

minor under twenty-one years of age may lawfully give her consent to the adoption of her child, under the provisions of Section 8025, of the General Code; and may also surrender such a child under Sections 1352-12 and 1352-13, of the General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1585.

SCHOOL TERRITORY—TRANSFER FROM EXEMPTED VILLAGE OR CITY SCHOOL DISTRICT TO ADJOINING DISTRICT—RIGHT OF COUNTY BOARD OF EDUCATION TO ANNEX ADJOINING TERRITORY—OPINION NO. 1377, 1930 MODIFIED.

SYLLABUS:

1. *Territory may be transferred from an exempted village or city school district to an adjoining county school district, upon the passage of a resolution by a majority vote of the full membership of the board of education of the district from which the territory is to be transferred, offering to surrender the territory, and its due acceptance by the board of education of the adjoining county school district to which the offer is made.*

2. *A county board of education may accept a transfer of territory from an adjoining exempted village school district, city school district or another county school district and annex the same to a school district of the county school district.*

3. *Opinion No. 1377, rendered under date of January 8, 1930, is reconsidered and modified.*

COLUMBUS, OHIO, March 4, 1930.

HON. G. H. BIRRELL, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—Since the rendition of Opinion No. 1377, which was addressed to you under date of January 8, 1930, my attention has been directed to certain pertinent provisions of Section 4696, General Code, which were not noted and discussed in the said opinion. It has been suggested that by giving effect to the provisions of the statute to which my attention is now directed, the conclusion reached and stated in the said opinion is probably wrong.

Upon again examining the matter, I am convinced that the suggestion is meritorious and warrants a reconsideration of the questions involved.

The substantial legal question upon which the conclusions in said Opinion No. 1377 were based, is whether or not, school territory embraced within the boundaries of a city school district may be transferred lawfully to a contiguous county school district. It is held in the said opinion as stated in the syllabus thereof:

“There is no authority of law whereby territory may be transferred from a city school district.”

As stated in the former opinion, the control over the boundaries of political subdivisions in a state is vested primarily in the state legislature. It is usually delegated by the Legislature to subordinate agencies such as boards of education and municipal legislative authorities. This general principle is stated in Abbott on Public Securities, Section 28, as follows:

"The boundaries of public corporations as agents of the sovereign come within the doctrine of absolute control by the Legislature. Originally possessing the right to create these agencies and sub-agencies, it can exercise the lesser power of changing or altering their boundaries. The right of the people within the district affected to consent to such change or alteration may be given as a matter of favor."

See also Ruling Case Law, Vol. 24, page 566:

In a case decided by the Supreme Court of Ohio in 1859, *Canton Union School vs. Meyer, et al.*, 9 O. S. 581, at page 586, it is said:

"It has always been the policy of our school laws to provide for changes in the boundaries of school districts, and thus, by giving flexibility to the system, to adapt it to the ever-varying wants of a growing country, in which the convenience of the present can but faintly indicate the necessities of the future."

The policy has been to invest local school authorities with the power of transferring territory from one school district to another, and to that end there has been from time to time, much and varied legislation.

The power of local school authorities to transfer territory has never been considered as being contained within their general power to provide for the needs of the schools, but is possessed by said boards of education only when and as granted to them by statute. This fact has never been questioned, and is evidenced by the many decided cases in our courts where questions relating to the transfer of school territory have been considered.

The strict rule limiting public officers in the exercise of their powers is directly applicable to boards of education. This rule is stated and applied in a recent case decided by the Supreme Court of Ohio, being that of *Schwing vs. McClure*, 120 O. S. 333. In the many cases which have been before the courts wherein questions relating to the power of school authorities to transfer school territory have been involved, not only in this state, but in others as well, the authorities have been held strictly, in the transfers of school territory, to the powers granted them by statute, both as to the extent and the manner of making those transfers.

From the time of the enactment of Sections 3894 et seq., Revised Statutes, (97 O. L. 336) until the adoption of the School Code, in 1914, a part or all of any school district might have been transferred to an adjacent school district by the mutual consent of the boards of education having control of the districts concerned, or by the probate judge after the filing of a proper petition therefor.

The law enacted in 1904 was considerably changed in 1914, upon the adoption of the school code at that time. There was then no provision made for the transfer of school territory except such territory as was a part of a county school district. It was provided that a part of a county school district might be transferred to an adjacent county school district or a city or village school district by the mutual consent of the boards of education having control of such districts. (104 O. L. 135, Sec. 4692, General Code). There was no provision made at that time whereby territory might be transferred from a city school district.

Subsequent to the adoption of the School Code in 1914, and prior to the effective date of amended Section 4696, General Code, as enacted in 1919, there was no provision for transferring territory from a city school district. This fact was noted by the then Attorney General in his opinion reported in the Opinions

of the Attorney General for 1918, page 600. It was also noted in the Opinions of the Attorney General for 1919, at page 1468, wherein it is said:

"Prior to the enactment of House Bill No. 348, amending Section 4696, General Code, there was no provision under the laws of the state for the transfer of territory from an exempted village school district or a city school district to the county school district, and attempted transfers of school territory from an exempted village school district or a city school district to a school district of the county school district prior to September 22, 1919 were without authority of law."

