

1059.

CONTRACT — STATE WITH VILLAGE OF VERMILION, IMPROVEMENT, CLEVELAND-SANDUSKY ROAD, STATE HIGHWAY NO. 3.

COLUMBUS, OHIO, August 18, 1939.

HON. ROBERT S. BEIGHTLER, *Director, Department of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval the contract between the State of Ohio and the Village of Vermilion, Ohio, for the proposed cooperate improvement of a portion of the Cleveland-Sandusky Road, State Highway No. 3.

Finding said contract and the proceedings thereunder in proper legal form, I have noted my approval thereon, and same is transmitted to you herewith.

Respectfully

THOMAS J. HERBERT,
Attorney General.

1060.

SCHOOL TERRITORY — TRANSFERS — NEW SCHOOL DISTRICTS CREATED—MAPS—FUNDS AND INDEBTEDNESS—EQUITABLE DIVISION—ALL FUNDS COLLECTED, TO BE COLLECTED AND IN TREASURY SHOULD BE CONSIDERED—SECTIONS 4692, 4696, 4736 G. C.

SYLLABUS:

When transfers of school territory are effected by authority of Section 4692, General Code or Section 4696, General Code, or new school districts created by authority of Section 4736, General Code, and equitable divisions of funds and indebtedness are made between subdivisions involved, as directed by these statutes, all the funds to which a district may be entitled at the time of the transfer or the creation of the new school district as the case may be, even though collection of the funds will not take place until later, as well as the funds actually in its treasury at the time should be taken into consideration.

COLUMBUS, OHIO, August 18, 1939.

HON. GLENN W. MARRIOTT, *Prosecuting Attorney, Mansfield, Ohio.*

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

"I would appreciate an opinion from you upon the following statement of facts:

Union Rural School District in Richland County embraces all of Weller Township, all of Franklin Township, and a portion of Bloominggrove Township. Butler Township, in the northeast corner of Richland County, is contiguous to Union School District on the north and also a portion of Bloominggrove Township belonging to Union School District is to the west of Butler Township.

On April 27 last, the County Board of Education by resolution created a district under Section 4736. This action of the board would, of course, have been consummated on the 29th day of May, 1939, by lapse of time. On May 27 last, a petition bearing more than 75% of the names of electors of Butler Township was presented to the County Board of Education, asking that Butler Township be annexed to the Ashland County School District, and on said date the county board of education of Richland County voted to transfer said territory. On June 3rd last the County Board of Education of Ashland County accepted said territory pursuant to Section 4696 of the General Code.

Mr. Robinson, County Superintendent of Schools, tells me that he has received a check for some \$1900.00 for the old Butler Township School District. However, on June 3rd, at the time of the acceptance of Butler Township as transfer, the Ashland County Board took over and made an equitable distribution of the funds of Butler Township. The contention of both Mr. Robinson and myself is that Butler Township was not transferred to Ashland County as school territory until the transfer was accepted by the Ashland County Board on June 3rd, and that Butler Township became a part of the Union Township School District during the period between May 29th and June 3rd last. If our contention is correct, funds would have to be equitably divided upon the basis of Union School District property and Butler Township Rural School District property.

Before directing Mr. Robinson to make any disposition of the \$1900.00 check above mentioned, I would like your opinion with reference to whether Butler Township became a part of the Union School District, whereby the equitable division of funds would be made pursuant to Section 4696 upon that basis."

I gather from your letter and other information which has come to my attention, that all of the territory of what formerly constituted Butler Township Rural School District in the Richland County School District was included in the territory embraced within the Union School District

created by authority of Section 4736, General Code, by resolution of the Richland County Board of Education under date of April 27, 1939.

On May 27, 1939, a petition signed by 75% of the qualified electors residing on territory which had formerly been the Butler Township Rural School District, requesting a transfer of all this territory to the Ashland County School District was filed with the county board of education of the Richland County School District. On the same day the Richland County Board passed a resolution transferring this territory in accordance with the prayer of the petition. On June 3rd the transfer was accepted by the Ashland County Board and an equitable division of the funds made as directed by the statute (Section 4696, General Code) as between the district of the Ashland County School District to which the territory was attached and the district of the Richland County District from which the territory was detached—to-wit, the new Union District of the Richland County District—this district having been created by resolution of the Richland County Board of Education on May 27th, 1939, and no remonstrance having been filed within thirty days thereafter to prevent the action so taken by the Richland County Board from taking effect.

Although you do not so state, I assume that the \$1900.00 check spoken of as having been received by the county superintendent of schools was received from the Treasurer of State and was in payment of the quarterly distribution of the State Public School Fund due to the Butler Township Rural District if it had been in existence as it was prior to its incorporation in the new Union School District calculated as of May 31, 1939.

The statute providing for the distribution of the State Public School Fund is Section 7595-1g, General Code, which provides as follows:

“The amount of all apportionments made to the district, as provided in this act, shall be distributed to such districts in quarterly payments. On or before the last day of February, May, August, and November in each year, the director shall calculate the amounts to be paid to the respective districts as such quarterly payments of the apportionments theretofore made by him for such districts for the current year, and shall certify to the auditor of state the amounts of such quarterly payments, whereupon the auditor of state shall issue his warrants on the treasurer of state in favor of the respective districts for the amounts so certified and the treasurer of state shall forthwith pay the same to the designated districts.”

As there are a large number of school districts in the State and the calculation of the amounts due the several districts involves many factors and is quite complicated, it would be almost an impossibility from a practical standpoint, for the Director of Education to take into consideration

last minute transfers of territory in making these apportionments. In the present instance, the Director of Education could hardly be expected to have known at the time computations were made of the allotments due May 31, 1939, whether or not the territory of the Butler Township District had then become a part of the new Union District, as remonstrances might have been filed as late as May 29th which would have prevented the creation of the Union District from becoming effective. It will be noted that Section 4736, General Code, after providing that a county board of education may create a school district from one or more school districts or parts thereof, provides further, *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.”

Under the circumstances, the Butler Township District, in whose behalf the apportionment of the public school fund was made, which apportionment is represented by the \$1900.00 check in question, was, on May 31, 1939, the date fixed for the apportionment, a part of the new Union School District as created by resolution of May 27, 1939, and the check should therefore be sent to the Clerk of the Board of Education of the new Union District and when cashed, the proceeds thereof should be credited to the funds of that district.

The transfer of the territory of the former Butler Township District did not become complete until some time later, and when it did become complete by its due acceptance, apportionment of funds, and filing of the maps as provided by Section 4696, General Code, the fact that it was then a part of the new Union School District of Richland County and that that district was possessed of the \$1900.00 represented by the check in question should have been taken into consideration in making an equitable distribution of the funds as between the district of the Ashland County District to which the territory became attached and the Union District of Richland County from which it was detached.

Respectfully

THOMAS J. HERBERT,
Attorney General.