

631.

SCHOOLS—DISTRICT CREATED OUT OF TERRITORY OF ONE OR MORE DISTRICTS BECOMES CLASS OF DISTRICT CREATED OR TO WHICH ATTACHED.

COLUMBUS, OHIO, August 11, 1923.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

SYLLABUS:

A school district created out of the territory of one or more districts or parts thereof, or territory joined or transferred to a district, becomes the kind or class of district created, or to which attached.

GENTLEMEN:—In your communication of recent date you request the opinion of this department upon the following questions:

“Question 1. If a village school district containing a population of less than 1500 votes under the provisions of section 4682-1 G. C., to dissolve and join any contiguous rural district, is the resulting district a village or a rural district?

Question 2. If a county board of education under the provisions of section 4692 G. C. transfer all of a village school district to an adjoining rural school district, is the resulting district a village district or a rural district?

Question 3. When a rural school district is dissolved under the provisions of section 4735-1 G. C., and is joined to a contiguous village district, is the resulting district a village or a rural district?

Question 4. If a county board of education creates a school district under the provisions of section 4736 G. C., from a village school district and all or parts of rural school districts, is the resulting district a rural or a village district?

The law fixes the compensation of members of boards of education of rural school districts containing more than sixteen square miles at \$2.00 for each meeting not to exceed ten meetings in any one year and in rural districts containing less than sixteen square miles at \$1.00 per meeting not to exceed ten meetings in any one year. There is no provision of law fixing compensation of members of village boards of education or boards of education of a city district. It is therefore important that we know in each instance whether the district is a village or a rural district.”

It is to be observed that in all the sections quoted in your questions, section 4692 G. C. uses the word “transfer;” section 4736 G. C. uses the term “create” and the others use the terms “dissolve and join” or “become a part of” when speaking of the district formed after action taken.

Your attention is called to section 4687 G. C. which reads as follows:

"Upon the creation of a village, it shall thereby become a village school district, as herein provided, and, if the territory of such village previous to its creation was included within the boundaries of a rural school district and such rural school district included more territory than is included within the village, such territory shall thereby be attached to such village school district for school purposes, provided such territory has an area of less than 16 square miles. The legal title to school property for school purposes in such newly created village school districts shall be vested in the board of education of the newly created village school district. Provided, however, if there be any indebtedness on the school property located within the newly created village school district, the board of education of the newly created village school district shall assume such indebtedness and shall levy a tax annually sufficient to pay such indebtedness and shall pay to the board of education of the district or districts from which it acquired the school property, the amount of money collected from such levy as it becomes due."

It is evident from the section just quoted that an entire rural school district in which a village is newly created may become territory attached to the village school district provided such territory of the rural school district outside the confines of the village is less than sixteen square miles in area.

Section 4690 G. C. provides that upon annexation of territory to a city or village such territory becomes part of the city or village school district and it is evident by necessary implication that this is true from the terms used in sections 4692, 4696, 4735-1, 4735-2 and 4736 G. C.

If a school district, which is a public corporation, is dissolved it loses its entity and ceases to function as such, and if that which composed it is joined with, transferred to, or created into something else it reappears consolidated in the entity to which transferred, joined or created out of its parts, thereupon taking the legal character of the district in which it reappears. It does not preserve its former corporate existence even to discharge the debts owing at dissolution.

"We think the rule in Ohio is well fixed that when territory for school purposes is transferred pursuant to statutory authority, that those residing in such annexed territory may be taxed to pay pre-existing indebtedness embraced in the new territorial district."

Ewing vs. Schopf, 30 O. C. A. 63.

We therefore believe that the answer to your questions is to be found in the sections of the statutes to which they refer. Hence, your first question is answered by section 4683 G. C., which says:

"When a village school district is dissolved, the territory formerly constituting such village district shall become a part of the contiguous rural district which it votes to join in accordance with section 4682-1, * * *

Your second question seems likewise to be answered by section 4692 G. C., which says:

"* * * If an entire district be transferred the board of education of such district is thereby abolished, or if a member of the board of education lives in a part of a school district transferred, the member becomes a non-resident of the school district from which he was transferred and

ceases to be a member of such board of education. The legal title of the property of the board of education shall become vested in the board of education of the school district to which such territory is transferred."

