

restrictions of record all of which the Grantee assumes and agrees to pay," and in which Harry R. Templeton, husband of Alma M. Templeton and John J. Rada, husband of Elsie H. Rada release their right and expectancy of dower in the premises. The deed was executed by the persons above named on the 19th day of July, 1928. There is some question in my mind as to the meaning of the words quoted above from the warranty clause "and ordinary restrictions of record." This language apparently refers to building and other like restrictions of which none are shown by the abstract, and it is therefore my opinion that a new deed should be prepared omitting the words last above quoted. The deed recites the consideration for the transfer to be the sum of \$10.00. In my opinion the full amount of the consideration should be stated.

You further request an opinion as to how the matter of the 1928 taxes which have not been determined but are a lien on the property and which are to be paid by the grantors, should be handled. Among the papers submitted is a letter from Harry R. Templeton directed to the State Architect and Engineer, making reference to the taxes, and stating that the taxes due and payable in December, 1928, will amount to approximately \$62.14, and that the taxes due and payable in June, 1929, will include a paving assessment of about \$100.00 plus an approximate amount of \$65.00 for taxes, making the total sum necessary to pay taxes and assessments for the year 1929, approximately \$225.00. In my opinion the state will be fully protected if the sum of \$225.00 be deducted from the purchase price of the property and retained by the state until such time as receipts showing the payment of the taxes and assessments shall have been presented by the grantors.

You have further submitted evidence showing that the amount necessary for the purchase of the above described real estate has been released by the Controlling Board, as required by Section 12 of House Bill No. 502 of the 87th General Assembly. You have also submitted an encumbrance estimate bearing No. 1195, in favor of Alma M. Templeton and Elsie H. Rada, in the sum of \$1,700.00, for the purchase of the above described real estate, which bears the certification of the Director of Finance under date of August 21, 1928, to the effect that there are unencumbered balances legally appropriated sufficient to pay for the same.

I am returning herewith the abstract of title, warranty deed and other papers submitted in this connection.

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

2473.

BOARD OF EDUCATION—CREATION OF NEW SCHOOL DISTRICT—  
COUNTY BOARD TO MAKE DIVISION OF FUNDS—INDEBTEDNESS  
—WHEN EFFECTIVE—PURCHASES.

SYLLABUS:

1. *A county board of education upon the creation of a new school district, by authority of Section 4736, General Code, is authorized to make an equitable division of the funds and indebtedness between the new district and other districts from which any portion of the territory comprising the new district has been taken, either at the time of the passage of the resolution creating the new district, or later, as it sees fit, but if made before the expiration of thirty days after the passage of such resolution*

*the order constituting this equitable division will not become effective until after the expiration of thirty days from the date of the passage of the resolution creating the new district.*

2. *When after the creation of a new school district by authority of Section 4736, General Code, an equitable division is made of the funds and indebtedness between the new school district and other districts a portion of whose territory has been taken to constitute the new district, an order requiring the board of education of one district to pay any portion of its funds to the board of education of the newly created district constitutes an encumbrance on the funds in the hands of such board of education to the extent of the amount so ordered paid, even though the order may not become effective until a later date.*

3. *Inasmuch as a school district in the purchase of equipment or property of any kind must before making a contract for such purchase procure the certificate of its fiscal officer that the money required to meet said contract has been appropriated, and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, as provided by Section 5625-33, General Code, the board could not lawfully make expenditures from any funds which had been previously ordered paid to another board of education by reason of the making of an equitable distribution of the funds of the district between said district and another district which had recently acquired a portion of its territory. If, however, its funds are not encumbered by such an order or otherwise, it may use them as it sees fit, in the purchase of supplies, limited only by the provisions of law with reference to making such purchases.*

4. *A newly created school district created by authority of Section 4736, General Code, does not have title or any interest in the personal property of another school district from whose territory it was carved, except in the school funds belonging to said district, and then only to the extent that it is given an interest therein by the county board of education in making an equitable division of funds between such districts.*

COLUMBUS, OHIO, August 22, 1928.

HON. FRANK F. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

“By virtue of authority of Section 4692, G. C., and subsequent sections of the same chapter the county board of education has created a new school district in Orange Township known as the Sherrodsville School District.

Have the county auditor and clerk of the county board of education any legal right to make division of the original township school funds before the thirty-day remonstrance period has expired?

Has the original school district from which said new school district was created the authority to proceed and purchase necessary equipment from funds already in their hands for the requirements of their first grade high school?

