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INTERPRETATION—SECTION 4831-13 G. C.:

1. FIRST PARAGRAPH—AUTHORITY, COUNTY BOARD OF EDUCATION TO TRANSFER PORTION OF TERRITORY FROM LOCAL SCHOOL DISTRICT TO ADJOINING CITY OR EXEMPTED VILLAGE SCHOOL DISTRICT—NO AUTHORITY TO TRANSFER ENTIRE TERRITORY OF LOCAL SCHOOL DISTRICT.
2. COUNTY BOARD OF EDUCATION—AUTHORIZED TO TRANSFER CERTAIN TERRITORY AT ANY TIME DURING ANY YEAR.
3. PETITION TO TRANSFER PORTION OF DISTRICT TO CITY OR EXEMPTED VILLAGE SCHOOL DISTRICT—MAY ONLY BE FILED PRIOR TO FIRST DAY OF FEBRUARY IN EVEN NUMBERED YEAR.
4. BOARD OF EDUCATION—TRANSFERRED TERRITORY FROM LOCAL SCHOOL DISTRICT WITHIN COUNTY SCHOOL DISTRICT TO ADJOINING COUNTY SCHOOL DISTRICT OR ADJOINING CITY OR EXEMPTED VILLAGE SCHOOL DISTRICT—RESIDENTS OR ELECTORS—HAVE NO RECOURSE BY WAY OF PETITION OR REMONSTRANCE.

SYLLABUS:

1. The first paragraph of Section 4831-13, General Code, authorizes a county board of education to transfer a portion of the territory from a local school district to an adjoining city or exempted village school district but does not authorize the transfer of the entire territory of a local school district.

2. The first paragraph of Section 4831-13, General Code, authorizes a county board of education to transfer such territory at any time during any year.

3. Under the provisions of Section 4831-13, General Code, where it is sought by a petition of the electors residing in the territory of a local school district to transfer a portion of such district to a city or exempted village school district such petition may only be filed prior to the first day of February in an even numbered year.

4. Where a board of education has pursuant to the authority given it in the first paragraph of Section 4831-13, General Code, transferred territory from a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, the residents or electors in the territory so transferred have no recourse by way of petition or remonstrance.

Columbus, Ohio, April 21, 1952

Hon. Jackson Bosch, Prosecuting Attorney
Butler County, Hamilton, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"We request your opinion interpreting Section 4831-13 G. C. in connection with a set of facts, as follows:

"The City of Middletown is located in Butler County, Ohio, and Lemon Township surrounds it. The bounds of Lemon Local School District are almost co-extensive with the township and therefore Lemon Local School District also surrounds the City of Middletown.

"There is a movement in the city of Middletown and also in Lemon Local School District to consolidate the two school districts. There is also some opposition. The questions we would like to have answered are as follows:

"1. Does the first paragraph of Section 4831-13 authorize the County Board of Education to transfer an entire school district, such as Lemon Local School District, to an adjoining city school district or does this section contemplate the transfer of only a part of a school district?

"2. Reading the first paragraph of Section 4831-13 in connection with the second paragraph, can such transfer be made in any year or can it only be made in the even numbered years?

"3. Can such transfer be made at any time of the year?

"4. Do the inhabitants of the school district which is being transferred have any recourse against the action of the County Board or any appeal from its action?

"The first paragraph of this section, so far as we can determine, has never been interpreted, as it went into effect in 1947. There are several Attorney General's Opinions noted in Page's Ohio General Code and also in Baldwin's Code Service. Section 4831-13 was passed on by the Supreme Court in 145 O. S. 441."

Section 4831-13, General Code, is a part of an act which became effective September 25, 1947, and which is found in 122 Ohio Laws, 572. This act embraced also Sections 4831, 4831-1 and 4831-14, General Code,

and appears to have been intended to provide a complete system for transfers of territory and changes in the boundaries of school districts.

Section 4831, General Code, authorizes the county board of education to transfer "part or all" of a school district of the county school district to an adjoining district, and reserves to the resident electors of the territory proposed to be transferred, the right to defeat such transfer by a protest signed by a majority. Section 4831-1, General Code, authorizes such county board to create a new district out of one or more local districts or parts thereof, with a similar right of protest.

This act repealed a large portion of the chapter beginning with Section 4831, which had formed a part of the new school code of 1943, and which had undertaken to provide for the adoption biennially of a plan of territorial organization by county boards of education.

Section 4831-13, as it now stands, relates solely to transfers of territory from a local school district to an adjoining county school district or an adjoining city or exempted village school district. That section reads as follows:

"If a county board of education deems it advisable *to transfer territory from* a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, such transfer may be made by the county board of education by the adoption of a resolution providing for such transfer. A county board of education may accept a transfer of territory from another county school district or from a city of exempted village school district and annex such territory to a contiguous local school district of the county school district.

"If there is filed with a county board of education prior to the first day of February in any even numbered year a petition requesting the transfer of territory from a local school district of the county school district to an adjoining county school district or to an adjoining city or exempted village school district, and such petition is signed by 75% of the qualified electors residing in the territory which the petition seeks to have transferred voting at the last general election, such county board of education shall, prior to the first day of April next following the filing of such petition with the county board of education, either adopt a resolution transferring the territory as requested by such petition or adopt a resolution objecting to the requested transfer. If the resolution adopted by the county board of education is a resolution objecting to the requested transfer, then the county board of education shall, within ten days after the adoption of

such resolution, file a copy of the resolution, together with a copy of the petition and a map showing the boundaries of the territory which the petitioners seek to have transferred, with the superintendent of public instruction. The superintendent of public instruction, if he is not in agreement with the county board of education's action in objecting to the requested transfer of territory, shall, prior to the first day of August next following such action, hold a hearing in the county where the proposal to transfer territory was filed. The superintendent of public instruction or his representatives shall preside at any hearing. For a period of ten days after such hearing the petitioners who signed the original petition which was filed with the county board of education pursuant to the provisions of this section shall have the right to request that their names be removed from such petition. Not later than the first day of September after the filing with the superintendent of public instruction, pursuant to the provisions of this section, of a proposal to transfer territory, the superintendent of public instruction shall either approve or disapprove such proposed transfer of territory and shall submit, in writing, to the county board of education filing such proposal, notice of his decision. If the decision of the superintendent of public instruction is an approval of the proposed transfer of territory, then the county board of education shall, within thirty days after receiving the superintendent's decision, adopt a resolution transferring the territory.

