

superintendent of schools. Section 7766-1, General Code, provides with reference thereto:

"The superintendent of schools shall not issue such certificate until he has received, examined, approved and filed the following papers duly executed: * * *

(4) A certificate from the school physician or physician designated by him, or if there be no school physician from the district health commissioner, or physician designated by him, showing after a thorough examination that the child is physically fit to be employed in such occupations as are not prohibited by law for a boy or girl, as the case may be, under eighteen years of age."

The statute is clear, to the effect that a superintendent of schools is not permitted to issue an "age and schooling certificate" unless he has on file the certificate described in the statute. He is not permitted in lieu thereof to accept the certificate of the family physician or of anyone else than the persons named in the statute.

I am therefore of the opinion, in specific answer to your questions:

1. A superintendent of schools is not permitted to arbitrarily demand the certificate of the school commissioner or public health physician as to the physical or mental condition of a child before excusing such child, as authorized by Section 7763, General Code. A certificate of the family physician should ordinarily be sufficient to constitute a satisfactory showing of the facts set forth in the certificate.

2. A superintendent of schools, in issuing an "age and schooling certificate", by authority of Section 4766-1, General Code, is required by law to receive, approve and file a certificate from the school physician or physician designated by him, or if there be no school physician, from the district health commissioner or physician designated by him, showing that the child to whom the certificate is to be granted is physically fit to be employed in such occupations as are not prohibited by law for a boy or girl, as the case may be, under eighteen years of age. The superintendent of schools may not take as a substitute therefor, the certificate of a family physician or of any physician other than the one named in the statute.

Respectfully,

GILBERT BETTMAN,

Attorney General.

2138.

TRANSFER OF SCHOOL TERRITORY—PETITION FILED WITH COUNTY BOARD OF EDUCATION TO HAVE RURAL SCHOOL TERRITORY TRANSFERRED TO CITY—SUCH PETITION CONTROLS OVER EARLIER ONE REQUESTING TRANSFER OF SAME TERRITORY TO ANOTHER RURAL DISTRICT IN SAME COUNTY—CONDITIONS.

SYLLABUS:

When a petition is filed with the county board of education, signed by 75% of the electors residing in any portion of the county school district, asking to have that portion of the county school district transferred to a contiguous county, city or exempted village school district, there immediately devolves on the said county board of education the mandatory duty to make the transfer as requested, providing no part of said territory lies in a school district where the schools have been centralized by virtue of Section 4726, General Code, or where proceedings for such centralization have theretofore been instituted, even though a previous petition had been filed with the county board of education asking that a portion of the same territory be transferred to a district of the same county school district.

COLUMBUS, OHIO, July 23, 1930.

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

DEAR SIR:—I am in receipt of your recent communication by which you request my opinion with reference to a state of facts set forth in a letter to you from the county superintendent of schools of the Shelby County School District. The statement of the county superintendent follows:

“The Clinton Township Rural School District in Shelby County, Ohio, surrounds and is contiguous to the territory comprising the Sidney City School District. An effort is being made on the part of the electors residing in the Clinton Township Rural School District to have this entire district transferred to the Sidney City School District. The county board of education desires to transfer a portion of the Clinton Township Rural School District to the Anna Rural School District of Shelby County, Ohio.

On April 12, 1930, a petition was filed with the county board of education asking them to proceed to transfer a certain portion of the Clinton Township Rural School District to the Anna Rural School District. The petition came up for hearing before the county board of education at their meeting on April 12, 1930, but the same was continued and not finally acted upon at the meeting on that day for the purpose of making some further investigations. On April 17, 1930, another meeting of the county board was called for the purpose of finally acting upon the transfer of this territory to the Anna Rural School District. On this same day, to wit, April 17, 1930, a couple of hours before the meeting of the county board of education as above stated, a petition was filed with the county board containing seventy-five per cent of the electors residing in the Clinton Township Rural School District, asking for the transfer of the entire Clinton Township Rural School District to the Sidney City School District. When the county board met on April 17, 1930, a couple of hours after the petition had been filed, they passed a resolution transferring a portion of the Clinton Township Rural School District to the Anna Rural School District, in accordance with the prayer of the petition that had been filed with and considered by them on April 12th. At their meeting on April 17, by resolution passed by the county board of education the petition signed by seventy-five per cent of the electors to transfer the entire district to the Sidney City School District was laid on the table. These petitioners now threaten to bring an action of mandamus in the Common Pleas Court of this county, asking the court to compel the county board of education to make the transfer of the entire Clinton Township Rural School District to the Sidney City School District.

