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SCHOOLS: Districts — Transfer of territory between Intermediate Board of Education — Powers of.

Intermediate board of education may, in its discretion, detach from one school district and attach to another school district all or any part of territory requested by resolution or petition under Sec. 461 of Act 269, P.A. 1955, as amended.

No. 4119

September 8, 1964.

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An opinion is requested on the following question:

Is an intermediate board of education empowered to accept or reject all or any part of a petition for transfer of territory between school districts filed under Sec. 461 of Act 269, P.A. 1955, as amended?

Act 269, P.A. 1955, as amended, being C.L.S. 1961, § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the School Code of 1955.

Sec. 461 of the School Code of 1955 provides as follows:

"The county board of education may, *in its discretion*, detach territory from 1 district and attach it to another when requested to do so by resolution of the board of any district whose boundaries would be changed by such action, or when petitioned by not less than $\frac{2}{3}$ of the resident owners of the land to be transferred. The county board of education shall take final action in regard to the resolution or petition within a period of 60 days of the receipt of the resolution or petition. Only territory contiguous to a district may be transferred. Whenever the latest available taxable valuation of the area to be detached is more than 10% of the latest available taxable valuation of the entire school district from which it is to be detached, the action of the county board of education directing such detachment shall not be valid unless approved, at an annual or special election called for that purpose in the district from which the detachment is to be made, by an affirmative vote of a majority of the school tax electors of the district, voting thereon." (Emphasis supplied)

Act 190, P.A. 1962 amended the School Code of 1955 to add new sections 292a and 293a, supplanting the county school district with the intermediate school district under the supervision and control of an intermediate school district board of education. As its successor, the intermediate board of education possesses the rights and privileges of county boards of education.

Sec. 462 of the School Code of 1955 requires notice to be given of the meeting at which the intermediate board of education or joint boards of education shall consider the proposed alteration of school district boundaries, and under Sec. 464 of the School Code of 1955, supra, the intermediate board of education or the joint intermediate boards of education, having

approved alterations in the boundaries of the school districts, is required to cause the preparation of a map showing the boundaries of the affected districts.

Sec. 465 of the School Code of 1955 provides in pertinent part as follows:

"In the resolution ordering the transfer of property, the county board or joint boards shall determine the effective date of such transfer, which shall not be less than 10 days from the date of the resolution, * * *."

Consideration must also be given to Sec. 467 of the School Code of 1955, which provides in pertinent part as follows:

"Any one or more resident owners of land considered for transfer from 1 district to another, or the board of any district whose territory is affected, may appeal the action of the county board of education or joint boards in transferring such land, or the failure to transfer such land, or the action taken relative to the accounting determination, to the state board of education within 10 days after such action or determination by the county board of education or the joint boards. If the county board of education or the joint boards fail to take action within the time limit prescribed in section 461, the appeal may be made to the state board of education within 10 days following the termination of the period. * * *"

It is necessary to consider all of the aforesaid provisions of the School Code of 1955 in order to ascertain the legislative intent. *School District No. 3, Mt. Haley Township v. State Board of Education*, 364 Mich. 160 (1961).

Because the legislature has provided for an appeal from the action of the intermediate board of education, or the failure to transfer such land, or the failure to take any action whatsoever, the authority of the intermediate board of education to grant or deny the petition for transfer in its entirety is clear.

While the power in the intermediate board of education to transfer only a part of the territory requested to be detached from one school district and to attach to another is not explicitly conferred, in construing the provisions of Sec. 461 of the School Code of 1955, supra, I am persuaded that the legislature intended to authorize transfer of less than all of the territory requested.

The grant of power to make transfer of territory between school districts is to be exercised by the intermediate board of education "in its discretion," as set forth in Sec. 461 of the School Code of 1955, supra.

Discretion has been held to be a decision of what is just and proper in the circumstances, *The Styria, Scopinich, Claimant, v. Morgan*, 186 U.S. 1 (1902), the exercise of honest judgment on the facts before them by an administrative body. *Wilson v. Michigan State Board of Registration in Medicine*, 228 Mich. 25 (1924).

"* * * The term discretion itself involves the idea of choice, of an exercise of the will, of a determination made between competing considerations."

Spalding v. Spalding, 355 Mich. 382 (1959).

The jurisdiction of the intermediate board of education to order the detachment of territory from one school district and its attachment to another may be exercised upon filing a proper resolution of the board of education of any school district whose boundaries would be changed by such action or upon petition filed by not less than $\frac{2}{3}$ of the resident owners of the land to be transferred, after a meeting of the intermediate board of education pursuant to notice as required by law. Owners of land in the territory sought to be transferred would have an opportunity at the meeting to indicate their approval or objection to the proposed transfer of the territory in question. At the meeting of the intermediate board of education those resident owners who did not join in the petition, which may be pending before the intermediate board of education, could state their wishes and preferences.

As a result of the meeting at which all interested persons had an opportunity to be heard, the intermediate board of education could then exercise the discretion reposed in it by the legislature. To do what is just and proper on the facts and circumstances before it, the grant of power in the intermediate board of education must include the power to detach from one school district and to attach to another part but not all of the territory requested.

The discretion to be exercised by the intermediate board of education is something more than merely making a decision to accept or reject a proposal as drafted in a resolution from the district board or in a petition signed by resident owners of the land to be transferred. *The Styria, Scopinich, Claimant, v. Morgan, supra.*

The power of the intermediate board of education to transfer all or part of the territory requested is subject to the statutory requirement that only contiguous territory may be transferred as provided by Sec. 461 of the School Code of 1955. *School District No. 3, Mt. Haley Township v. State Board of Education, supra.*

Therefore, it is the opinion of the Attorney General that an intermediate board of education is empowered, in its discretion to detach from one school district and to attach to another all or part of the territory requested under Sec. 461 of Act 269, P.A. 1955, as amended.

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Attorney General.