“Upon the adoption by a county board of education, as authorized by this section, of a resolution transferring territory to another county school district or to a city or exempted village school district such county board of education shall, forthwith, submit a copy of such resolution to the clerk of the board of education of the county, city or exempted village school district to which the territory is transferred. Such transfer of territory shall not be complete, however, until (1) a resolution accepting the transfer has been passed by a majority vote of the full membership of the board of education of the county, city or exempted village school district to which the territory is transferred, (2) an equitable division of the funds and indebtedness between the districts involved has been made by the county board of education making the transfer, and (3) a map showing the boundaries of the territory transferred has been filed, by the board of education accepting the transfer, with the county auditor of each county affected by the transfer. When such transfer is complete the legal title of the school property in the territory transferred shall be vested in the board of education of the school district to which the territory is transferred.”

Prior to this amendment Section 4831-13 related to the same subject but provided a procedure whereby the residents of the territory proposed

to be transferred from a local school district to an adjoining county school district or to a city or exempted village school district could by filing a protest prevent such change from being consummated.

1. Coming now to an examination of the present Section 4831-13 with especial reference to your first question, I call attention to the language of the first sentence:

“If a county board of education deems it advisable to *transfer territory from* a local school district within the county school district * * *.”
(Emphasis added.)

The natural meaning of the words, “transfer territory *from*”, certainly does not include the idea of taking an entire district. The use of such language implies that after taking something *from* the whole, whether it be a tangible article or an area of land, there is something remaining. This meaning, it appears to me is emphasized by the language of the second sentence of this section, to wit:

“A county board of education may accept a transfer of territory *from another county school district or from a city or exempted village* school district, and annex such territory to a contiguous portion of the county school district.”
(Emphasis added.)

It seems to me quite unreasonable to assume that this would imply authority for an entire county district or an entire city district or an entire exempted village district to be transferred to a contiguous local district. That it was not intended by the section under consideration to authorize the transfer of an entire district, seems further to be evidenced by the provisions of Sections 4831 and 4831-1, General Code which were parts of the same act as said Section 4831-13. In those other sections the express reference is to a transfer of “a part or all” of a district; and to the creation of a new district from “one or more local school districts or parts thereof.” If the general assembly had intended to allow the same latitude in Section 4831-13, it is quite reasonable to assume that it would have used appropriate language to express its intention.

2. The first paragraph of the section under consideration confers a power upon the county board of education acting on its own initiative, and appears to be complete in itself. There is no qualification found in the succeeding portions of this section which appears to limit the power

of the county board. There is no stipulation as to the time when the board may take this action, and the language of the first sentence seems to me to give finality to the action, by saying:

“Such transfer may be made by the county board of education by the adoption of a resolution providing for such transfer.”

It is my opinion that this statute gives the board absolute power to act, and it can act whenever it sees fit.

3. Having disposed of the questions arising out of the first paragraph, we turn to the remainder of the section, which appears to deal with an entirely different procedure, to wit, a transfer initiated by a petition of the electors residing in the territory sought to be transferred. This petition, which is to be signed by 75% of the qualified electors residing in such territory may only be filed prior to the first day of February in any even numbered year.

4. In view of my answer to your first question, it seems very clear that the action of the county board of education taken pursuant to the authority of the first paragraph of Section 4831-13 supra, is final, and that no provision whatsoever is made by the section entitling the residents or electors in the territory transferred to protest such action or to prevent it from becoming effective, and that no appeal of any character whatsoever is provided. The entire provision of the section relating to anything of the nature of an appeal is confined to those proceedings which have been initiated by the petition of 75% of the qualified electors to which I have referred. Nor do I find in any other section of the statutes any provision whereby the residents of the territory in question have the right to object to the proposed transfer, if it has been ordered by the county board on its own initiative. Sections 4831 and 4831-1, General Code, which, as I have stated, were part of the act in question, relate exclusively to proceedings by a county board of education to accomplish transfers of a part or all of a local school district to an adjoining district or districts in the county school district, and Section 4831-14, General Code, which was also a part of the same act, deals exclusively with the transfer of territory from a city school district or an exempted village school district to an adjoining city or exempted village district or to a county school district.

Accordingly, in specific answer to your questions it is my opinion:

1. The first paragraph of Section 4831-13, General Code, authorizes a county board of education to transfer a portion of the territory from a local school district to an adjoining city or exempted village school district but does not authorize the transfer of the entire territory of a local school district.

2. The first paragraph of Section 4831-13, General Code, authorizes a county board of education to transfer such territory at any time during any year.

3. Under the provisions of Section 4831-13, General Code, where it is sought by a petition of the electors residing in the territory of a local school district to transfer a portion of such district to a city or exempted village school district such petition may only be filed prior to the first day of February in an even numbered year.

4. Where a board of education has pursuant to the authority given it in the first paragraph of Section 4831-13, General Code, transferred territory from a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, the residents or electors in the territory so transferred have no recourse by way of petition or remonstrance.

Respectfully,

C. WILLIAM O'NEILL
Attorney General