

* * it is the duty of the county board of education at the time of making said transfer to make an equitable division of the indebtedness of the school district from which said territory is transferred, and that part of said indebtedness which said board, in the exercise of its discretion, determines shall be assumed by the school district to which said territory is transferred will become an indebtedness of the entire district as reformed and not merely an indebtedness of the territory transferred thereto."

A very similar situation was passed upon in an earlier opinion. See Annual Report of the Attorney General for 1914, page 1333. It was there said:

"The situation presented, then, is that the rural district as originally constituted has no bonded indebtedness, whereas the district from which the territory is transferred is burdened with an indebtedness.

In such a situation the statute (§ 4692 G. C.) requires that a proportional part of the indebtedness of the old district, from which the territory was transferred, shall be assumed by the new district. * *

The indebtedness so transferred becomes an indebtedness of the whole district thus formed and is not to be met by levies upon the transferred territory only."

See also Opinions of the Attorney General for 1927, page 318.

It is my opinion that if the proposed transfer as stated in your letter, is made, the taxable property in that part of district A which is transferred to district B will be required to bear its proportionate share of the burden of the indebtedness of district B, after the transfer is made. In a sense, this territory must contribute by way of taxation to help pay for both school buildings but in the adjustment of indebtedness and tax levies to meet that indebtedness, it is very probable that the burden of taxation for debt purposes, on this property, will be no greater after the transfer than it was before.

Respectfully,

JOHN W. BRICKER,

Attorney General.

984.

REMONSTRANCE—SIGNERS WITHDRAWING NAMES THEREFROM
MAY IN WRITING RESTORE THEIR NAMES PRIOR TO THIRTY-
DAY LIMIT FOR FILING.

SYLLABUS:

Under Section 4692, General Code, or Section 4736, General Code, signers to a remonstrance who have later withdrawn their names from such remonstrance, may restore their names to the remonstrance, providing it is done in writing and before the expiration of the thirty-day period allowed for the filing of the remonstrance.

COLUMBUS, OHIO, June 21, 1933.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“On April 15, 1933, the County Board of Education of Allen County, Ohio, made an order transferring a portion of S. Rural School District, Allen County, to the S. Village School District, Allen County. Thereafter, and within thirty days, a remonstrance, signed by more than fifty percent of the electors of the territory to be transferred, was filed with the county board. After this was filed a re-remonstrance, signed by a sufficient number of the electors who signed the remonstrance, to reduce the number thereon to less than fifty percent, was filed with the county board. The re-remonstrance was in the following language:

‘We, the following residents and electors of the Spencer Township Rural School District, hereby re-remonstrate and request that our names be withdrawn from a remonstrance which we signed against the transfer of territory consisting of the Spencer Township Rural School District to the Spencerville Village School District and we ask that our names be not counted on the remonstrance but ask that they be withdrawn and counted as a re-remonstrance.’

Thereafter a number of the electors of the district, who had signed both the remonstrance and the re-remonstrance, filed a signed statement with the county board in the language following:

‘May 17, 1933.

To the County Board of Education of Allen County, Ohio.

Gentlemen:

We, the undersigned, qualified electors residing in the Spencer Rural School District of Allen County, Ohio, proposed to be transferred by the order made by you on or about the 15th day of April, A. D. 1933, therein attempting to transfer the said Spencer Rural School District of Allen County, Ohio, to the Spencerville Village School District of Allen County, Ohio, for school purposes, having signed a remonstrance protesting against such transfer, and later having signed a petition or paper requesting that our names be taken off said remonstrance, now request that our names be taken off of said Petition or Paper and restored to and counted on said Remonstrance.

Respectfully submitted.’

A sufficient number signed the last petition to increase the number remonstrating against the transfer of territory to more than fifty percent of the electors of the territory to be transferred. All of the above proceedings occurred within thirty days from the date of the order of transfer by the county board of education. Notices were posted and a map of the transferred territory was filed with the county auditor as required by Section 4692 of the General Code.

At your earliest convenience I shall be pleased to have your opinion on the following question:

Did the petition last filed with the county board of education, requesting the withdrawal of the names of the signers thereof from the re-remonstrance and requesting that they be restored to the original

remonstrance, have the effect of restoring such names as signers of the original remonstrance so that they may be counted against the transfer of territory?"

The county board of education of the Allen County School District, in attempting to accomplish the transfer in question, was acting by authority of Section 4692, General Code. This section provides in part, as follows:

"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. Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred, and a notice of such proposed transfer has been posted in three conspicuous places in the district or districts proposed to be transferred, or printed in a paper of general circulation in said county, for ten days; 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. * * "

It will be observed from the foregoing statute that in order to defeat the action of the county board of education in making a transfer under this section, by remonstrance, the remonstrance must be signed by a majority of the electors residing in the territory to be transferred and must be filed within thirty days after the filing of the map referred to. Although the board in this case made its order on April 15th, apparently the map was not filed until later, and the communication dated May 17th was filed within thirty days after the filing of the map, as you expressly state that: "All of the above proceedings occurred within thirty days from the date of the order of transfer by the county board of education."

Proceeding on that assumption it becomes necessary to determine the effect of the re-remonstrance you speak of and the attempted withdrawal of names from this re-remonstrance made under date of May 17, 1933.

