

1592.

APPROVAL, BONDS OF MARION COUNTY, OHIO—\$17,370.00.

COLUMBUS, OHIO, January 17, 1928.

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

1593.

APPROVAL, BONDS OF HARDIN COUNTY, OHIO—\$7,526.80.

COLUMBUS, OHIO, January 17, 1928.

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

1594.

APPROVAL, BONDS OF DECATUR RURAL SCHOOL DISTRICT, LAWRENCE COUNTY—\$25,000.00.

COLUMBUS, OHIO, January 17, 1928.

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

1595.

SCHOOL DISTRICT—CHARACTER AND EXTENT OF EACH TYPE OF SCHOOL DISTRICT DISCUSSED AND DEFINED.

SYLLABUS:

1. *Definitions of city school districts, village school districts and exempted village school districts are given by statute. A district composed of territory not included within a city, exempted village or village school district constitutes a rural school district.*

2. A school district with a tax valuation of \$500,000.00 or more and embracing within its boundaries an incorporated village, or an incorporated village from which a portion of the territory comprising the village has been detached for school purposes, and additional territory, is a village school district.

3. Territory attached to a village for school purposes may become so attached either by transfer effected by virtue of Sections 4692 or 4696, General Code, or upon the creation of new districts as authorized by Section 4736, General Code, or by operation of law, as upon the creation of new villages.

4. A school district, created out of the territory of one or more village or rural districts or parts thereof or territory joined or transferred to such districts, becomes a village or rural district, dependent on whether or not the district thus formed contains a village, with the territory attached to it for school purposes and exclusive of the territory detached therefrom for school purposes, and has a tax valuation of \$500,000.00 or more. If it does embrace within its boundaries an incorporated village, which, with the territory attached to it for school purposes and exclusive of the territory detached from it for school purposes, and has a tax valuation of \$500,000.00 or more, it is a village school district, otherwise it is a rural school district.

5. When a village school district votes to dissolve and join a contiguous rural school district by virtue of Section 4682-1, General Code, the result of its action is that the district thus formed by the joinder of the village and rural school district is a rural school district.

6. An exempted village school district, as defined by Section 4688, General Code, is a village school district with a population of three thousand or more, which, by a majority vote of the full membership of its board of education, has decided to be exempted from the supervision of the county board of education.

COLUMBUS, OHIO, January 17, 1928.

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

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

“You are respectfully requested to furnish this department your written opinion upon the following questions:

Notwithstanding the opinions of the Attorney General to be found in his 1919 Report at page 869 and in his 1923 Report at page 499, we have much difficulty in determining the character of school districts when established under the various provisions of law. Section 4715 G. C., provides that each member of the board of education of a rural district shall receive certain compensation. This, of course, eliminates city and village districts. There is no provision for compensation for members of the boards of education of those districts. Our difficulty is in many instances to determine whether a certain district is a village or a rural district. Therefore the following questions:

Question 1. When under the provisions of Section 4735-1 G. C., a rural district is dissolved and joined to a rural district which contains an incorporated village but by reason of the valuation of the district being less than \$500,000.00 is classed as a rural district, if the joining of the two districts makes a tax valuation of more than \$500,000.00, is the district so established a village or a rural district?

Question 2. When under this Section (4735-1) a rural district is dissolved and joined to a village district, is the new district a rural or a village district?

Question 3. When under the provisions of Section 4736 G. C., the county board of education creates a school district out of a rural and village district, is the new district a village or a rural district, assuming that the valuation of the new district is over \$500,000.00?

Question 4. When under the provisions of that Section (4736) the county board of education creates a district out of two rural districts, one of which contains a village, but on account of having less than \$500,000.00 valuation, is a rural district, is the new district a village or a rural district, assuming that it has a valuation of \$500,000.00 or over.

Question 5. When under this Section (4736) the county board creates a school district out of two village districts and all or a part of a rural district, is the new district a rural or village district?

Question 6. When under this Section (4736) the county board creates a district, may such board designate it as a rural or village district, regardless of the provisions of Section 4681, General Code?

Question 7. When under the provisions of Section 4692, G. C., the county board transfers a part or all of a rural district to a village district, is the district so established a rural or a village district?

Question 8. When under that Section (4692), the county board transfers a part of all of a rural district to another rural district and when one or the other of the rural districts contains a village, but such district is a rural district by reason of having less than \$500,000.00 valuation is the district to which the transfer is made a rural or village district, assuming that it has a valuation of over \$500,000.00?

Question 9. When under that Section (4692) the county board of education transfers a village district to a rural district, is the district to which the transfer is made a rural or a village district?

Question 10. When a village district, having a valuation of more than \$500,000.00, votes to dissolve and join a contiguous rural district, is the new district a village or rural district, such action being taken under Section 4682-1, General Code?"

