

of which the diversion of public school funds for the benefit of any religious sect or sects is positively forbidden. The exact question has never, so far as I know, been the subject of a judicial decision in this state. However, in the state of Wisconsin where there exist constitutional provisions with reference to public schools similar to those in this state, the Supreme Court of Wisconsin in the case of *State ex rel. Van Straten vs. Milquet*, 192 N. W. 392, held:

“\* \* \*

The officers of a school district must act within the limitation of their statutory authority, and, where they are by statute required to act in a specified manner, they must conform to the statutory requirements.

\* \* \*

In view of the provisions of Const. Art. 10, Section 3, requiring the establishment of district schools which shall be free to all children and in which no sectarian education shall be allowed, the provision of St. 1921, Section 40.16, subd. 1 (c), authorizing a district in which schools have been suspended to provide transportation to and from the school for all children residing more than one mile from the nearest school, must be limited, as is the provision of the same section for the payment of tuition, to the attendants at public schools in another district, and does not authorize the district to provide free transportation for children who desire to attend private schools.

Where a contract for the transportation of all the children of a district to an adjoining city was entire, and was intended to provide transportation for children attending parochial schools, as well as those attending public schools, the contract was void in toto, and the fact that two of the children transported by the contractor were attendants at the public schools does not save the contract.”

I am therefore of the opinion, in answer to your specific question, that it is neither mandatory nor permissible for a school board to provide transportation in any case for pupils attending a parochial school or other private school.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2582.

**ELECTORS—QUALIFIED RESIDENTS OF AFFECTED TERRITORY AT  
TIME OF ELECTION—MAY VOTE ON BOND ISSUE.**

**SYLLABUS:**

*Electors of a political subdivision for which a bond issue is proposed, otherwise qualified, are entitled to vote on the proposed bond issue regardless of whether or not they were qualified electors of that political subdivision at the time when the legislation for said proposed bond issue was started or completed.*

COLUMBUS, OHIO, September 17, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your communication requesting my opinion in answer to the following question:

“Question: Legislation was started for a bond issue for Fremont School District prior to September 1st. If on October the 5th, outlying territory is annexed to the Fremont School District, will the electors in the territory an-

nexed to Fremont Schools be allowed to vote on this question of issuing bonds?"

The question of whether or not persons who reside within the boundaries of a political subdivision may vote on a proposed bond issue for the subdivision, or territory which includes the subdivision, is not determined by the time when legislation for the bond issue was started or enacted, but by the fact of whether or not, if twenty-one years of age and sui juris, they possess the necessary residential qualifications for electors in the particular subdivision where they reside.

It is well settled that where territory is annexed to a political subdivision the taxable property lying within the annexed territory becomes subject to taxation within the subdivision to which the territory is annexed, and is subject to taxation for the payment of any indebtedness on the subdivision existing at the time of annexation, as well as for indebtedness incurred after the annexation.

If the proposed bond issue for Fremont School District is authorized, the territory annexed on October 5th must bear its proportionate share of the burden, and will correspondingly receive its proportionate share of the benefits as a part of the school district.

Mere physical presence or residence in a political subdivision does not qualify a resident to vote therein. The residence must be such as under the law qualifies him to be an elector. The Constitution of Ohio, Article V, Section 1, provides:

"Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections."

The requirements for length of residence in counties, townships, villages or wards of cities or villages, with certain exceptions not pertinent to the present inquiry, are fixed by Section 4862, General Code, which reads as follows:

"No person shall be permitted to vote at any election unless he or she shall have been a resident of the state for one year, resident of the county for thirty days, and, except as provided in the next section, resident of the township, village or ward of a city or village for twenty days next preceding the election at which he or she offers to vote."

You do not state whether or not the territory to be annexed to Fremont School District on October 5th is a part of another county or township than that in which Fremont School District as formerly constituted, is located, or when the proposed election is to be held. I assume however, that the proposition for the issuing of bonds is to be submitted at the regular November election to be held on November 6, 1928. In that case all the electors in the annexed territory will without question possess the qualifications of electors in Fremont School District on the day of election, and will be entitled to vote on all propositions submitted at that time.

I am therefore of the opinion, in specific answer to your question, that persons otherwise qualified, who reside in the territory to be annexed to Fremont School District on October 5, 1928, are entitled to vote at the election held on November 6, 1928, on proposed bond issues for Fremont School District submitted at that time, regardless of the time when the legislation for said bond issues was started or completed.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*