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ANNEXATION OF SCHOOL DISTRICT, BY MUNICIPAL  
SCHOOL DISTRICT—TITLE TO FACILITIES PASSES.

## SYLLABUS:

Where a city annexes part of the territory of a local school district and the transfer of territory has been approved by the state board of education, title to school buildings, school real estate and school facilities, located in such annexed territory, becomes vested in the board of education of the city school district.

Columbus, Ohio, August 3, 1959

Hon. Paul J. Mikus, Prosecuting Attorney  
Lorain County, Elyria, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Our office respectfully requests an opinion from your office on the following questions: ‘Does the title of school buildings, school real estate and facilities transfer from the local school district to the board of education of a city to which the area of the local school district containing said school facilities, etc., is annexed?’

“We would like to add that for the purpose of the above question you should consider that the area of the local school district containing said school facilities is approximately one-eighth to one-tenth of the total area and total school population of such local school district. There is now in the process of consideration two such instances; one involving annexation of the area containing the school buildings and facilities of the Clearview Local School District to the City of Lorain, and the second involving annexation of the area containing the buildings and facilities of Elyria Township Local School District to the City of Elyria.

“On January 2, 1959, as legal counsel for the Clearview Local School District, we have advised said board that title to school buildings and facilities of said district in an area seeking annexation to the City of Lorain would not be lost to said school board. The same opinion would apply to the similar conditions existing in the area of Elyria Township seeking annexation to the City of Elyria. A copy of such opinion is herein enclosed for your consideration.

“You will also find enclosed herein a copy of a letter under date of March 18, 1959, over the signature of M. Byron Morton, Assistant Superintendent of Public Instruction, of the Ohio Department of Education, addressed to C. A. Gibbens, Lorain County Superintendent of Schools, wherein Mr. Morton holds an opinion that when a portion of a school district is transferred to another school district, and a school building is located within the territory so transferred, . . . legal title to the school building becomes vested in the board of education of the district to which the territory is transferred.’ Our office considers it important to emphasize that the area under consideration for transfer is a small fraction, much less than one-half, and in the above instance approximately one-eighth.

“Our office would be pleased to send a member of our staff to confer and discuss this request with your office should you deem it advantageous.”

Section 3311.06, Revised Code, governs the procedure in the annexation by a municipal corporation of territory which comprises part of a school district. This section has been amended by Amended Senate Bill No. 297 of the 103rd General Assembly, such amendment to become effective on October 2, 1959, thus, for the purpose of this opinion, it will be necessary to consider the effect of such section as it now stands and as it will be as of October 2, 1959.

Section 3311.06, Revised Code, now and until October 2, 1959, reads as follows :

“The territory included within the boundaries of a city, local, exempted village, or joint vocational school district shall be contiguous except where a natural island forms an integral part of the district.

“When territory is annexed to a city or village, such territory thereby becomes a part of the city school district or the school district of which the village is a part, *and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city school district or the school district of which the village is a part*; provided, that when

the territory so annexed to a city or village comprises part but not all of the territory of a school district, the said territory shall become a part of the said city school district or the school district of which the village is a part only upon the approval by the state board of education. In the event territory is transferred from one school district to another under this section, an equitable division of the funds and indebtedness between the districts involved shall be made under the supervision of the state board of education and that a board's decision shall be final. After the effective date of this section, no action with regard to the transfer of school district territory pursuant to annexation to a municipality shall be completed in any other manner than that prescribed by this section." (Emphasis added)

Your question is concerned with the title of school buildings, school real estate and school facilities of the annexed territory thereby posing the question whether such items are "school property" within the purview of Section 3311.06, *supra*.

The statement in Section 3311.06, *supra*, that "the legal title to school property in such territory for school purposes shall be vested in the board of education of the city school district or the school district of which the village is a part" appears to me to mean that the title to school buildings, school real estate and school facilities of the annexed territory would be transferred to the school district to which the territory is annexed. That is, the words "school property" would seem to include such items. Also, it is difficult to see what school property could be vested in the city or village district other than school buildings, school real estate and school facilities. Certainly the title to other property in the territory could not be *vested* in the city or village district.

Your question of interpretation seems to have arisen from the definition of the words "school property" as given in the case of *State, ex rel. v. Bateman*, 119 Ohio St., 475, at pages 478 and 379, in which the Supreme Court said:

"\* \* \* 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. \* \* \*” (Followed in *State ex Van Buren Twp. Bd. of Ed. v. Oakwood Bd. of Ed.*, 32 Ohio Law Abs., 367, (1938))

In both of the cases cited above the question involved interpretation of “school property” as contained in the *proviso* of Section 4690, General Code, (now Section 3311.06, Revised Code) which section 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.*” (Emphasis added)

You will note that the court in *State, ex rel. v. Bateman, supra*, was concerned with “any indebtedness on the school property annexed” and did not deal with “the title to school property annexed.” The same is true of the case of *State ex rel. Van Buren Twp. Bd. of Ed. v. Oakwood Bd. of Ed., supra*. In the *Bateman* case the question was whether the city school district would assume indebtedness on school property or on taxable property in the territory. The court ruled that since there could not be any indebtedness on school property, itself, the words “school property” must apply to all taxable property in the territory. Actually, in this case, there was school property in the territory annexed but no question was raised over whether this property was transferred to the city district. I am of the opinion, therefore, that the definition of “school property” as given in the *Bateman* case does not apply to the words “school property” as used in present Section 3311.06, *supra*; and, thus, where a city annexes territory of a local school district, title to school buildings, school real estate and school facilities, located in such annexed territory, is vested in the city school district.

As I noted at the outset of this opinion, Section 3311.06, *supra*, has been amended by the 103rd General Assembly, effective October 2, 1959. New language of the section pertinent in the instant case reads as follows:

“\* \* \* In the event such transferred territory includes real property owned by a school district, the state board of education,

as part of such division of funds and indebtedness, shall determine the true value in money of such real property and all buildings or other improvements thereon. The board of education of the school district receiving such territory shall forthwith pay to the board of education of the school district losing such territory such true value in money of such real property, buildings and improvements less such percentage of the true value in money of each school building located on such real property as is represented by the ratio of the total enrollment in day classes of the pupils residing in the territory transferred enrolled at such school building in the school year in which such annexation proceedings were commenced to the total enrollment in day classes of all pupils residing in the school district losing such territory enrolled at such school building in such school year. The school district receiving such payment shall place the proceeds thereof in its sinking fund or bond retirement fund. \* \* \*

Thus, under the new law there will be no question about the title to school property transferred since the section definitely states that real property owned by a school district is transferred, and provides a formula for reimbursement for such property.

You will also note that the new law will apply to all proceedings *pending on* or commenced after October 2, 1959. Section 3311.06, Revised Code, as effective October 2, 1959, reads in part as follows:

“\* \* \* No transfer of school district territory or division of funds and indebtedness incident thereto, pursuant to the annexation of territory to a city or village shall be completed in any other manner than that prescribed by this section regardless of the date of the commencement of such annexation proceedings, and this section shall apply to all proceedings for such transfers and divisions of funds and indebtedness pending or commenced on or after the effective date of this section.”

I might also note that both under the present Section 3311.06, *supra*, and under such section as amended, an annexed territory comprising part of a school district would not become a part of the city school district until approval of such transfer is given by the state board of education.

Accordingly, answering your specific question, it is my opinion and you are advised that where a city annexes part of the territory of a local school district and the transfer of territory has been approved by the state board of education, title to school buildings, school real estate and school

facilities, located in such annexed territory, becomes vested in the board of education of the city school district.

Respectfully,  
MARK McELROY  
Attorney General