As we understand it, the matter resolves itself into this question: Did the county board of education have jurisdiction to proceed to transfer any portion of the Clinton Township Rural School District to the Anna Rural School District which is in the same county, after the petition to transfer the entire Clinton Township Rural School District to the Sidney City School District had been filed? We were of the opinion that by reason of the fact that we had already, on April 12, 1930, taken jurisdiction of the matter of the transfer of a portion of the territory to the Anna Rural School District, that the filing of the petition to transfer the entire district at any time thereafter did not deprive us of the right and jurisdiction to complete the transfer to the Anna Rural School District.”

By reference to Section 4692, General Code, it will be found that county boards of education are vested by statute with the power to transfer territory from one school district of the county school district to another school district of the same county school district. This authority is limited somewhat by the terms of Section 4727, General Code, which provides that before territory may be transferred from or to a centralized school district by authority of Section 4692, General Code, jurisdiction must be conferred upon the board to make such transfer by the filing of a petition signed by 66 2/3 per cent of the electors residing in the territory sought to be transferred. That is to say that transfers of territory from one rural or village school district to another in the same county school district may be made by a county board of education upon its own initiative, subject, of course, to the provisions of Section 4727, General Code, if either one or both districts involved in the proposed transfer is a rural district wherein the schools have been centralized, in accordance with Section 4726, General Code.

A county board of education has authority to make such transfers without a petition being filed therefor, if a centralized district is not involved in the transfer. In fact, the filing of a petition in such cases has no effect. There is no way whereby the interested school patrons or electors residing in a rural or village school district can compel a board of education to transfer territory to or from the district whether it be a centralized district or not, and the only power residents have to defeat the action of a county board in making such transfers is by filing a remonstrance to the action of the board in making a transfer as provided by Section 4692, General Code.

The fact that the filing of a petition with the county board of education asking for the transfer of territory to or from a rural or village school district other than a centralized district has no effect whatever on the power of the board to make the transfer or to require the board to make the transfer has been noted in a number of previous opinions of this office. See Opinions of the Attorney General for 1919, page 1195, for 1927, page 1151, for 1928, pages 966 and 995. In an earlier opinion rendered by me, which opinion may be found in the reported Opinions of the Attorney General for 1923 at page 1630, it is said:

"There is no authority for the filing of petitions for the transfer of school territory under and by virtue of Section 4692, General Code, except when a proposed transfer involves territory lying within a centralized school district. Transfers of territory between school districts of a county school district, except when a centralized district is involved in a proposed transfer, may be made as seems in the judgment of the county board to be for the best interests of the schools, subject to the filing of remonstrances by the electors residing in the territory affected. Under no circumstances is the making of such a transfer mandatory, no matter how many resident electors petition therefor."

I am not advised whether or not either Clinton Township Rural School District or Anna Rural School District in Shelby County School District is a centralized district. If either or both of these districts are centralized districts, the filing of the petition referred to in the above statement on April 12, 1930, conferred jurisdiction on the county board of education to make the transfer requested, providing it was signed by 66 2/3 per cent of the electors residing in the territory sought to be transferred, but imposed no mandatory duty on the county board of education to make such transfer. If neither of these districts is a centralized district, the filing of the petition had no effect whatever, no matter how many signers there were thereto, except to inform the county board of the wishes of the people in the district. The county

board did not, according to the statement, make a transfer of territory from Clinton Township District to Anna Rural District on April 12, 1930, and took no steps whatever toward making such transfer. Even if Clinton or Anna Districts or both were centralized districts and the petition filed on April 12, 1930, was signed by two-thirds of the qualified electors residing in that part of Clinton Township District seeking to be transferred to Anna District it had no other effect than to confer the jurisdiction on the county board to make the transfer, which might or might not be made as in the discretion of the county board seemed to be for the best interests of its schools. It can not be said, therefore, that the filing of a petition, even if a centralized district were involved, asking a county board to make transfers between districts of the county district constituted the taking of action to make a transfer of school territory, as the people themselves, the signers of the petition, had no power to actually make such a transfer or to compel the making of such a transfer.

On April 17, 1930, a petition was filed with the county board by three-fourths of the electors residing in a portion of Clinton Township Rural School District asking that that portion of the district be transferred to Sidney City School District, in accordance with Section 4696, General Code. By the terms of said Section 4696, General Code, a mandatory duty may be imposed on a county board of education to transfer territory of the county school district to a contiguous county, city or exempted village school district by the filing of a petition signed by seventy-five per cent of the electors residing in the territory sought to be transferred, which was done in this case.

Immediately upon the filing of the petition of April 17, 1930, there devolved upon the county board of education of Shelby County School District the mandatory duty to make the transfer as requested by the petition, and as soon as that duty became mandatory the county board's power to transfer the territory described in the petition otherwise than in accordance with the petition, was foreclosed.

In an opinion rendered by me on June 5, 1930, being Opinion No. 1946, it is held as stated in the first branch of the syllabus:

“When power is given under the statutes to two different governmental agencies to act with reference to the same subject matter, exclusive authority to act with reference thereto is vested in the agency first acting under the power.”

The doctrine of the aforesaid opinion, and the conclusions reached therein are based on the holding of the Supreme Court of Ohio in the recent case of *Trumbull County Board of Education vs. The State ex rel Van Wye*, 122 O. S., 247, O. L. B. and Rep., issue of May 19, 1930, Ohio Bar, issue of May 13, 1930, and the authorities therein cited.

In the matter here under consideration, the statutes give power over the same territory to two agencies—one the county board of education of Shelby County school district, which, by authority of Section 4692, General Code, possesses the power to transfer territory to or from Clinton Township Rural School District, the other the resident electors of Clinton Township School District who, by the filing of a petition in accordance with Section 4696, General Code, were empowered to place a mandatory duty upon the county board of education of Shelby County School District to transfer all or any portion of the territory of said rural school district to a contiguous county, city or exempted village school district.

The resident electors of the district have exercised their power by the filing of a petition for the transfer of a portion of the Clinton Township School District to Sidney City School District contiguous thereto, and thereby imposed on the Shelby County Board of Education the mandatory duty to make the transfer or complete the

proceedings for such transfer. According to the terms of the petition, the said Shelby County Board of Education did not possess the power after the filing of said petition to transfer any of the territory described in the petition otherwise than in accordance with the mandatory duty imposed on said board by the filing of said petition.

Even if the county board had on April 12, 1930, or at any other time, transferred all of Clinton Township School District to Anna Rural School District, and said territory had been a part of Anna School District on April 17, 1930, the people residing in any portion of such combined districts could impose on the county board of education a mandatory duty to transfer said territory to a contiguous county, city or exempted village school district by the filing of a proper petition therefor, and I am of the opinion that it is now the duty of the Clinton County Board of Education to make the transfer to the Sidney City School District, in accordance with the petition filed with said board on April 17, 1930, and that if they fail to do so and an action in mandamus is instituted to compel them to make the transfer, a writ of mandamus will be issued requiring them to make the transfer.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2139.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE AMERICAN VETERANS INSURANCE ASSOCIATION OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, July 23, 1930.

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

DEAR SIR:—I return herewith the articles of incorporation of the American Veterans Insurance Association of Columbus, which you submitted for my approval. Article III of said articles of incorporation discloses that one of the purposes of said association is "to transact the business of insurance as provided for Fraternal Benefit Societies in accordance with Sections 9462 to 9473, both inclusive, and especially as provided in Section 9466-5 (correct citation Section 9466, Section 5) of the General Code of the State of Ohio."

The sections cited above appear in Title IX, Division III, Subdivision I, Chapter 4, of the General Code of Ohio. Section 9465 of the General Code of Ohio (102 O. L. 533, Section 4), included in the same chapter, provides:

"Except as herein provided, such societies shall be governed by this act, and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein."

I find no statute in Title IX, Division III, Subdivision I, Chapter 4, *supra*, which empowers me to approve or disapprove articles of incorporation of a fraternal benefit association such as you submit. I do not find any statute elsewhere in the General Code, expressly designating fraternal benefit societies, agreeable to the exception in Section 9465, General Code, *supra*, which authorizes me to comply with your request.