

ritory petitioning for transfer. But there is nothing mandatory in such section that the county board of education shall make such transfer."

Since the issuance of Opinion 655 by this department on September 25, 1919, there has been no change in section 4692 as it was originally enacted in 106 O. L., 396, and therefore the condition which obtained at that time is still in force.

You are therefore advised, in answer to your inquiry, that where it is desired to transfer certain territory from one school district to another school district in the same county school district and within the jurisdiction of the same county board of education, the provisions of section 4692 G. C. apply. There is no provision in section 4692 G. C. for any petition on the part of the electors, the only provision in such section being that a remonstrance and not a petition can be filed with the county board of education.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3016.

BOARD OF LIBRARY TRUSTEES OF VILLAGE SCHOOL DISTRICT—
TRANSITION OF VILLAGE TO CITY—MEMBERS OF SAID BOARD
MAY LAWFULLY CONTINUE TO SERVE AS SUCH TRUSTEES
UNTIL EXPIRATION OF THEIR TERMS—BOARDS OF EDUCATION
MAY PURCHASE BOOKS AND OTHER PERIODICALS FOR THEIR
OFFICIAL USE AND THAT OF PUPILS.

1. *A board of library trustees of a village school district, appointed and created under the provisions of sections 7631 and 7636 G. C., is unaffected by the change of the village school district to the city district upon the transition of a village to a city, and the members of such a board may lawfully continue to serve as trustees until the expiration of the respective terms of their appointment.*

2. *Under the provisions of section 7620 G. C., boards of education may lawfully purchase books and other periodicals for their official use and that of the pupils, when deemed advantageous and for the best interests of the schools under their management and control.*

COLUMBUS, OHIO, April 21, 1922.

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

GENTLEMEN:—Receipt is acknowledged of your recent communication which reads as follows:

"We respectfully request your written opinion upon the questions contained in the enclosed letter from Mr. G. E. Hartshorn, director of law of Cleveland Heights, Ohio."

The letter referred to above reads as follows:

"As you doubtless know, Cleveland Heights went under a city form of government on the 1st of January, 1922. Previous to that time it had operated under a village form of government. The undersigned is director of law of city and legal adviser of the school board. Up to the 1st of January,

1922, the school board was known as the board of education of Cleveland Heights Village School District. Under the statute it provided that the new city board should be composed of five members. These five members were elected at the last November election and took office on the 1st of January, 1922, and are known as the board of education of Cleveland Heights City School District.

The village board, acting under sections of the General Code 7631 to 7641, two or three years ago created and established a free public library for Cleveland Heights Village School District and appointed a board of trustees who, since said appointment, have been conducting a free public library in said school district, receiving their funds from levies made by the board under the provisions of the sections above mentioned.

We would like a ruling on two questions:

First: Does the old board of trustees of the library continue in office or do they automatically cease to exist and must the new city board create and appoint a new library board? Section 7636 of the General Code provides for a term of these trustees. Do the old trustees continue to serve until their term expires or does the fact that the village board ceased to exist and the city board, an entirely new organization has come into being, automatically terminate the powers of the old village board of trustees? The Attorney-General has made a ruling that the members of the board of education of the village board automatically went out of office on the 1st of January, 1922, notwithstanding that some of their terms had not expired, basing the opinion on the ground that the village board ceased to exist and was supplanted by an entirely new entity to-wit: the new city board of education. If this reasoning is applicable, it seems to me that it might well be applied to the library board, as well as the board of education, and if it does, then the library board would likewise cease to exist and would have to be supplanted by a new board appointed by the present board of education. We are anxious to have this matter determined at an early date.

Second: Has the present board of education any right to expend money for the purchase of magazines and library books used almost exclusively by the teachers and pupils as supplementary reading matter in connection with school work? It has been the custom of the old village board to spend considerable money each year for this purpose. My information is that the same custom is followed by the boards of education of the city of Cleveland, the city of Lakewood and the city of East Cleveland, notwithstanding the fact that in any of these cities there have been established free public libraries open to all the citizens of the respective school districts.

Section 7642 of the general code provides that in districts where there is not a public library operated under public authority, etc., that the board of education may appropriate, not to exceed \$250.00 each year, for the purchase of books other than school books for the use and improvement of teachers and pupils of the school district. This undoubtedly would cover the kind of books and magazines above referred to. But you will note that the expenditure is limited to \$250.00 and moreover it is authorized only in case no public library exists.

It is clear to me, therefore, that if a public library does exist the school board would not have any authority under this section to spend money in any sum for such purposes, yet as above indicated the cities mentioned have been spending money for this purpose. The only other section that I can discover that might possibly bear on the subject is section 7620, which gives the boards of education broad powers and includes the words, 'and

provide all necessary apparatus and make all other necessary provisions for the schools under its control.' While this does not specify supplementary reading matter it might be argued that if supplementary reading matter is necessary for the proper conduct of a course of education in the schools, the board would be authorized to supply it under the powers conferred by this section. As against this, however, section 7642 deals explicitly with the purchase of books, other than school books, and the limitation therein is explicit. The books and magazines are strictly speaking not school books but supplementary reading matter. The question therefore it seems to me is one that should be determined by your office, as we are anxious to keep within the spirit and letter of the law.