Prior to the enactment of the school code in 1914 (104 O. L. 133), school districts in this state were classified by virtue of former Section 4679, General Code, as city school districts, village school districts, township school districts and special school districts.

These several classes of districts were defined by Sections 4680, 4681, 4682, 4683 and 4684 of the General Code, which at that time read as follows:

Sec. 4680. "Each city, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a city school district."

Sec. 4681. "Each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than five hundred thousand dollars, shall constitute a village school district."

Sec. 4682. "A village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than five hundred thousand dollars, shall not constitute a village school district, but the proposition to organize the territory thus formed into a village school district may be submitted by the board of education, and shall be submitted by the

board of education upon the presentation to it of a written petition for such purpose signed by 25 per cent of the electors of the territory thus formed, to a vote of the electors of the territory thus formed at any general or special election called for that purpose, and be so determined by a majority vote of such electors."

Sec. 4683. "Each civil township, together with the territory attached to it for school purposes and excluding the territory within its established limits detached for school purposes, shall constitute a township school district."

Sec. 4684. "Any school district, other than a city, village or township school district, and any school district organized under the provisions of chapter five of this title, shall constitute a special school district."

By the enactment of the school code in 1914, a new classification of school districts was effected. Section 4679, General Code, was amended to read as follows:

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

At the time of the adoption of this new classification of school districts the terms of Section 4680, 4681 and 4682, General Code, were not changed. Chapter 5, referred to in former Section 4684, supra, was repealed, Sections 4683 and 4684, supra, were amended and Sections 4682-1 and 4735, General Code, were enacted.

Sections 4683 and 4684, General Code, as amended, and Sections 4682-1 and 4735, General Code, as enacted in 1914, read as follows:

Sec. 4683. "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, and all school property shall pass to and become vested in the board of education of such rural school district."

Sec. 4684. "Each county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the supervision of the county board of education by the provisions of Sections 4688 and 4688-1, and territory detached for school purposes, and including the territory attached to it for school purposes, shall constitute a county school district. In each case where any village or rural school district is situated in more than one county such district shall become a part of the county school district in which the greatest part of the territory of such village or rural district is situated."

Sec. 4682-1. "A village school district containing a population of less than fifteen hundred may vote at any general or special election to dissolve and join any contiguous rural district. After approval by the county board such proposition shall be submitted to the electors by the village board of education on the petition of one-fourth of the electors of such village school district or the village board may submit the proposition on its own motion and the result shall be determined by a majority vote of such electors."

Sec. 4735. "The present existing township and special school districts shall constitute rural school districts until changed by the county board of education, and all officers and members of boards of education of such existing districts shall continue to hold and exercise their respective offices and powers until their terms expire and until their successors are elected and qualified."

The terms of the aforesaid Sections 4680, 4681, 4682, 4682-1, 4683, 4684 and 4735, General Code, have not been changed since 1914, and are now in force.

Section 4679, General Code, has been amended (109 O. L. 552) so as to provide for an additional class of school districts, styled exempted village school districts. An exempted village school district is defined by Section 4688, General Code, as a village district with a population of 3,000 or more, which, by a majority vote of the full membership of its board of education, decides to be exempted from the supervision of the county board of education and thereupon so notifies the county board of education. Such a district is none the less a village district. It must first have the characteristics of a village school district before it may become an exempted village school district. No provision is made for rural school districts to become exempted from county supervision.

It will be observed that village school districts, other than exempted districts, and rural school districts, make up a county school district, as defined by Section 4684, supra. These districts, village and rural, are under the control of the board of education for the county school district. Transfers of territory may be made as between village and rural districts by the county board of education and the county board may create new districts from parts or all of the territory embraced within two or more village or rural districts, subject to remonstrance on the part of the electors residing in the territory affected. These transfers and the creation of new districts are controlled by Sections 4692, 4696 and 4736, General Code, pertinent portions of which read as follows:

Sec. 4692. "The county board of education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. * * * nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred, shall, within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer. * * * "

Sec. 4696. "A county board of education may, upon a 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. * * * 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. * * * "

Sec. 4736. "The county board of education may create a school district from one or more school districts or parts thereof. * * * 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. * * * "

There is very little distinction between village and rural school districts other than the name. They are both under the supervision of the county board of education, each has a local board of education consisting of five members, the essential rights and liabilities of each are practically the same except in three respects; members of boards of education in rural districts are entitled to pay for attendance at meetings of the board, as provided by Section 4715, General Code. No such provision is made for members of village boards of education. Village school districts may under certain circumstances become exempted from supervision by the county board of education,

while rural school districts can not. Rural districts may provide for centralization of their schools. No provision is made for centralization in village districts.