It is well settled that names may be withdrawn from a remonstrance filed by authority of this statute, any time before the thirty-day period has elapsed. In the case of *Neiswander et al. vs. Brickner, et al.* 116 O. S. 249, the question was presented as to whether or not names might be withdrawn from a remonstrance against the action of a county board of education in creating a new school district under authority of Section 4736, General Code. Both Section 4736 and Section 4692, General Code, contain provisions for filing a remonstrance, in practically the same language. It is provided in each of these sections that action of a county board of education in creating a new school district (§ 4736, G. C.) or in transferring territory (§ 4692, G. C.) shall not "take effect" if a majority of the electors residing in the "territory affected" or "territory transferred" as the case may be, file a written remonstrance against the action of the board within thirty days after the action is taken or the map filed. The court held, as stated in the first branch of the syllabus of the *Neiswander* case, *supra*:

"Under Section 4736, General Code, signers to a remonstrance may withdraw their names before and up to the end of the 30-day period

allowed for the filing of the remonstrance.”

The same principle would apply in my opinion, to the remonstrance filed under section 4692, General Code. See Opinions of the Attorney General for 1931, page 859.

It is clear that the withdrawal of names from the original remonstrance in this case, was legal and if nothing else had occurred after this withdrawal was made or the so-called re-remonstrance filed, the remonstrance as it then existed was not sufficient to defeat the taking effect of the transfer as made by the county board.

The reasoning upon which the conclusion of the court was based in the Neiswander case *supra*, is stated by Judge Allen in her opinion in the case, as follows:

“It has been repeatedly held in this state that persons who have subscribed their names to petitions may withdraw their names therefrom at any time before official action is taken thereon. * * The same doctrine has been applied in case of a remonstrance under this very Section 4736, General Code. *County Bd. of Education of Putnam County vs. Bd. of Education of Hartsburg Rural Special School District*, 112 Ohio St., 108, 146 N. E., 812. The proposition also has support in other state jurisdictions. In *re Mercersburg Independent School District*, 237 Pa., 368, 85 A., 467; *People ex rel. Koensgen vs. Strawn*, 265 Ill., 292, 106 N. E. 840.

It is true that the earlier Ohio cases above cited, as pointed out in *County Bd. of Education of Putnam County vs. Bd. of Education*, 112 Ohio St. 108, 146 N. E. 812, relate to the filing of petitions instead of to the filing of remonstrances. However, so far as the right to withdraw signatures is concerned the principle they announce directly applies. It is a right generally enjoyed by one who casts a vote to change his vote, or by one who is authorized to state in writing his position of affirmation or dissent upon public questions to withdraw from or change that statement of position. This can be done in meetings of Congress, state legislatures, city councils, and all legislative bodies, and is based upon the general proposition that the right to register an opinion in a vote includes the right to withdraw that registry of opinion.”

The same reasoning may be applied, in my opinion, to withdrawal of names from the withdrawal from the original remonstrance as were applied by the court to withdrawals from the remonstrance.

It is the names on the remonstrance at the end of the thirty-day period that determine the sufficiency or non-sufficiency of the remonstrance and if names may be withdrawn after the remonstrance is first filed, I see no reason why they cannot be restored in the same way they are withdrawn and the process repeated as often as desired. This conclusion is supported by the language of the Supreme Court in the case of *Board of Education vs. Board of Education*, 112 O. S. 108.

In that case, involving the construction of Section 4736, General Code, the question before the court was whether or not names might be withdrawn from a remonstrance after the thirty-day period had elapsed. Although perhaps not necessary to the decision of the case, the court made the following comment:

“We have no doubt that in the given case the signers to the remonstrance could have withdrawn their names before and up to the end of

the 30-day period. It is only when the 30-day period has elapsed that the number of names upon the remonstrance is definitely fixed. The remonstrance must be placed in the hands of the county board of education within thirty days from the time of creation of the new school district by the county board, but the remonstrance cannot be considered as filed until the 30-day period has elapsed. Names could no doubt be added to the remonstrance within that time by qualified electors, and names could also be cancelled upon the remonstrance within that time, if such cancellations were made by the original signers."

There is no doubt in my mind, that the persons who had withdrawn their names from the remonstrance in this case, must have signed and filed another remonstrance, and, I am of the opinion that the effect of the communication made to the board under date of May 17, 1933, as stated in your letter, was to restore the names of the signers of this communication to the original remonstrance.

Respectfully,

JOHN W. BRICKER,

Attorney General.

985.

COUNTY CHARGES—COUNTY'S DUTY TO PROVIDE POOR RELIEF
AND PAY BURIAL EXPENSES—DEFINITION OF COUNTY
CHARGE—COUNTY RELIEF WORKER UNAUTHORIZED TO CON-
FER STATUS.

SYLLABUS:

1. *The county has the duty to provide poor relief and to pay burial expenses of all persons who are county charges within the meaning of section 3476 of the General Code.*
2. *Persons entitled to be received as inmates in the County Home shall become county charges only in the manner provided by section 2544, General Code.*
3. *A county relief worker is without authority to confer upon persons the status of county charges whether or not the relief sought by such persons is admission to the County Home.*

COLUMBUS, OHIO, June 21, 1933.

HON. RAY B. WATTERS, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—I have your request for my opinion which reads as follows:

"This office has been requested to ask the Attorney General for an opinion covering the following statement of facts:

A man, who was a resident of the City of Akron, was found to be permanently disabled, and was sent to a local hospital by a Summit County relief worker for treatment, where he died two days later. It is conceded by the City and County authorities that under Section 3495 G. C. he must be buried at public expense.

Question: Is the City or County liable for the burial expense?"