

442.

APPROVAL, NOTE OF BENTON TOWNSHIP SCHOOL DISTRICT,
HOCKING COUNTY, \$6,720.00.

COLUMBUS, OHIO, May 2, 1927.

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

443.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN ATHENS, ADAMS,
GALLIA, JACKSON, BELMONT, HIGHLAND, MEIGS, BROWN AND
CLINTON COUNTIES.

COLUMBUS, OHIO, May 2, 1927.

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

444.

TRANSFER OF SCHOOL DISTRICT—MANDATORY DUTY OF COUNTY
BOARD OF EDUCATION TO MAKE TRANSFER IN ACCORDANCE
WITH PETITION UNLESS SCHOOL DISTRICT IS CENTRALIZED—
RULE AS TO CENTRALIZED SCHOOL DISTRICT.

SYLLABUS:

When a petition is filed with a county board of education for the transfer of a part or all of a school district, other than a centralized school district, to an exempted village, city or county school district the territory of which is contiguous thereto, signed by seventy-five per cent of the qualified electors residing within the territory sought to be transferred it is the mandatory duty of the county board of education to make such transfer in accordance with the petition. If however, the territory sought to be transferred is from a centralized school district to another district the county board of education may, but is not required, to make such transfer in accordance with the petition although the petition therefor be signed by seventy-five per cent of the qualified electors residing within the territory sought to be transferred.

COLUMBUS, OHIO, May 3, 1927.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert County, Van Wert, Ohio.*

DEAR SIR:—I am in receipt of your communication requesting my opinion in answer to the following question:

"Must a County Board of Education transfer territory in a County District to another District in the *same* County upon petition of three-fourths of electors in the territory to be transferred?"

Section 4696 of the General Code, provides in part as follows:

"A county board of education may, upon petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five per cent. of the electors in the territory proposed to be transferred the county board of education shall make such transfer. A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district."

In considering your inquiry it is only necessary for us to determine whether or not the language of the statute above quoted wherein it provides for transfer of territory from one school district to another is mandatory.

This question has been before the courts in a number of cases, among which is the case of *The State of Ohio, ex rel. Beakler et al, vs. Board of Education of Clark County* 19 O. N. P. (N. S.) 88, wherein Judge Geiger in his opinion held that, if a petition for transfer of school territory from one district to another be signed by seventy-five per cent. of the electors residing in the territory sought to be transferred, the making of the order of transfer and the passing of the petition on for further proceedings, as provided by statute, is mandatory.

To the same effect is the decision of the Supreme Court of Ohio in the case of *The State, ex rel. Brenner et al., vs. The Board of Education of Franklin County et al.* 97 O. S. 336. Reference is made to this latter case by the Supreme Court in its decision of the case of *The State, ex rel. Snapp, vs. Goul et al.*, 97 O. S. 259. In the Goul case, however, the question arose as to whether or not the same rule applied if the proposed transfer was to be from a centralized school district, and it was held that in construing the provisions of Sections 4727 and 4696, General Code, which must be read in *pari materia* and in giving force and effect to both sections the provisions of the former section must be construed as an exception to the requirements of the latter and that neither the provisions of Section 4696 nor 4692 give authority to county boards of education to transfer territory upon petition from or to a school district wherein the schools have been centralized.

However, since the decision of the Goul case, *supra*, Section 4727 of the General Code, has been amended (108 O. L. Part I, 235) and the Supreme Court had occasion to consider the applicability of this section as amended to petitions for transfer of territory from a centralized school district, when the petition was signed by seventy-five per cent. of the qualified electors residing within the territory sought to be transferred, in the case of *State, ex rel. Darby, vs. Hadaway et al.*, 113 O. S. 658. In this case it was held that the mandatory provisions of Section 4696, General Code, have no application to centralized school districts, and that while the county board of education may transfer territory from a centralized school district to another school district upon the petition of two-thirds of the qualified electors of the territory sought to be transferred, it is not required to make such transfer.

Your inquiry does not state whether or not the school district to which you refer is a centralized district. If it is, the mandatory provisions of Section 4696

do not apply. If, however, the petition is for the transfer of a part or all of a school district of the county school district other than a centralized school district to an exempted village, city or county school district, the territory of which is contiguous thereto, it becomes the mandatory duty of the county board of education to make such transfer upon petition of seventy-five per cent. of the electors residing in the territory sought to be transferred. If, however, the territory which it is sought to have transferred is from a centralized school district to another district contiguous thereto, the county board of education may make such transfer if it sees fit upon presentation of a petition signed by two-thirds of the electors of such territory, but is not required to do so although the petition therefor be signed by seventy-five per cent. of the qualified voters residing within the territory sought to be transferred.

Respectfully,
EDWARD C. TURNER,
Attorney General.

445.

APPROVAL, BONDS OF TWIN TOWNSHIP RURAL SCHOOL DISTRICT,
PREBLE COUNTY—\$4,938.98.

COLUMBUS, OHIO, May 4, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

446.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN ATHENS, ADAMS, BELMONT, BROWN, COLUMBIANA, DARKE, GAUGA, GALLIA, GUERNSEY, HOCKING, JACKSON, LAWRENCE, LORAIN, MORGAN, MEIGS, PIKE, PERRY, ROSS, SCIOTO, TUSCARAWAS AND WASHINGTON COUNTIES.

COLUMBUS, OHIO, May 4, 1927.

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

447.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN ATHENS, ASHTABULA, AUGLAIZE, CLERMONT, CLINTON, LOGAN, MEIGS AND MORGAN COUNTIES.

COLUMBUS, OHIO, May 4, 1927.

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