Has the newly created district any title or interest in equipment bought by the old district for the purpose of transporting pupils when they have no use for the same?”

New school districts may not be created by authority of Section 4692, General Code, or any subsequent sections of the same chapter. Section 4692 and 4696, General Code, authorize the transfer of territory from one school district to another. The result of such transfer, however, is not the creation of a new school district. When

transfers are made by authority of Sections 4692 or 4696, General Code, the school district from which territory is transferred still continues as a school district and its board of education still continues to function with jurisdiction over the territory remaining within the district after the transfer.

New school districts may be created by authority of Section 4746, General Code, which reads as follows:

"The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall make an equitable division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. 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. Members of the board of education of the newly created district shall be appointed by the county board of education and shall hold their office until the first election for members of a board of education held in such district after such appointment, at which said first election two members shall be elected for two years and three members shall be elected for four years, and thereafter their successors shall be elected in the same manner and for the term as is provided by Section 4712 of the General Code. The board so appointed by the county board of education shall organize on the second Monday after their appointment."

In the creation of a new school district by authority of the above statute, the county board must not only adopt a resolution to that effect but must as well make an equitable division of funds and indebtedness between the newly created district and the other district or districts from which the territory has been taken and included within the newly created district. The passage of the resolution setting forth the boundaries of the new district and reciting that the territory described as being within such boundaries shall constitute a new school district, is in my opinion the creation of the new district. When this is done a further duty devolves on the board to make an equitable division of the funds and indebtedness as prescribed by statute, but this need not be done at the time the resolution creating the district is adopted. It may be done at that time, or later, as the board chooses. After the district is created, it further devolves on the county board to appoint a board of education for the new district.

On June 10, 1921, the county board of education of Muskingum County by appropriate action, pursuant to the provisions of Section 4736, General Code, created the Jefferson School District from the territory theretofore comprising three entire rural school districts and part of Cass Township rural school district in Muskingum County. Thereafter the county board of education duly made an equitable division of the funds and indebtedness between the newly created district and the district of which only a part had been taken in the creation of the new district, and appointed a board of education for the new district thus created. The members of the boards of education of two of the districts which had been included within the newly created district refused to recognize the action of the county board of education and refused to surrender and turn over the books, money and property of these two districts to the board of education which had been appointed for the new district. An action in quo warranto was instituted in the Supreme Court by the Prosecuting Attorney of Muskingum County (*State*

*ex rel.*, vs. *Schneider, et al.*, 103 O. S. 492,) seeking to oust the members of the two boards of education who had refused to turn over the books, moneys and property of these two districts to the board of education for the new district. One of the defenses to this action was:

"That no apportionment of funds or indebtedness was made at the meeting when the county board of education created said new district June 10, 1921."

In the course of the opinion in said case rendered by Judge Matthias, it was said:

"The failure to apportion the funds and indebtedness between the newly-created district and Cass township rural school district, from which a part of the territory was taken, is also urged as a defense. However, the entries of the proceedings disclose that such order of apportionment of funds and indebtedness was in fact made, though at a subsequent meeting of the county board. A mere delay in taking such action cannot invalidate the proceeding creating the new district. The duty of ascertaining the relative valuations of the respective portions of the only district which was divided was delegated to the clerk of the board and thereafter the board ordered a division of the funds and indebtedness in a manner the validity of which has not been questioned."

It will be observed that the statute, after authorizing the creation of new school districts and directing that in so doing an equitable division of the funds and indebtedness be made, provides that:

"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."

A similar provision is made in Section 4692, General Code, which provides for the transfer of territory from one school district of a county school district to another school district of the same county school district.

Manifestly, if the action of the board in creating a new district does not take effect in the event of the happening of a certain contingency it does not take effect until it has been determined whether or not that contingency will arise. The statute does not provide that the action of the board in creating a new district may be defeated by the filing of a remonstrance within thirty days, but that it shall not take effect if a remonstrance is filed. This clearly means that it does not take effect until the time for filing remonstrances has expired. It follows that no matter when the equitable division of funds and indebtedness is made, any order so made does not become effective until the expiration of thirty days after the resolution creating the new district has been passed.

In my opinion the county board may make the equitable division at the time it passes the resolution to create the district, or later, but if it makes it any time before the thirty day period permitted for the filing of remonstrances has expired, the board which is ordered to pay a portion of its funds to the new district need not and should not comply with the order until the thirty day period has expired. This does not mean, however, that the board affected by the order might spend or encumber these funds in the meantime so as to put it out of its power to

comply with the order if and when it becomes effective. In my opinion an order of that kind would constitute such an encumbrance of the funds as to preclude the board from disposing of them by purchasing equipment or the like and thus so tie up the funds that the order of the county board could not be complied with when it becomes effective.

Until the county board makes this equitable division, and orders a portion of the funds of a district paid to another, the board, in whose possession the funds are, has control of them and may use them within the limits authorized by law, as it sees fit. That is to say, the mere creation of a district does not encumber the funds of a district from which territory is taken to make up the new district, until an equitable division is made of the funds and a part of them ordered paid to the board of education of the new district. The amount of available cash and the indebtedness of the district as constituted after a part of its territory has been taken away is fixed as of the date of the equitable distribution.

The equitable apportionment of the funds and indebtedness is not made by the county auditor and clerk of the board of education, but by the county board itself, although no doubt the board may delegate to its clerk the duty of ascertaining the relative values and indebtedness upon which to base the proper apportionment. This right is recognized by the Supreme Court in the language above quoted. The county auditor would be the proper officer to look to for information about this matter, but the actual apportionment should be fixed by a resolution of the county board at a duly constituted meeting.

The apportionment between the two districts is of funds and indebtedness only and not of personal property other than school funds such as school busses and similar property. Such personal property other than money, as belonged to a district, before a portion of its territory was transferred away from it, or taken from it to form a part or all of the new school district, remains with the old district as its property; and there is no authority for the county board to apportion this property, either in whole or in part, to the new district, or to a district to which a portion of the territory of the district had been transferred. The value of this property as an asset of the district should of course be taken into consideration in determining what is an equitable division of the funds between the two subdivisions. Real estate and school buildings of course belong to the district in which they are located, after a readjustment of boundaries either by creation of new districts or transfers of territory from one district to another.

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

First, that a county board of education upon the creation of a new school district, by authority of Section 4736, General Code, is authorized to make an equitable division of the funds and indebtedness between the new district and other districts, from which any portion of the territory comprising the new district has been taken, either at the time of the passage of the resolution creating the new district, or later, as it sees fit; but if made before the expiration of thirty days after the passage of the resolution creating the new district the order constituting this equitable division will not become effective until after the expiration of thirty days from the date of the passage of such resolution.

Second, when after the creation of a new school district, by authority of Section 4736, General Code, an equitable division is made of the funds and indebtedness between the new school district and other districts, a portion of whose territory has been taken to constitute the new district, an order requiring the board of education of one district to pay any portion of its funds to the board of education of the newly created district constitutes an encumbrance on the funds in the

hands of such board of education to the extent of the amount so ordered to be paid, even though the order may not become effective until a later date.

Inasmuch as a school district in the purchase of equipment or property of any kind must before making a contract for such purchase procure the certificate of its fiscal officer that the money required to meet said contract has been appropriated and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances, as provided by Section 5625-33, General Code, the board could not lawfully make expenditures from any funds which had been previously ordered paid to another board of education, by reason of the making of an equitable distribution of the funds of the district between said district and another district which had recently acquired a portion of its territory. If, however, its funds are not encumbered by such an order or otherwise, it may use them as it sees fit in the purchase of supplies, limited only by the provisions of law with reference to making such purchases.

Third, a newly created school district, created by authority of Section 4736, General Code, does not have title or any interest in the personal property of another school district from whose territory it was carved, except in the school funds belonging to said district, and then only to the extent that it is given an interest therein by the county board of education in making an equitable division of funds between such districts.

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

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2474.

APPROVAL, BONDS OF GUERNSEY COUNTY, OHIO—\$46,440.00.

COLUMBUS, OHIO, August 22, 1928.

*Industrial Commission of Ohio. Columbus, Ohio.*

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2475.

BOILER—OPERATION OF STATIONARY STEAM BOILER BY LICENSED ENGINEER—COMPULSORY—EXCEPTIONS.

*SYLLABUS:*

1. *By the terms of Section 1047, General Code, it is unlawful for any person to operate a stationary steam engine of more than thirty horse power unless such person first obtain a license therefor as provided by Section 1048, General Code.*

2. *By the terms of Section 1047, General Code, it is unlawful for any owner, user or agent of an owner of any stationary steam engine of more than thirty horse power to permit such engine to be operated unless it is directly in charge of a duly licensed steam engineer.*