3108.

SCHOOL DISTRICT—ANNEXATION OF TERRITORY BY CITY FROM RURAL DISTRICT—PROPORTION OF INDEBTEDNESS—SPECIFIC FORMER OPINIONS MODIFIED.

SYLLABUS:

In the construction of Section 4690, General Code, the expression 'any indebtedness on the school property in the territory annexed' shall be held to mean such indebtedness as, in the ordinary course of the administration of school affairs in the original district by which the indebtedness has been incurred, would have been paid by the levy and collection of taxes upon the taxable property in the territory annexed.

2. *In applying that statute to a case where territory has been detached from one school district and annexed to another, where the original district from which territory is detached has outstanding indebtedness, the district to which such territory is annexed shall be held to pay such proportion of such indebtedness as the tax valuation of the territory detached bears to the tax valuation of the property remaining.*

3. *In view of the decision of the Supreme Court in the case of State ex rel. Board of Education of the South Zanesville Village School District* vs. *Bateman et al. cause No. 21384, decided December 26, 1928, 119 O. S. 475, the following previous opinions of this office should be modified:*

An opinion of the Attorney General rendered in 1926, and reported in the Opinions of the Attorney General for that year, at page 424; Opinions reported in Opinions of the Attorney General for 1927, at pages 1311, 1414, 1979 and 2516; and Opinion No. 1946 rendered under date of April 9, 1928, and addressed to the Prosecuting Attorney of Montgomery County, Ohio.

COLUMBUS, OHIO, January 5, 1929.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, as follows:

> "A part of Brock Park Village which is in the Berea Village School District has petitioned the County Commissioners for annexation to the City of Cleveland, subject of course to the passage of proper legislation by the City of Cleveland annexing this territory.
>
> Berea Village School District has recently erected a high school costing $650,000. The portion of Brock Park desiring to be annexed to the City of Cleveland covers approximately three million dollars of taxable property. Does this portion contemplating annexation still pay its proportionate share of bonded indebtedness for the school building which is out of the territory to be annexed?
>
> Section 4690 of the General Code seems to make no provision for apportionment of indebtedness in cases of this kind."

When territory is annexed to a city or village, the status of the annexed territory, in its relation to a particular school district, before and after annexation, is governed by Section 4690, General Code, which reads as follows:

"When territory is annexed to a city or village, such territory thereby becomes a part of the city or village school district, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city or village school district. Provided, however, if there be any indebtedness on the school property in the territory annexed, the board of education of the city or village school district, shall assume such indebtedness and shall levy a tax annually sufficient to pay such indebtedness and shall pay to the board of education of the school district or districts from which such territory was detached, the amount of money collected from such levy as it becomes due."

In cause No. 21384, *State ex rel. Board of Education of the South Zanesville Village School District* vs. *Bateman et al., Board of Education of the Zanesville City School District, et al.,* decided by the Supreme Court of Ohio on December 26, 1928, it was held as stated in the syllabus:

"1. In the construction of Section 4690, General Code, the expression 'any indebtedness on the school property in the territory annexed' shall be held to mean such indebtedness as, in the ordinary course of the administration of school affairs in the original district by which the indebtedness has been incurred, would have been paid by the levy and collection of taxes upon the taxable property in the territory annexed.

2. In applying that statute to a case where territory has been detached from one school district and annexed to another, where the original district from which territory is detached has outstanding indebtedness, the district to which such territory is annexed shall be held to pay such proportion of such indebtedness as the tax valuation of the territory detached bears to the tax valuation of the property remaining."

This case was an original suit in the Supreme Court of Ohio, in which the relator prayed for a writ of mandamus to require the Board of Education of the Zanesville City School District to assume a portion of the indebtedness which was an obligation of the South Zanesville School District prior to the severance of a portion of the territory of the said South Zanesville School District and its annexation to the Zanesville City School District.

It appears that on April 1, 1928, annexation proceedings were completed whereby certain territory was annexed to the City of Zanesville. This annexed territory had previously been a part of the South Zanesville Village School District, and by reason of its annexation to the City of Zanesville did by force of Section 4690, supra, thus automatically become attached to the City School District of the City of Zanesville.

In the course of the opinion rendered by Chief Justice Marshall in the above case, it is said:

"The issue is joined by a demurrer to the petition, which of course admits the truth of all well-pleaded facts, and we therefore look to the allegations of the petition alone. These allegations are that the Village School District of South Zanesville, at the time of the loss of territory, had a net indebtedness of $78,165.56; that the appraisement for purposes of taxation of the taxable property severed from the South Zanesville District is $1,716,320, and that the total tax valuation of all property of the South Zanesville district before division was $3,374,720. It therefore appears that

50.86% of all the taxable property in the district was taken away and added to the Zanesville district. It is sought by this proceeding to compel the board of education of the Zanesville district to assume a like percentage of the amount of the indebtedness which was an obligation against the South Zanesville district before division, in the sum of $39,755.