The legislature after defining all classes of school districts except rural districts, simply provided, as to them that all districts which had theretofore been other than city or village school districts should constitute rural school districts (Section 4735, supra). The Supreme Court in the case of *Board of Education vs. Campbell*, 111 O. S. 54, states:

"Definition of the various school districts is given by statute, and school territory not included within a city, exempted village, or village district constitutes a rural district."

An analysis of the several sections of the Code relating to the classification of school districts discloses that the distinguishing characteristic of a village school district is that it contains within its territory an incorporated village. By the terms of Section 4681, supra, each village, together with the territory attached to it for school purposes and exclusive of the territory detached from it for school purposes, and having in the district thus formed a total tax valuation of \$500,000.00 or more shall constitute a village school district. The only exception to this rule is that found in the next two sections of the Code, Sections 4682 and 4682-1, supra, wherein it is provided that even though a district formed as provided by Section 4681, General Code, does not have a total tax valuation of \$500,000.00 or more, it may nevertheless become a village school district by vote of the electors residing in said territory, and even though it does have a tax valuation of \$500,000.00 or more it need not remain a village district, but may dissolve and join a contiguous rural district by vote of the electors residing in said territory. Unless, however, affirmative action is taken by the electors as provided by Section 4682 or 4682-1, supra, the provisions of Section 4681, supra, control and all districts with a tax valuation of \$500,000.00 or more and embracing within its boundaries a village, or a village from which a part of its territory has been detached for school purposes, is a village school district, no matter how small a proportionate part of the entire territory comprising the district lies within the limits of the corporation, or how the portion of the territory comprising the district which lies outside the corporate limits of the village and is attached to the village for school purposes, became so attached.

Territory may become attached to a village for school purposes by transfer made by the county board of education as authorized by Sections 4692 or 4696, General Code, or upon the creation of new districts as provided by Section 4736, supra, or by operation of law upon the creation of new villages.

When a new village is created from territory which had previously been a part of a rural school district, and the remaining territory of the rural district from which the territory comprising the village has been taken is less than sixteen square miles, such territory automatically becomes attached to the village for school purposes, and if the village, together with this territory which thus becomes automatically attached to the village for school purposes, has a tax valuation of \$500,000.00 or more it becomes a village school district, otherwise it remains a rural district. If the territory remaining in a rural school district, after the creation of a new village within its boundaries, is more than sixteen square miles in area, no territory automatically attaches itself to the village for school purposes. Such remaining territory under these considerations remains and functions as a rural school district. The village itself becomes a village school district providing it has a tax valuation of \$500,000.00 or more as provided by Section 4681, supra.

The status of school districts embraced within territory effected by the creation

of new villages is controlled by Section 4687, General Code, which reads in part 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. * * * ”

From the foregoing, it appears that irrespective of area, population or tax valuation, a school district does not come within the classification known as a village school district unless there is within its territory an incorporated village, or an incorporated village from which certain territory has been detached for school purposes and the territory within the village, exclusive of any territory detached therefrom for school purposes and inclusive of any territory thereto attached for school purposes, has a tax valuation of \$500,000.00 or more; except when by vote of the people the territory within the village, including territory attached thereto for school purposes, with a tax valuation of less than \$500,000.00, has been organized into a village school district, as provided by Section 4682, *supra*.

A school district does come within the classification styled village school districts, if there is an incorporated village, or an incorporated village from which a part of its territory has been detached for school purposes, within its territory and such village, together with the territory attached to the village for school purposes has a tax valuation of \$500,000.00 or more, unless action has been taken to dissolve the village district as provided by Section 4682, *supra*.

There are no restrictions or limitations, so far as the class of the school district is concerned, as to how territory becomes attached to a village for school purposes. If the attachment is determined to exist it becomes a factor in computing the tax valuation of the district, and the said tax valuation, together with the corporate existence of the village, are the determining characteristics, and the only ones, as to whether or not a school district is a village or rural school district, with the exception of course, that the status of the district may be effected by the result of any action that may have previously been taken by the electors to organize a village district within territory not otherwise qualified to be a village district or to dissolve a village district by virtue of Sections 4682 and 4682-1, *supra*.

When by virtue of Sections 4682 or 4682-1, *supra*, action has been taken by the electors to organize a village district or to dissolve a village district as the case may be, the status of the district as determined by the action of the electors will continue until such time as proceedings are taken to undo the action theretofore taken. For the purpose of considering the specific questions submitted in your inquiry, I will assume that no action has heretofore been taken by virtue of Sections 4682 and 4682-1, *supra*, which would affect the status of the districts about which you inquire, except as such action is material in the tenth question.

With the foregoing observations in mind, I pass to the consideration of your specific questions, in their order:

First, when the rural school district dissolved and its territory was joined to a contiguous district which contained within its boundaries an incorporated village, the territory of the rural district thus joined to the district which contained the village became attached to the village for school purposes, and inasmuch as the district then had a tax valuation of more than \$500,000.00, it constituted a village school district, as defined by Section 4681, *supra*.

Second, inasmuch as the village district, before its territory was augmented by the territory comprising the rural district, must necessarily have contained a village, which with the territory attached to it for school purposes had a tax valuation of \$500,000.00 or more, it obviously would continue to possess the same characteristics after the territory formerly comprising the rural district was joined to it, and would therefore be a village school district.

Third, inasmuch as one of the districts involved, before being combined with the other to form a new district was a village school district, and thus must have possessed the characteristics of a village school district, that is, it must have contained an incorporated village, which with the territory attached to it for school purposes had a tax valuation of at least \$500,000.00, it could not have lost this characteristic by being augmented by the territory embraced within the former rural district, and the new district thus created by the joinder of the village and rural district is a village school district.

Fourth, upon the joinder of two school districts, one of which contains a village, all the territory embraced within the two districts not included within the village becomes attached to the village for school purposes, and if the village together with the territory attached to it for school purposes has a tax valuation of \$500,000.00 or more, it becomes a village school district.

Fifth, when two village school districts and a rural district are combined to form one district the district thus created is a village school district.

Sixth, a county board of education in creating new districts, by authority of Section 4736, General Code, is not authorized to designate such newly created district to be a village or rural school district. Whether or not the new district thus created is a village or rural school district is to be determined in accordance with the provisions of law with respect thereto.

Seventh, when a county board of education transfers a part or all of a rural school district to a village school district, by authority of Section 4692, General Code, the territory embraced within the rural district so transferred becomes attached to the village school district, for school purposes, and the district to which the territory is transferred remains a village school district.

Eighth, when, by authority of Section 4692, General Code, a county board of education transfers a part or all of a rural school district to another district in which is contained an incorporated village, the territory so transferred becomes attached to the village for school purposes, and if, after such transfer, the village, together with the territory so attached to it for school purposes has a tax valuation of \$500,000.00 or more, it becomes a village school district.

Ninth, when under Section 4692, General Code, a county board of education transfers a village school district to a rural school district, the village, together with whatever territory may have been attached to it for school purposes, becomes augmented by the territory embraced within the district transferred to it, and inasmuch as such village together with the territory which had formerly been attached to it for school purposes must necessarily have had a tax valuation of \$500,000.00 or more in order for it to have been a village school district, it obviously, when augmented by additional territory, would possess the same characteristics, and the district would therefore be a village school district.

Tenth, when a village school district votes to dissolve by virtue of Section 4682-1, General Code, the purpose of said action is the dissolution of the district as a village school district, and when such action is taken and the said district is joined with a contiguous rural district, as provided by Section 4682-1, General Code, the resulting district is a rural school district, regardless of the tax valuation of the property within its boundaries, as provided by Section 4683, *supra*.

It will be noted that these conclusions are in accord with the conclusion reached by my predecessors in office in the opinions referred to in your letter, namely, those reported in Opinions, Attorney General, 1919, Vol. 1, p. 869, and Opinions, Attorney General, 1923, Vol. I, p. 499, with the exception of the second conclusion reached in the latter opinion, as set forth on page 502, to the effect that :

“When all of a village school district is transferred to an adjoining rural district, the resulting district is a rural one.”

The former Attorney General based this conclusion upon the following reasoning, as set forth on page 501 :

“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.”

I agree with his holding that where a village district is transferred to a rural district by a county board of education the village board of education is abolished and the rural board of education is the one which continues to function; but I do not agree that from this fact it follows that the district is a rural school district, for the reason that, as set forth above, the characteristics of a village school district are plainly set forth in the statutes.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1596.

MOTOR TRUCK—WHEN TOTAL GROSS WEIGHT EXCEEDS TEN TONS
—UNLAWFUL TO OPERATE UNLESS EXCEPTED BY SECTIONS
7246 OR 7247, GENERAL CODE.

SYLLABUS:

Under the provisions of Section 7246 of the General Code, it is unlawful to operate a motor truck over the public streets of a municipality or the public highways of the state, the total gross weight of which, including truck and load, exceeds ten tons, unless said vehicle comes within one of the exceptions expressly provided in Sections 7246 or 7247, General Code.

COLUMBUS, OHIO, January 18, 1928.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“What is the maximum load permitted on a six-wheel automobile truck, which has a four-wheel drive in the rear, two axles in the rear, and twelve-inch tires on each of the four back wheels, and six-inch tires on the two front