

a finance company purchasing a note from an automobile dealer charges in the re-financing of the original note a rate of interest greater than 8% per annum, which includes charges and interest as defined in Section 6346-1, General Code, it is engaging in the business of making loans and should be licensed under the provisions of Section 6346-1, et seq., General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

481.

TRANSFER OF TERRITORY ONE SCHOOL DISTRICT TO
ANOTHER—LEVY AND COLLECTION OF TAX—DUTY
OF COUNTY TREASURER—YEARS 1936 AND 1937.

SYLLABUS:

When a transfer has been completed of the territory of a school district in one county to a school district within another county school district, and a different school tax rate has been established and levied in each said school district, the treasurer of each county must continue collecting the school tax rate for the year 1936, that has been levied in the school district within each respective county; the treasurer of the county, wherein is situated the territory of the school district that was transferred for school purposes, should at the tax distribution period for each respective half year of 1936, forward to the school district to which the transfer has been made, the amount due to the transferred school district; and for the year 1937, and annually thereafter, the same school tax rate must be established and levied upon all the school territory included in the new enlarged school district.

COLUMBUS, OHIO, April 17, 1937.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Warren County, Lebanon, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

“This office respectfully requests your opinion upon the following:

A petition in proper form, requesting the transfer of cer-

tain school territory in Madison Township, Butler County, Ohio, to the Carlisle, Warren County, Ohio, school district, has been filed. The Budget Commission of Butler County, Ohio, has given the Madison Township School District a school tax rate of 3.3 mills within the 10 mill limitation; whereas, our Budget Commission has given the existing Carlisle School District a school tax rate of 4.2 mills within said limitation.

In the event this transfer is completed, I respectfully ask your opinion as to whether or not the Warren County rate of 4.2 mills should then be levied upon all the territory in the Carlisle School District, including the new territory acquired by transfer, or whether the two rates heretofore established should be respectively levied and collected within the same district."

I assume that the transfer of the territory in the Madison Township School District in the Butler County School District to the Carlisle School District within the Warren County School District is being made in conformity with Section 4696, General Code, which provides 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 per cent 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.

In any case before such a transfer shall be complete (1) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be (2) an equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, which in the case of territory transferred to a county school district shall mean the board of education of the county school district to which such territory is transferred, and (3) a map shall be filed with the county auditor of each county affected by the transfer.

When such transfer is complete the legal title of the school

property shall become vested in the board of education of the school district to which such territory is transferred.”

I further assume, that in accordance with Sections 5625-20, et seq., General Code: that, after July 20, 1936, the Madison Township School District received from the Budget Commission of Butler County, the “certification” with an estimate by the Auditor of Butler County of the rate necessary to be levied by said Madison Township School District; that, Madison Township School District by resolution authorized a 3.3 mills levy and certified said levy of 3.3 mills to the Auditor of Butler County before October 1, 1936; that, likewise, after July 20, 1936, the Carlisle School District received from the Budget Commission of Warren County, the “certification” with an estimate by the Auditor of Warren County of the rate necessary to be levied by said Carlisle School District; that, Carlisle School District by resolution authorized a 4.2 mills levy and certified said levy of 4.2 mills to the Auditor of Warren County before October 1, 1936; that, the Treasurer of Butler County has collected or is now in the process of collecting, the school tax rate of 3.3 mills for the first half of 1936, from the taxpayers of the Madison Township School District, and said school tax rate of 3.3 mills for the second half of 1936, will be payable to the Treasurer of Butler County, June, 1937; and that likewise, the Treasurer of Warren County has collected, or, is now in the process of collecting, the school tax rate of 4.2 mills for the first half of 1936, from the taxpayers of the Carlisle School District and said school tax rate of 4.2 mills for the second half of 1936, will be payable to the Treasurer of Warren County, June, 1937.