The cause involves the construction of Section 4690, General Code, which provides:

* * * * * *

It is insisted by respondents that this language, properly interpreted, calls upon the Zanesville district to assume only such indebtedness as is charged against the school buildings and equipment thereof located within the territory severed from the one district and annexed to the other. Counsel for relator argues for the broader interpretation, which would include all property within the territory severed and annexed which is subject to taxation for the maintenance of schools.

The petition alleges that the school building in the property detached cost for erection and equipment the sum of $26,900, while the school buildings and equipment in the territory remaining in the South Zanesville district cost approximately $80,000. The petition further recites that 115 pupils of school age reside in the territory transferred to the Zanesville district, and that 450 pupils reside in the territory remaining in the South Zanesville district.

It is difficult to see how these facts relating to value of school buildings and number of pupils required to be taught have any bearing upon the controversy, except that they present a strong equity in favor of giving relief to the South Zanesville district. We are, however, solely concerned with the proper interpretation of the section of the General Code above quoted. As bearing upon this interpretation, it is proper to refer to other related sections of the Code.

It will not be disputed that no indebtedness can attach to the school property itself; that is to say, no lien can attach thereto, either for the security of mechanics, or by way of mortgage or other lien executed by a board of education. No such property could be sold as upon execution. All such property is exempt from taxation. The members of a board of education cannot be individually held liable for indebtedness contracted in the usual and regular way, in compliance with law, and for the use and benefit of the schools of the district. The only manner in which the obligations of a board of education can be enforced is by compelling a levy and collection of taxes upon all taxable property within the jurisdiction of the board.

The difficulty about this controversy turns upon the proper meaning to be given to the term 'school property.' We are of the opinion that school property does not mean the school buildings and equipment utilized in conducting the schools, but rather all the taxable property within the district subject to taxation. No other interpretation would produce equitable results. The language of the statute is quite as susceptible of this interpretation as of any other. The Legislature would not be presumed to have intended that term to be employed in any manner which would produce inequitable and unjust results."

In view of the foregoing decision in the Zanesville case, it seems that the proper interpretation of Section 4690, General Code, is to the effect that when

territory has been detached from one school district and annexed to another by force of said statute, and the original district from which the territory is detached has outstanding indebtedness, no matter for what purpose the indebtedness had been incurred, the district to which the territory is annexed shall be held to pay such proportion of the indebtedness as the tax valuation of the territory detached bears to the tax valuation of the property remaining, regardless of the location of the school buildings and school lots or of any other consideration.

In specific answer to your question, and in the light of the foregoing decision, I am constrained to hold that the Cleveland City School District will, if a part of Brock Park Village is annexed to the City of Cleveland, as petitioned for, be held to pay such proportion of any indebtedness, then existing, of the Berea Village School District as the tax valuation of the territory detached from the Berea Village School District bears to the tax valuation of the property remaining in said district after the annexation becomes effective.

By reason of the decision of the Supreme Court above referred to, the following opinions of this office heretofore rendered should be modified:

An opinion of the Attorney General rendered in 1926, and reported in the Opinions of the Attorney General for that year, at page 424; Opinions reported in Opinions of the Attorney General for 1927, at pages 1311, 1414, 1979 and 2516; and Opinion No. 1946 rendered under date of April 9, 1928, and addressed to the Prosecuting Attorney of Montgomery County, Ohio.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3109.

APPROVAL, BONDS OF OTTAWA COUNTY—$15,000.00.

COLUMBUS, OHIO, January 7, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

3110.

AMENDED LEASE—CANAL LANDS—WHAT LANDS INCLUDED IN CONVEYANCE—DETERMINATION OF CREDIT ENTITLED LESSEE UPON SALE BY STATE OF PART OF SUCH LANDS.

SYLLABUS:

1. *By the provisions of the amended lease executed by the Governor of Ohio in* 1915 *conveying to the City of Cincinnati certain canal lands for street and boulevard purposes, made in pursuance to the act of the* 79th *General Assembly* (102 O. L. 168) *and the acts amendatory thereof and supplementary thereto, there were conveyed to said city all the lands comprising the Miami and Erie canal system and used in connection with its operation between the points designated in said lease.*