

by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2730.

SCHOOL DISTRICTS—TRANSFER OF TERRITORY CONTROLLED BY SECTION 4692, GENERAL CODE—COUNTY BOARD OF EDUCATION SHOULD MAKE AN EQUITABLE DIVISION OF THE FUNDS AND INDEBTEDNESS BETWEEN SCHOOL DISTRICTS INVOLVED.

SYLLABUS:

1. *Transfers of school territory between districts of the same county school district are controlled by Section 4692, General Code.*
2. *The principles of equity and fair dealing should be followed by a county board of education in making an equitable division of the funds and indebtedness between school districts involved in a transfer of territory.*

COLUMBUS, OHIO, December 29, 1930.

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

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Considerable dispute has arisen under Sections 4692 and 4696, of the General Code, relative to the transfer of territory from one school district to another in Harrison Township of this county. A block of territory represented by approximately 90% of the persons residents therein, have made application to the county board of education to transfer their territory from Harrison Township to Center Township School District. These are both township school districts.

In Orange Township of this county, we have a block in which approximately 80% of the qualified electors residing therein are anticipating application for transfer to the Bowerston Special School District, Monroe Township, Harrison County, Ohio.

We desire your opinion as to the necessity of county boards to make these transfers upon the presentations of petitions. I understand you have a recent opinion under Section 4692, relative to this section being mandatory. If so, may I please have a copy of this opinion, as well as a specific answer to my questions.

In the proposition referred to above relative to the transfer in Orange Township, the Orange Township Rural School has just voted a \$34,000.00 bond issue. The Bowerston Special School District already has a \$20,000.00 bond issue. What division would be made if a block were transferred from Orange Township to Bowerston Special School District of this indebtedness, and what proportionate share, if any, would the residents of Orange Township have to pay? If Orange Township had voted before the application for

transfer, would any part of the Orange Township indebtedness, follow them providing the transfer was made or would they simply step in with the Bowerston Special School District taxation rate and continue under that project?"

By authority of Section 4692, General Code, school territory may be transferred by a county board of education from one school district of a county school district to another school district of the same county school district, that is, from one rural district to another rural district of the same county school district or from one village district to another village district of the same county district or from a village district to a rural district or vice versa, of the same county school district. Transfers to or from a city school district, exempted village district or county school district to another city district, county school district or exempted village school district are controlled by Section 4696, General Code.

From the terms of Section 4692, General Code, it will be observed that the transfers with which said section deals may be made by a county board of education upon its own initiative, subject to the control of the people to the extent only that the same may be done by remonstrance, as is provided by the statute. There is no provision in the statute for an application for transfer by interested residents or for the filing of a petition.

The filing of such a petition has no effect whatever on the rights and powers of the county board of education in the premises, except as it may be a guide to the county board as to the wishes of their constituents.

An exception to this rule exists however in case either or any of the school districts involved in a proposed transfer is a rural district in which the schools have been centralized by a vote of the people in accordance with Section 4726 of the General Code.

In the event it is proposed to transfer territory to or from a centralized school district, the same is done by authority of said Section 4692, General Code, but it may not be done unless a petition is filed therefor, signed by two-thirds of the qualified electors of the territory petitioning for the transfer. See Section 4727, General Code, and *Board of Education vs. Board of Education*, 104 O. S. 1.

When transfers are made, by authority of Section 4696, General Code, that is, from or to a city, exempted village or county school district, a petition must first be filed therefor, requesting the transfer. As a general rule, if that petition be signed by three-fourths of the resident electors of the territory sought to be transferred, a mandatory duty devolves upon the county board of education to make the transfer as requested. There are some exceptions to this rule which are not pertinent to your inquiry and which need not be noted at this time, as your inquiry has to do with transfers between districts of a county school district which transfers are governed by Section 4692, General Code.

In an opinion rendered by me under date of October 22, 1929, and addressed to the Prosecuting Attorney of Madison County, it was held as stated in the second, third and fourth branches of the syllabus:

"2. When a petition is filed with a county board of education whereby it is sought to transfer all or a portion of the territory of a non-centralized school district of a county school district to a contiguous city, exempted village, or county school district, which petition is signed by three-fourths of the electors residing in the territory sought to be transferred, it becomes the mandatory duty of the county board of education to make the transfer as prayed for in the petition, unless some part of the territory sought to be transferred had been transferred within five years from the date of the filing of the petition, in which case the duty to make the transfer is man-

datory only when it is approved by the state director of education. If the territory sought to be transferred is all or a part of a centralized rural school district, the duty devolving upon the county board to make the transfer is not mandatory. The transfer may, however, be made by the county board of education if the petition seeking the transfer is signed by two-thirds of the electors residing in the territory to be transferred.