Will you then please give us a ruling on this question, as well as the first one above mentioned and oblige."

Pertinent to your first question section 4686 G. C. provides:

"Sec. 4686. When a village is advanced to a city, the village school district shall thereby become a city school district. When a city is reduced to a village, the city school district shall thereby become a village school district. The members of the board of education in village school districts that are advanced to city school districts, and in city school districts that are reduced to village school districts shall continue in office until succeeded by the members of the board of education of the new district, who shall be elected at the next succeeding annual election for school board members."

Applying the provisions of the section quoted to your first question, it is apparent that a change has occurred in the school district indicated, wherein by reason of the advancement of the village to the status of a city, the former village school district automatically became a city school district. It is also true that the transition of the village to a city has by operation of law created a new board of education, designated in your inquiry as "the new city board of education, consisting of the five members mentioned, elected at the last November election, and who took office on the first day of January, 1922."

Consideration at this point may be directed to the board of library trustees mentioned in your communication, and who presumably were appointed as such officials by the village board of education, in compliance with the provisions of section 7636 G. C. This section reads as follows:

"Sec. 7636. Such board of library trustees shall consist of seven members, who must be residents of the school district. No one shall be eligible to membership on such library board who is or has been for a year previous to his election, a member or officer of the board of education. The term of office shall be seven years, except that at the first election the terms must be such that one member retires each year. Should a vacancy occur in the board, it shall be filled by the board of education for the unexpired term. The members of the library board must serve without compensation and until their successors are elected and qualified."

It may be observed under the provisions of this section, that the number of trustees authorized is seven, each appointed for the term of seven years, except that at the first election the terms must be such that one member retires each year, such trustees serving without compensation and until their successors are elected and qualified.

Since therefore the library trustees under consideration possess the same quali-

fifications as those provided in Sec. 7636 G. C. for "city, village, or rural school districts, it is obvious that no change has occurred in any particular in the statutory requirements of number or qualifications of such library trustees, by reason of the advancement of village to city. It may also be noted in this connection that such trustees are thought to be unaffected by any requirement of the civil service law, which became effective upon the change of the village form of government to that of a city, since it is thought to be clearly indicated that officials serving in the capacity of trustees are exempt from the operation of this law. Hence it is concluded that while a change has been brought about in the name of the district and the board of education, no change has occurred in the manner of appointment or other statutory requirement of the qualifications of said library trustees, the same apparently remaining constant in city, village, or rural school districts.

While the question considered is one necessarily arising after each period of the census, a search of the records of this department fails to cite a precedent in the particular instance, although the general principle involved in the operation of the law arising upon the advancement of a village to a city has been previously considered, yet it is noted, that the questions discussed involve others, such as compensation, civil service requirements, and the change of statutory provision occasioned by the operation of law, etc., which apparently do not obtain in the question under consideration.

Unaided therefore by express statutory direction or other precedent it is believed in such cases a rule of reason not inconsistent with the general policy of the legislature may be adopted, following which it would seem advantageous that the old board of library trustees should be left undisturbed. Under such conditions this board of trustees would continue to function in the future as in the past in the manner prescribed by statute and the continuing features of the same would thus be preserved. Indeed such is thought to have been the legislative intent in the instance, as evidenced by the long term appointments of such trustees. Under the adoption of such a policy it is believed that the interests of the library and the school district may best be subserved and unnecessary confusion and delay perhaps avoided in the practical administration of the duties incumbent upon the board of education. Following such a plan, it is thought that the new city board of education should proceed to appoint each year the new member to such board of trustees as prescribed by statute.

Proceeding to your second question it is thought that no authority exists for the purchase by the board of education of such books and magazines as your inquiry mentions under the general provisions of section 7642 G. C. since the limited expenditure of \$250.00 is authorized only in case no public library exists. However, it may be noted that a former opinion of this department is thought to have a bearing upon this question; namely, opinion No. 1033 found in Opinions of the Attorney-General, volume I, 1920, page 229, wherein it is held that under the incidental and implied powers conferred upon boards of education, books and periodicals necessary for the promotion of the official welfare of a board of education may be lawfully purchased by said board, the conclusion being reached as noted supra, from the implied powers delegated to such boards in such matters. It would seem, therefore, that under the broad provisions of section 7620 G. C. which authorizes boards of education "to provide all necessary apparatus and make all other necessary provisions for the schools under its control," such books and periodicals as you mention may lawfully be purchased by the board of education when the same are considered necessary to promote the interests and welfare of the schools under their management and control.

Respectfully,
JOHN G. PRICE,
Attorney-General.