

the county superintendent is not such that renders the same void. If, however, it was claimed by electors of the county that they were misled and had no opportunity to protest the election of the county superintendent, and there were good grounds for the protest, such election might be held by a court to be voidable.

Even if there were any question about the regularity of the first meeting, which was attended by all of the members of the board, I am satisfied that their action was ratified at the succeeding meeting at which the minutes of the previous meeting were read and unanimously approved.

Respectfully,

EDWARD C. TURNER,
Attorney General.

676.

BOARD OF EDUCATION—COUNTY BOARDS NOT CHARGED WITH MANDATORY DUTY OF TRANSFERRING TERRITORY FROM ONE DISTRICT TO ANOTHER EVEN THOUGH A PETITION BE FILED SIGNED BY 75 PER CENT OF THE ELECTORS.

SYLLABUS:

Under no circumstances are county boards of education charged with the mandatory duty of transferring territory from one village or rural school district to another village or rural school district within the same county school district as authorized by Section 4692, General Code, even though a petition be filed therefor signed by seventy-five per cent of the electors residing within the territory sought to be transferred.

COLUMBUS, OHIO, June 29, 1927.

HON. FRANK F. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

“I would like your opinion as to whether or not under Section 4692 of the General Code, a petition of 75% as required therein, can, in any event, make it mandatory on the part of the county board of education to transfer territory, all of the requirements being complied with, from one school district to another.”

The provisions of Section 4692, General Code, are 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. If an entire district be transferred the board of education of such district is thereby abolished or if a member of the board of education lives in a part of a school district transferred the member becomes a non-resident of the school district from which he was transferred and ceases to be a member of such board of education."

The first sentence of the above statute names the class of school districts to which the provisions of the statute apply, to wit: "school district or districts of the county school district". To determine what are "school district or districts of the county school district" it is necessary to look to the definition of a county school district as contained in Section 4684, General Code, wherein county school districts are defined thus:

"Each county, exclusive of the territory embraced in any city school district and the territory in any village school district exempted from the supervision of the county board of education by the provisions of Sections 4688 and 4688-1, and territory detached for school purposes, and including the territory attached to it for school purposes, shall constitute a county school district."

The several school districts of the state are styled respectively (Section 4679, General Code):

"City school districts, exempted village school districts, village school districts, rural school districts and county school districts."

It will thus be seen that "school district or districts of the county school district" are village school districts and rural school districts. The clause "school district or districts of the county school district," as used in Section 4692, General Code, does not include city school districts, exempted village school districts and county school districts, and the provisions of Section 4692, General Code, with reference to the transfer of territory from one school district to another apply only to transfers from one village or rural school district to another village or rural school district within the same county school district. Provision is made for transfers of territory to or from the other classes of school districts by Section 4696, General Code.

It will be noted that Section 4692, General Code, makes no provision for the filing of a petition asking for the transfer of territory to be made by authority of its provisions nor are its terms mandatory. It is entirely within the discretion of the county board of education whether or not transfers be made as authorized by this statute. The filing of a petition by the county board of education praying for a transfer of territory from one village or rural school district to another in the same county school district would have no other effect than to convey to the board the expression of the will of the signers of the petition. The county board of education might act in accordance with this petition or not as it saw fit.

Transfers under Section 4692, General Code, should not be confused with transfers of territory from or to city school districts, exempted village school districts or another county school district, which transfers are regulated by the provisions of Section 4696, General Code, wherein it is provided that such transfers may be made upon petition of a majority of the electors residing in the territory to be transferred and if seventy-five per cent of the electors residing within the territory to be

transferred petition for such transfer the county board of education must make the transfer.

There are no provisions of law by which the transfer of territory from one village or rural school district to another district of the same class within the same county school district must be made upon petition of the residents of the territory to be transferred. You are therefore advised in answer to your question that under no circumstances are county boards of education charged with the mandatory duty of transferring territory from one village or rural school district to another village or rural school district within the same county school district as authorized by Section 4692, General Code, even though a petition be filed therefor signed by seventy-five per cent of the electors residing within the territory sought to be transferred.

Respectfully,
EDWARD C. TURNER,
Attorney General.

677.

DISAPPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE RICE-JONES COMPANY, CLEVELAND, OHIO, FOR CONSTRUCTION OF CONCRETE DAM ACROSS THE TUSCARAWAS RIVER AT LONG LAKE NEAR AKRON, SUMMIT COUNTY, OHIO, AT AN EXPENDITURE OF \$10,676.04—SURETY BOND EXECUTED BY THE LONDON AND LANCASHIRE INDEMNITY COMPANY OF AMERICA.

COLUMBUS, OHIO, June 29, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract in triplicate between the State of Ohio, by George F. Schlesinger, Director of Highways and Public Works, and The Rice-Jones Company, of Cleveland, Ohio. This contract covers the construction and completion of a reinforced concrete dam across the Tuscarawas River at Long Lake near Akron, Summit County, Ohio, and calls for an expenditure of ten thousand, six hundred and seventy-six and 4/100 dollars (\$10,676.04).

You have also submitted a certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which The London and Lancashire Indemnity Company of America appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, and bids tabulated as required by law. Also it appears that the laws relating to the workmen's compensation have been complied with.

While there appears to have been a publication of a notice to contractors of the time and place when and where bids will be received for this project, which notice appears to have been approved by the Director of Highways and Public Works and published in the Akron Beacon-Journal and the Akron Times Press on April 22, 29, May 6, and May 13, 1927, there is no proof of publication among the papers submitted. It also appears, as stated above, that the bids were tabu-