The opinions of 1918 and 1919, referred to above, were without a doubt correct. In 1919, the Legislature made provision for the transfers from city and exempted village school districts by amending Section 4696, General Code, (108 O. L. part I, page 704) to read 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 exempted village school district or city school district or to another county school district upon the petition of a majority of the freeholders residing in the territory to be transferred, and make an equitable division of the funds and indebtedness between said districts; and a county board of education may accept a transfer of territory from an adjoining exempted village school district, city school district or another county school district and annex same to a school district of the county school district. When territory is to be transferred from an exempted village school district, city school district or another county school district, the board of education of the district from which such territory is to be transferred shall pass a resolution by a majority vote of the full membership of such board asking for such transfer and file the same with the county board of education of the county school district to which such territory is to be transferred. * * * "

It will be noted from the terms of the above statute, as enacted in 1919, that a county board of education is expressly authorized to make transfers of territory between the school districts of the county school district. It is also expressly authorized to accept transfers of territory from "an adjoining exempted village school district, city school district or another county school district." The statute does not expressly authorize the board of education of an exempted village school district or a city school district to transfer any of its territory to a contiguous county school district, but that authority may be said to be implied by reason of the fact that the statute fixes the procedure to be followed when territory is to be transferred from an exempted village school district or a city school district and expressly authorizes, in terms, a county board of education to accept such a transfer. This implication should be recognized in order to give that full flexibility as to boundaries which is the evident design of the statutes taken as a whole.

Section 4696, General Code, was again amended in 1921, (109 O. L. page 65). As then amended, the pertinent part of the statute conferring power to make transfers of territory read 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 percent of the electors in the territory proposed to be transferred, the county board of education shall make such transfers. 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 any case, before such a transfer shall be complete (1) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be. * * * "

Said Section 4696, General Code, was again amended in 1929, (113 O. L. 296), but no change was made in the statute at that time, so far as the question here under consideration is concerned.

By comparison of the terms of Section 4696, General Code, as enacted in 1919, and as amended in 1921, two significant changes will be noted by the amendment. First, the language authorizing a county board of education to accept transfers is clear and specific, in the statute of 1919, that transfers might be accepted from "an adjoining rural school district," city school district or another school district", whereas, as the statute was amended in 1921, the authority for county boards of education to accept transfers of territory was from "any such school district." Second, the specific provision in the statute of 1919, setting forth the manner by which territory might be transferred or offered from an exempted village school district or city school district, was changed in the amendment of 1921.

It is difficult to say just what is meant by the words "any such school district" as contained in the statute as amended in 1921. Whether this expression is meant to refer to a city, exempted village, or other school district, or whether the reference is to a district of the county school district is not at all clear. Neither is it clear what the Legislature meant when, in the amendment of 1921, the language contained in the former statute from which the inference was drawn, as stated in the 1919 opinion referred to, that city and exempted village districts were authorized to make transfers of territory to county school districts, was changed to read as follows:

"In any case, before such a transfer shall be complete, (1) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district *making* or accepting the transfer, as the case may be." (Italics the writer's).

Neither the language of the amendment of 1919 nor of 1921 directly and expressly authorized a board of education of a city or exempted village to transfer or offer to transfer a portion of its territory to an adjoining county school district, or to ask the board of education of an adjoining county school district to accept a transfer from it. In either case, the right and power of the board of education of a city school district or exempted village district to offer to transfer to an adjoining county school district a portion of its territory must be based, to a great extent, on an inference to be drawn from the language used. The inference, however, has just as substantial a basis in the language used in the 1921 amendment as in the 1919 amendment and is probably sufficiently clear to warrant the holding that the language of the statute imports the power to make these transfers.

While the question is not free from doubt, I believe that by construing the statute from its four corners, in the light of its history and the policy to provide

for transfers of territory to the end that the best interests of the schools may be conserved, it may be said that the statute contains authority for transferring territory from a city or exempted village school district to a contiguous county school district upon the passage of a resolution by the city or exempted village board of education by a majority vote of its full membership, offering to transfer said territory, which offer is thereafter accepted by the board of education of the county school district to which the offer is made.

This seems to have been the view of the Attorney General in 1921. Note his opinion published in the reported Opinions of the Attorney General for that year at page 857. In this 1921 opinion other phases of the question were considered and the power to make a transfer of territory from a city or exempted village district apparently was taken for granted; at least the possibility of the non-existence of such power was not considered. See also Opinions of the Attorney General for 1924, page 721.

It seems to have been the general policy of our school laws, as stated by the Supreme Court in the case of *Canton Union School District vs. Meyer, et al., supra*, to provide for changes in the boundaries of school districts for the good of the school system generally, and the history of the school laws shows this policy to have been consistently followed for a great many years, with the exception of the few years intervening from 1914 to 1919, and while the language of Section 4696, General Code, as amended in 1919, does not definitely and expressly extend to boards of education of city and exempted village school districts the power to transfer territory from the district, the language of the statute is susceptible of that meaning, and I believe indicates a legislative intent to provide for those transfers which had apparently been overlooked upon the adoption of the School Code of 1914. Having thus remedied a situation theretofore existing, I do not believe that the change in the language upon the amendment of the statute in 1921 indicated an intent to remove the power which had at least been inferentially extended in 1919.

I am therefore of the opinion, upon a reconsideration of this matter, that the conclusions reached in Opinion No. 1377 should be modified to conform to the conclusions set forth herein.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1586.

CHAUFFEUR'S FEE—NOT SUBJECT TO QUARTERLY REDUCTION—
REGISTRATION NOT RENEWABLE EACH YEAR.

SYLLABUS:

The fee provided in Section 6302, General Code, which shall accompany an application for registration as a chauffeur is not subject to reduction depending upon the time of year when such application is made, and such registration need not be renewed from year to year.

COLUMBUS, OHIO, March 5, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date reads as follows: