right to have his instrument recorded, if it otherwise definitely describes the premises, notwithstanding such an instrument may work an inconvenience to the recorder in view of the system employed. As above indicated, if the recorder complies with the provisions of Section 2764, this condition will not arise in connection with the filing of the instruments about which you inquire, because the instruments may be found by examining the alphabetical list.

In considering your second inquiry with reference to the duty of the county auditor in regard to the taxation of such easements or rights of way as are under consideration, in view of the provisions of Sections 8820 and 8821 of the General Code, it should be noted that the sections to which you refer have no application to such an easement as is described in the instrument under consideration, for the reason that those sections relate to rights of way of railroad companies. Said sections are a part of Division II of Title IX of the General Code, and an examination of the related sections clearly indicates that said sections relate to railroad companies, and therefore have no application whatsoever to the interest conveyed in the instruments under consideration. In certain instances the Legislature has seen fit to provide for the taxing of leasehold estates in the name of the lessee, such as certain leases for a term of years, renewable forever (Sections 5329 and 5330, General Code), and rights to minerals in land (Section 5563, General Code). However, in the absence of specific authority, easements and lesser interests in land are not to be separately taxed.

Based upon the foregoing, it is my opinion that:

1. The conclusion of my predecessor to the effect that the instrument in said opinion considered should be recorded in the record of deeds, is correct.

2. The recorder of your county should keep an alphabetical index as required by Section 2764 of the General Code.

3. Sections 8820 and 8821 relate to railroad companies and have no application to the situation presented in your communication.

Respectfully,
GILBERT BETTMAN,
Attorney General.

307.

PETITION—FOR TRANSFER OF CONTIGUOUS TERRITORY TO CITY SCHOOL DISTRICT—SUCH TERRITORY MUST BE ADJACENT AT DATE OF FILING.

SYLLABUS:

1. *Only contiguous territory may be transferred to a city school district.*

2. *A petition filed with a county board of education requesting that territory, not contiguous to a city school district, be transferred to the said city school district, is a nullity, and will not be imbued with legality, simply by force of the fact that after it had been signed, the said territory had become contiguous to the city school district by reason of subsequent transfers of territory.*

COLUMBUS, OHIO, April 15, 1929.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter requesting my opinion, which reads as follows:

"Your opinion is desired upon the following question:

On February 16, 1929, a petition signed by more than 75% of the residents of the territory affected, asking the Delaware County Board of Education to transfer the larger part of Troy Township from the Delaware County to the Delaware City District, was presented to the Delaware County Board of Education. As Troy Township was not contiguous to the Delaware City District the county board declined to make the transfer. Since that time the county board has transferred most of Delaware Township, in which Delaware is located, to the city district so that Troy Township will be contiguous to the city district as soon as the city formally accepts the transfer of Delaware Township.

Residents of Troy Township ask the county board again to make the transfer on the old petition. The county board believes that transfers from a county district to a city district can be made by petition only under Sec. 4696 and that the old petition was not legal because the territory was not contiguous and for the further reason that many citizens may have changed their minds and that a new petition is necessary.

Question: In view of the above facts is it necessary for Troy Township to present a new petition to the county board?"

Transfers of territory from a school district of a county school district to a city school district are controlled by the terms of Section 4696, General Code. It is provided therein that when a petition is filed with the county board of education signed by 75% or more of the residents of a part or all of a school district of a county school district, asking that the territory therein described be transferred to the contiguous city school district, it becomes the mandatory duty of the county board of education to make such transfer as is requested by the petitioners.

It has been held that the filing of this petition is a prerequisite to the vesting of jurisdiction in a county board of education to act in the premises. That is to say, a county board of education is not vested by the terms of the statute itself with jurisdiction to make transfers of school territory to a city school district, and becomes vested with such jurisdiction only upon the filing of a petition therefor, in accordance with the terms of the statute.

In a former opinion of this office, found in Opinions of the Attorney General for the year 1927, at p. 2241, this principle is recognized. In the course of said opinion, it is said:

"By virtue of Section 4692, General Code, boards of education of county school districts are vested with jurisdiction to rearrange the geographical boundaries of rural and village school districts within their county school districts by the transfer of territory from one to another. No jurisdiction exists to make transfers to city, exempted village or county school districts, except when a petition is filed therefor as provided by Section 4696, supra. The filing of the petition is a prerequisite to the vesting of jurisdiction in the county board of education, to act with respect to such transfer."

Inasmuch as the territory sought to be transferred to the Delaware City School District by the petition filed with the Delaware County Board of Education on February 16, 1929, was not contiguous to the Delaware City School District, the petition was a nullity and conferred no jurisdiction whatever upon the Delaware County Board of Education; and even though the said territory later became contiguous by reason of extraneous acts of the county board of education, this, in and of itself, would not serve to extend jurisdiction to the county board of education to act in accordance with the petition, at least, not unless the petition was refiled.

The pertinent question involved in your inquiry is whether or not the petition formerly filed on February 16, 1929, may now be refiled with the county board of education, so as not only to confer jurisdiction on said board to act in accordance therewith, but as well to impose on said board the mandatory duty of transferring territory in accordance with the terms of the petition. The petition having been circulated and signed at a time when the territory described in the petition was not contiguous to the Delaware City School District, each signer at the time of signing was asking for something that was unauthorized and illegal, and, therefore, his signing was a complete nullity. I am, therefore, of the opinion that the petition at the time of its signing and filing was a complete nullity and will not be imbued with legality merely by reason of the fact that the territory described in the petition later became, by force of other transfers of territory, contiguous to the Delaware City School District.

I am, therefore, of the opinion that, in order to vest the Delaware County Board of Education with jurisdiction to transfer a portion of Troy Township to the Delaware City School District, it will be necessary to have signed and filed a new petition therefor.

Respectfully,
GILBERT BETTMAN,
Attorney General.

308.

GREEN LAW—CERTAIN PHRASE IN SECTION 6967, GENERAL CODE, CONSTRUED TO CONFORM TO LEGISLATIVE INTENT.

SYLLABUS:

The phrase "Sections 6906 and 6956" contained in Section 6967 of the General Code, should be construed as "Sections 6906 to 6956." In other words, the context of the language of the section, in order to convey an intelligent meaning, and to carry out the purposes thereof, requires the substitution of the word "to" for the word "and" in said phrase.

COLUMBUS, OHIO, April 15, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

> "You are respectfully requested to furnish this department your written opinion upon the following:
>
> Section 6967 of the General Code, relative to the construction of roads under the so-called Green Law, contains the following provision:
>
> 'The county shall pay not less than five hundred dollars per mile of said cost, such payment to be made out of the proceeds of any levy or levies made or to be made upon the grand duplicate of said county for the purpose of paying a county's proportion of the compensation, damages, costs and expenses of construction, reconstruction and improvement of roads under the provisions of Sections 6906 and 6956 of the General Code.'
>
> These two sections above mentioned do not provide for a tax levy and from the fact that in two other places in the section the term 'Sections 6906 to