

Whether other ordinances or other measures in the course of the legislative measures necessary to provide for a municipal improvement need be published, in the absence of the enactment of emergency measures, is not before me and I pass no opinion thereon.

Summarizing my conclusions, I am of the opinion that ordinances and measures enacted in the course of the legislation for a municipal improvement subsequent to the resolution of necessity therefor may be passed as emergency measures under authority of Section 4227-3 of the General Code, when in the sound judgment of council such emergency exists, and such ordinances or measures so passed do not require publication.

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

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1010.

APPROVAL, BONDS OF BELLEVUE CITY SCHOOL DISTRICT, HURON  
AND SANDUSKY COUNTIES—\$290,000.00.

COLUMBUS, OHIO, September 16, 1927.

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

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1011.

COUNTY BOARD OF EDUCATION—POWER TO CREATE NEW SCHOOL  
DISTRICTS.

*SYLLABUS:*

1. *A county board of education may in its discretion create a new school district from territory lying within the territory embraced within an existing school district even though the existing school district had recently theretofore been created by combining two or more school districts or parts of districts.*

2. *In the absence of fraud, bad faith or the taking of such arbitrary, whimsical and unreasonable action as amounts to an abuse of discretion, the only limitation upon the power and discretion of a county board of education in the creation of new school districts, in addition to the fact that the territory comprising a school district must be contiguous, is the limitation contained in Section 4736, General Code, providing for a remonstrance by majority of the qualified electors residing in the territory affected by such order.*

COLUMBUS, OHIO, September 16, 1927.

HON. LESLIE S. WARD, *Prosecuting Attorney, Wauseon, Ohio.*

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

"In March of this year the county board of education created a new school district under Section 4736 of the General Code, by combining the Fayette school district with the Gorham Township school district and called the newly created school district the Gorham-Fayette school district. A remonstrance against the creating of the new school district failed and the newly created Fayette-Gorham district became absolute.

Later, six contiguous school districts within the newly created Gorham-Fayette school district filed a petition with the county board of education asking that they be made a separate and distinct school district under the name of Gorham Township school district. The county board of education acting upon their petition created this Gorham Township school district.

The question has arisen as to whether or not under the above facts the county board of education after combining two school districts and creating a new school district can take six contiguous school districts out of the newly created school district and create another school district. Will you kindly give me an opinion upon this at your earliest convenience as this question must be decided before the November election."

Sections 4736, 4679 and 4685, General Code, respectively, read as follows:

Sec. 4736. "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."

Sec. 4679. "The school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts, rural school districts and county school districts."

Sec. 4685. "The territory included within the boundaries of a city, village or rural school district shall be contiguous except where an island or islands form an integral part of the district."

By the terms of Section 4735, General Code, enacted in 1914, township school districts and special school districts were abolished and school districts so designated, then in existence, were to be known as rural school districts until changed by the

county board of education. It will be noted that there are no school districts at the present time designated as township districts, special school districts or sub-districts. I take it therefore that what you speak of as "Fayette School District" and "Gorham Township School District" were each either a village school district or a rural school district and after their consolidation the Gorham-Fayette school district was either a village or a rural school district, as these are the only classes of districts over which the county board of education has such jurisdiction as to warrant action by consolidation authorized by Section 4736, *supra*.

This Gorham-Fayette school district being a district in and of itself could not embrace or contain within itself six contiguous school districts, so that when you speak of "six contiguous school districts" within the newly created Gorham-Fayette school district you evidently mean contiguous territory served by six school houses, at one time called sub-district schools or district schools, now within the territory embraced within the Gorham-Fayette village or rural school district as the case may be.

It will also be noted that the statute does not provide for the filing of a petition by citizens interested in the creation of new districts as authorized by Section 4736, *supra*, but merely for the filing of remonstrances after the county board has acted by the combining of two or more districts or parts of districts. The jurisdiction of a county board to make the consolidation or create the new district is given by the statute itself and is not dependent on the filing of a petition therefor, nor does the filing of such petition place any obligation on the county board to act in compliance with the prayer of the petition.

Upon the filing of a petition for the creation of a new school district from territory within the Gorham-Fayette school district the county board could, if it saw fit, have created the district as asked for, but need not have done so if in its discretion it had deemed it unnecessary and not for the best interests of the schools concerned. Having done so however, the presumption is, as stated by Judge Conn in *Kneale vs Jennings*, 111 O. S. page 637, at page 641, that it acted advisedly, and not arbitrarily, whimsically or unreasonably.

The fact that a petition had been filed therefor, before the board acted in the creation of the new district does not preclude the interested residents from filing a remonstrance as provided by statute, nor does the fact that a short time before the creation of the new district a district had been formed from territory which included the territory forming the new district, operate to suspend the operations of Section 4736, General Code, so as to preclude the creation of a new district within, or from parts of the district theretofore created, in the absence of proper remonstrance.

The only limitation on the creation of new districts by county boards of education by virtue of Section 4736, General Code, aside from that contained in Section 4685, General Code, to the effect that the territory comprising a school district must be contiguous, is stated in the syllabus of the case of *County Board of education of Hancock County vs. Boehm et al.*, 102 O. S. 292 as follows:

"Section 4736, General Code, vests in the county board of education the power to create a new school district from an existing district and a part of another existing district, and, 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, the only limitation upon such power and discretion

is the limitation contained in that section providing for a remonstrance by a majority of the qualified electors residing in the territory affected by such order."

Answering your question specifically, I am of the opinion that the fact that the county board of education of Fulton County had created a new school district known as the Gorham-Fayette school district by combining what was formerly the Fayette school district with the Gorham school district does not preclude the said board of education from later creating a new school district from a portion of the territory included within the Gorham-Fayette school district, providing a remonstrance is not filed against such action as provided by law and providing further that the territory within the newly created district is contiguous and the territory remaining after the creation of the new district is also contiguous and the said board in the creation of the new district did not act arbitrarily, whimsically or unreasonably, fraudulently or in bad faith.

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

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1012.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN VILLAGE OF  
OXFORD, BUTLER COUNTY, OHIO.

COLUMBUS, OHIO, September 16, 1927.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—You have submitted an abstract of title prepared and certified by Paul Scudder of Hamilton, Ohio, under date of August 18, 1927, accompanied by a certified copy of a resolution of the board of trustees of Miami University adopted on June 10, 1927, and a deed executed by Fannie K. Laird, all pertaining to the following described premises:

Situate in the Village of Oxford, in the County of Butler and State of Ohio, and being a part of outlot No. 11, as the same is designated on the plat of said Village, and described as follows: Beginning at a point in the east line of said outlot, located fifty feet north from the center point of said east line; thence north with said east line seventy feet; thence west parallel with the north line of said outlot to the west line thereof, a distance of four hundred and twelve and one-half feet; thence south with said west line seventy feet and thence east parallel with said north line of said outlot a distance of four hundred and twelve and one-half feet to the east line thereof and to the place of beginning, excepting, however, that portion of said real estate conveyed by the grantor to the grantee by deed dated January 6, 1923, and recorded in Deed Record 241 at page 445 of the Records of Butler County, Ohio.

Subject to the payment of an annual ground rent of \$1.00, payable to the Treasurer of Miami University on the nineteenth day of May of each year.