Evidently if an entire village district is transferred to a rural district the village board of education is abolished and the rural board of education of the district to which the transfer is made becomes the governing board. It must be presumed that a rural board of education exercises control and jurisdiction only over a rural school district. And in the case just mentioned the enlarged district is rural, the village district having ceased to exist, therefore, your second question is answered that the district is rural.

Your third question is answered by section 4735-1 G. C., which provides for a petition

"* * * * * praying that the rural district be dissolved and joined to a contiguous rural or village district * * * *."

Here again, if a rural district be dissolved and joined to a village district it becomes a part of that to which it is joined and is a village district, likewise, it will remain a rural district if joined to a contiguous rural one.

Section 4736 G. C., empowers a county board of education to "create a school district from one or more school districts or parts thereof" and your fourth question is answered by saying that the district created by the county board of education may be a rural or a village district depending upon the act of the creator and the districts or parts thereof out of which created. If rural, then it is a rural school district and if a village then a village district. A county board of education has no authority to change city or exempted village school districts.

Section 4735-1 and 4735-2 were discussed in connection with section 4736 G. C. by the Supreme Court in Board of Education vs. Boehn, 102 O. S., 292, at page 303, where it is said:

"Nor are we able to find that sections 4735-1 and 4735-2 General Code, enacted in 1914, qualify section 4736, General Code, enacted in 1919, and are of opinion that even though they were of concurrent enactment sections 4735-1 and 4735-2 are only effective to dissolve and transfer an entire existing district to another existing district upon the initiative of the electors of the district seeking dissolution and union with another district thereby enabling such district to accomplish such a union with an existing district without the aid of and probably in spite of the county board of Education, and in no way limit the power of the discretion vested in the county board to accomplish the same or a similar result by its own action, and that the only limitation upon the power and discretion vested in the county board of education by section 4736, 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, is the limitation expressed in the section itself."

It certainly follows that in every instance in which territory is transferred from one district to another, or in which a village district votes to dissolve and join a rural district, or when a county board of education acts to create a new district out of other districts or parts thereof, the resulting districts, severally, are

of the class of districts to which they are transferred, or to which they vote to join, or into which they are created by the action of the county board.

Specifically answering your questions, it is the opinion of this department that:

1. When a village district votes to join a contiguous rural district, it becomes a part of said rural district.
2. When all of a village school district is transferred to an adjoining rural district, the resulting district is a rural one.
3. When a rural school district is dissolved and joined to a contiguous village district, the resulting district is a village district.
4. When the county board creates a school district from a village and parts of other districts, it is a village school district.

Respectfully,
C. C. CRABBE,
Attorney General.

632.

BOARD OF GENERAL HEALTH DISTRICT AND COUNTY AUDITOR
MAY NOT PROCEED UNDER SECTION 1261-41 G. C. AS LONG AS
THERE ARE SUFFICIENT FUNDS IN GENERAL HEALTH FUND
TO COVER ALL ANTICIPATED EXPENSES.

COLUMBUS, Ohio, August 11, 1923.

Hon. P. P. BOLI, *Prosecuting Attorney, Hamilton, Ohio.*

SYLLABUS:

The board of a general health district and the county auditor may not proceed under section 1261-41 as long as there are sufficient funds in the general health fund to cover all anticipated expenses.

DEAR SIR:—I am in receipt of your recent communication as follows:

“On June 8, 1923, the District Board of Health of Butler County, Ohio, found and declared that an epidemic existed throughout all of the subdivisions in the county, and that for the purpose of preventing the spread of disease, it was necessary to have the sum of \$1300.00 as additional funds to defray the expenses.

In compliance with section 1261-41 G. C., the board certified to the County Auditor the total estimate and the amount to be apportioned against each subdivision comprising the district.

Through the past two or three years there has been accumulating in the General Health Fund of the county a surplus of about \$5,000, which surplus has been permitted to remain in the fund by mistake or oversight, and is now still in the General Health Fund. This surplus comprises funds paid in from all of the subdivisions of the county.