

It is fundamental that boards, such as the Ohio Board of Clemency, being creatures of statute, can exercise only such powers as are expressly granted by statute and such as are necessarily implied to carry the powers expressly granted into effect.

"Annul" as defined by Bouvier means: "To abrogate, nullify or abolish; to make void."

Nowhere in the powers expressly or impliedly granted to the Ohio Board of Clemency is authority given to "annul" a sentence. Such action may only be taken in a proper proceeding by a court of competent jurisdiction, or by a pardon duly granted by the proper authority.

Answering your second question specifically, it is my opinion that Section 2175, supra, in no wise grants authority to the Board of Clemency to release a prisoner, who has been paroled and has been convicted and sentenced to the penitentiary for a new crime, from serving any part of his first sentence in order to allow him to begin serving the second sentence before the maximum term of the first sentence has been served. As provided in Section 2174, supra, upon the return of such a prisoner to the penitentiary, he must serve the unexpired period of the maximum term of his imprisonment and as provided in Section 2175, the second sentence imposed for the new crime committed while on parole does not begin to run until the termination of his service under the first sentence or the annulment thereof by a court of competent jurisdiction or by a pardon properly granted. In other words, the sentence contemplated in Section 2175 supra, and therein referred to as a "second sentence" is in reality a sentence *in futuro* which does not begin until either the termination of the service under the first or former sentence, or the annulment thereof.

Respectfully,
EDWARD C. TURNER,
Attorney General.

728.

BOARD OF EDUCATION—AUTHORITY TO ACT WHEN JOINT PETITION
FOR TRANSFER IS FILED—MANDATORY AND DISCRETIONARY
DUTIES.

SYLLABUS:

The filing of a joint petition by electors of more than one, or parts of more than one school district seeking the transfer of school territory, is not authorized by Section 4696 General Code, and the filing of such a petition vests no jurisdiction in the county board of education to act thereon.

A county board of education is charged with the mandatory duty of transferring territory from a rural school district in which the schools have not been centralized to an exempted village school district upon petition of seventy-five percent of the qualified electors residing in the territory sought to be transferred. If however, the territory which the petitioners asked to have transferred is a district or part of a district in which the schools have been centralized, it is discretionary with the county board whether it makes the transfer or not irrespective of the number of petitioners.

COLUMBUS, OHIO, July 12, 1927.

HON. HAROLD A. PREDMORE, *Prosecuting Attorney, Hillsboro, Ohio.*

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

"I submit herein the following questions pertaining to the transfer of territory between school districts located in Highland County, Ohio.

Will you kindly let me have the opinion of your office at your earliest convenience, and oblige.

Can petitioners legally join in one petition, under Section 4696, G. C., petitioning the County Board of Education to transfer to an exempted village school district, a part of a rural school district and also a part of another rural school district, (the latter being centralized and having a high school), the territory sought to be transferred by said petition being contiguous, and also contiguous to said exempted school district? Or, must there be separate petitions from each rural school district for the transfer of that part lying in each which is desired to be transferred?

And if the petition presented embracing territory in said two districts, contains 75 percent of the electors residing within the territory sought to be transferred and described in the petition, is the transfer of them mandatory, without regard to whether or not the petition contains 75 percent in each of said districts from which it is proposed to transfer such territory?"

The statute which authorizes and regulates a transfer of territory to and from exempted village school districts is Section 4696, General Code, which reads in part as follows:

"A county board of education may, upon a 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 transfer. 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."

The court of appeals for Butler County, in the case of *Woodrey vs. Board of Education*, 21 O. A. 471 had under consideration a question involving the right of a county board of education to include in one resolution and one map the transfer of territory under Section 4692, General Code, of more than one school district. The court said at page 474 of the opinion:

"Moreover Section 4692 provides; 'The county board of education may transfer a part or all of a school district of the county school district, etc.'

The section does not say that the school board may transfer a part or all of a school district or two or more districts. It says a part, or all of a school district. This language, if it means what it says, means that each school district must be dealt with separately."

Aside from the applicability of this observation of the court, to the provisions of Section 4696, General Code, the first sentence of which reads substantially the same as that of Section 4692, General Code, which the court had under consideration, there are other considerations which must certainly lead to the same conclusion.

Each school district is a separate entity, and the purpose of the provisions of the statute that transfers of school district territory are to be made upon petition of the electors of the district affected is so that the electors of each separate district may be heard by way of petition. If it were otherwise, a petition might be filed for the transfer of territory from more than one district signed by practically all the electors in one district and only a few, or perhaps none in the other district, and yet bear the signatures of fifty or seventy five per cent of the total number of electors in both dis-

tricts or parts of districts taken together, thus bringing about a situation whereby a district or part of a district might be transferred contrary to the wishes of the electors affected.

In the specific case about which you inquire, different rules apply as to the transfer of territory from each of the two districts. One of these districts is a district in which the schools have been centralized and the other not. When a petition is filed, signed by seventy-five per cent of the electors residing in a rural school district or part of a rural district in which the schools have not been centralized asking to be transferred to an exempted village school district it becomes the mandatory duty of the county board of education to make the transfer subject of course to its being accepted by the exempted village district, but when the territory sought to be transferred is a centralized district or part of a centralized district the county board is vested with the discretion of making the transfer or not irrespective of the number of petitioners therefor. This has been definitely decided by the Supreme Court in the case of *Darby v. Hadaway, et al.* 113 O. S. 658; *Summit County Board of Education et al. v. State ex rel. Stipe*, 115 O. S. 333, Ohio Law Bulletin and Reporter, January 24, 1927; Opinions, Attorney General, 1919, page 1195.

I am therefore of the opinion that county boards of education must deal separately with school districts or parts of districts, seeking transfers of territory to other districts, and that there is no authority for the electors of more than one, or parts of more than one district to join in one petition for the transfer of territory sought by virtue of the authority granted in Section 4696, General Code. The filing of such a petition does not give jurisdiction to the county board of education to make the transfer as asked for in the petition.

Respectfully,
EDWARD C. TURNER,
Attorney General.

729.

BOARD OF EDUCATION—JURISDICTION OF COUNTY BOARDS TO TRANSFER SCHOOL DISTRICT TERRITORY TO OR FROM A CENTRALIZED SCHOOL DISTRICT.

SYLLABUS:

1. *County boards of education may be vested with jurisdiction to transfer school district territory to or from a centralized school district by the filing with it of a petition signed by two thirds of the qualified electors residing in the territory petitioning for the transfer.*

2. *Upon the filing of a petition for the transfer of territory to or from a school district in which the schools have been centralized, the county board of education with whom the petition is filed may use its discretion to either make the transfer as asked for, or not, as may in its opinion be for the best interests of the districts to be affected by the transfer.*

COLUMBUS, OHIO, July 12, 1927.

HON. JOHN E. PRIDDY, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—I have before me your correspondence, together with that of the attorneys for your county board of education and the Benton Ridge Village Board of Education with reference to the controversies over the transfer of school district territory within your county school district.