTMENT OF COMMERCE—HAROLD CRAIG.

COLUMBUS, OHIO, September 6, 1930.

HON. JOHN W. PRUGH, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of \$5,000.00, upon which the name of Harold Craig appears as principal and the name of the Southern Surety