In *State ex rel. Board of Education vs. Cappeller*, 6 O. Dec. Rep., page 481, it is said:

“Whether taxes are collected upon such duplicate depends on whether they are levied upon it. The condition of things at the time of the levy, therefore, controls.”

In the event this transfer of school territory is completed, it is my opinion: that, the two school tax rates heretofore established and levied for the year 1936, must be collected, separately; that, the Treasurer of Butler County must continue collecting the school tax rate of 3.3 mills for the year 1936, from the taxpayers of the Madison Township School District; and that, the Treasurer of Warren County must continue collecting the school tax rate of 4.2 mills for the year 1936, from the taxpayers of the Carlisle School District. It is further my opinion: that, after the transfer of the Madison Township School District has been completed, the Treasurer of Butler County should at the tax dis-

tribution period for each respective half year of 1936, forward to the Carlisle School District the amount due to the Madison Township School District.

In an opinion rendered by a former Attorney General, Opinions of the Attorney General for 1930, Vol. I, page 474, wherein it discussed the transfer of territory of a school district by a county board of education to an adjacent county school district, it was held:

“2. * * the legal title of the school property in the territory transferred becomes vested in the board of education of the school district to which the territory is annexed, and school taxes thereafter collected from such territory should be distributed at the next tax distribution period to the school district receiving the territory.”

After the completion of the transfer of the school territory of the Madison Township School District, the school territory of the Carlisle School District together with the territory of the Madison Township School District attached to it for school purposes, shall constitute an enlarged Carlisle School District.

Section 4696, *supra*, contains the following provision:

“When such transfer is complete the legal title of the school property shall become vested in the board of education of the school district to which such territory is transferred.”

This means that the school property of the Madison Township School District becomes the property of the enlarged Carlisle School District.

The law is well established that “territory attached to a school district from adjoining districts should be taxed with the district to which it is removed.” 36 O. J., page 105, Section 68.

It therefore is my opinion: that, for the year 1937, and annually thereafter, the same school tax rate must be established and levied upon all the school territory included in the enlarged Carlisle School District.

In an opinion rendered by a former Attorney General, Opinions of the Attorney General for 1919, page 753, it was stated:

“Where territory is transferred in regular and legal manner to another school district, it then and thereafter becomes an integral part of the district to which it is transferred and school taxes in such enlarged district must thereafter be spread uniformly over the whole of such enlarged district. There is nothing unreasonable in this, because persons in the territory

to be transferred are more likely seeking transfer to such exempted village or city school district, as the case may be, in order to have better educational advantages in the way of better teachers, better buildings and accommodations, all of which have been provided by the village school district at considerable expense to itself, following which there might be an unpaid debt or an increased tax rate. * * then it is only fair they should pay their equal share of the cost of such added advantages, for that, in the final analysis, is usually the reason that transfer to an exempted village school district has been sought."

Specifically answering your questions it is my opinion:

When a transfer has been completed of the territory of Madison Township School District of Butler County School District, having an established school tax rate of 3.3 mills, to the Carlisle School District within the Warren County School District, having an established school tax rate of 4.2 mills, that, said two school tax rates established and levied for the year 1936, must be collected, separately; that, the Treasurer of Butler County must continue collecting the school tax rate of 3.3 mills for the year 1936, from the taxpayers of the Madison Township School District; that the Treasurer of Warren County must continue collecting the school tax rate of 4.2 mills for the year 1936, from the taxpayers of the Carlisle School District; that, the Treasurer of Butler County should at the tax distribution period for each respective half year of 1936, forward to the Carlisle School District the amount due to the Madison Township School District; and that, for the year 1937, and annually thereafter, the same school tax rate must be established and levied upon all the school territory included in the enlarged Carlisle School District.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

482.

RELIEF—FEDERAL MONEY UNEXPENDED—IDENTITY RETAINED—WHEN—ACCOUNTING.

SYLLABUS:

Unexpended Federal moneys given the State of Ohio by the Federal Emergency Relief Administration for the purpose of aiding and meeting