3. The duty to transfer territory to or from a rural school district in which the schools are centralized by authority of Section 4726, General Code, is never mandatory. Such transfer may be made only after a petition signed by two-thirds of the electors residing in the territory to be transferred, has been filed with the county board of education, whether the proposed transfer is to be made by authority of Section 4692, General Code, or by that of Section 4696, General Code.

4. 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. Transfer 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 of education to be for the best interest 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."

This opinion may be found in the published Opinions of the Attorney General for 1929, at page 1630.

It does not appear from your communication whether any of the districts involved in the proposed transfers about which you inquire are centralized districts. They are all however districts of the Carroll County School District and any transfers made from one to the other would be made by authority of Section 4692, General Code. Whether any or all of them are centralized districts is immaterial so far as the duty of the county board of education to make the transfers, being mandatory, is concerned. Under no circumstances, no matter what kind of a petition may be filed with the county board of education does there devolve a mandatory duty on the board to make the transfers spoken of. You are mistaken in supposing that there has been a recent opinion by this office to the effect that a mandatory duty may be imposed upon a county board of education by authority of Section 4692, General Code, to transfer school territory.

It will be observed by the terms of said Section 4692, General Code, that when transfers are made by authority thereof, an equitable division of the funds and indebtedness of the districts involved in the transfer shall be made by the county board of education. An equitable division means a fair and proper division dependent in each case to some extent on the existing situation with reference to the districts involved in the division.

No hard and fast rule can be laid down which is a safe guide to follow in all cases. To some extent, the county board of education has discretionary power with reference to making this division. This question has been the subject of a great many opinions of this office, but no definite rule has been evolved that will fit all cases.

Quite an extended discussion of this question is had in an opinion of my predecessor, which is found in the published Opinions of the Attorney General for 1928, at page 733. The syllabus of this opinion reads as follows:

"1. A resolution of a county board of education which purports to make an equitable division of funds and indebtedness between two school

districts involved in a transfer of territory, operates on the funds and indebtedness of the districts as of the date of the resolution unless the resolution provides otherwise.

2. In making a division of the funds and indebtedness between two school districts involved in the transfer of territory from one to the other, consideration should be given not solely to the comparative tax valuation of the property located within the territory transferred and that of the entire districts before transfer, but to other factors bearing on the situation as well."

Your attention is also directed in this connection to an Opinion found in the Opinions of the Attorney General for 1929, at page 136, the third branch of the syllabus of which reads as follows:

"In making an equitable division of funds and indebtedness between school districts many elements are to be considered, and what is an equitable division in any specific case is dependent upon the facts peculiar to the immediate case."

See also, Opinions of the Attorney General for 1929, page 1199.

With reference to one of the proposed transfers about which you inquire, you state that Orange Township Rural School has just voted a \$34,000 bond issue, and you inquire in case some territory is transferred from Orange Township Rural District what part of this bond issue would be carried with the transferred territory.

Merely voting a bond issue does not create an indebtedness of the district and there will be no indebtedness in this district attributable to this bond issue until the bonds are sold or notes are sold in anticipation of the sale of the bonds. To state what proportion of the bonded indebtedness attributable to this bond issue would be assumed by the district to which a part of Orange Township Rural District may be transferred we would necessarily have to know what the status of the bond issue was at the date of the transfer. It is impossible to more specifically answer that question at this time.

With reference to the \$20,000 bond issue of the Bowerston Special District, the part of this bonded, indebtedness which would be assumed by another district to which a part of Bowerston District might be transferred, depends on what the bond issue was for, what permanent improvements were acquired with the proceeds of the bonds, and which district gets the benefit of those permanent improvements, what the prospective life of those improvements is, and many other factors which should be taken into consideration by the county board of education in making an equitable division of the funds and indebtedness of Bowerston District and any other district to which a part of Bowerston District may be transferred or from which territory is transferred to the Bowerston District.

In specific answer to your questions, therefore, I am of the opinion that the transfers mentioned by you may be made by the county board of education on its own initiative if it so desires, unless some district involved in the proposed transfer is a centralized district, in which case a petition must first be filed, signed by two-thirds of the resident electors of the territory sought to be transferred. In no case, however, no matter what kind of petition is filed, does the duty to make these transfers become mandatory. When the transfers are made, an equitable division of the funds and indebtedness between the districts involved in the transfer should be made by the county board of education making the transfer, taking into consideration in making the said division the principles of equity and fair dealing.

Respectfully,

GILBERT BETTMAN,

Attorney General.