

88.

APPROVAL, BONDS OF MEDINA VILLAGE SCHOOL DISTRICT, MEDINA COUNTY, \$220,000, TO ERECT A FIREPROOF SCHOOL BUILDING.

COLUMBUS, OHIO, February 20, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

89.

SCHOOLS—DISSOLUTION OF DISTRICT—BONDED INDEBTEDNESS IS CHARGE UPON PROPERTY OF DISTRICT CREATING IT—PROCEEDS OF BOND ISSUE CANNOT BE TRANSFERRED TO NEWLY CREATED DISTRICT—SPECIAL THREE MILL LEVY OF DISSOLVING DISTRICT SHOULD BE DISCONTINUED.

SYLLABUS:

1. Existing bonded indebtedness of a school district is a charge upon the property only of the district creating it and may not become a charge upon the property of the district formed by the dissolution of a rural district and its joining to another rural district under the provisions of sections 4735-1 and 4735-2, General Code.
2. If the tax levy for the payment of such bonded indebtedness has not been made by the board of education of the rural district dissolved, said district as a separate taxing district, and its board of education as its taxing authority, must continue for the purpose of levying a tax for the payment of such indebtedness.
3. Where part of such bonded indebtedness is an issue of bonds for building fund purposes and a large amount of the proceeds of such bonds remain in the building fund of the dissolved district, such surplus cannot be transferred to or used by the board of education of the newly created district for any purpose and should, under the provisions of section 5654 G. C., be transferred to the sinking fund of the district about to be dissolved.
4. Where the rural district voting to dissolve has in effect a special three mill levy for a period of five years, such three mill levy should be discontinued and in any event, in view of the provisions of section 5654, could not be used by the board of education of the newly created district.

COLUMBUS, OHIO, February 21, 1923.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Yours of recent date received in which you submit for an opinion the following statement of facts and questions:

“By a vote of the people in Van Buren Special School District No. 8, under section 4735-1 G. C., the district was dissolved. This would mean that Van Buren township school district would now take over what was once Van Buren Special School District No. 8.

"The following bonded indebtedness still exists or did exist in Van Buren Special School District No. 8 at the time said district was dissolved:

Date of Issue	Amount Issued	Outstanding
1914 Building-----	\$15,000.00	\$7,000.00
1916 Refunding-----	8,000.00	6,500.00
1921 Building-----	40,000.00	40,000.00
Total indebtedness-----		\$53,500.00

On August 10, 1920, the people in Van Buren Special School District No. 8 voted for an additional three mill levy for a period of five years. This has been on the tax duplicate for the years 1921 and 1922.

At the present time there is \$37,956.82 in the building fund. Only a small portion of the \$40,000.00 bond issue has been used. This was used for lots purchased and repairs on old buildings.

Under date of February 2, 1915, Attorney General Edward C. Turner rendered an opinion, the head note of which is as follows:

'Prior existing bonded indebtedness of a school district is a charge upon the property only of the district creating it, and may not become a charge upon the property of a district formed by the union of two districts under the provisions of sections 4735-1 and 4735-2 G. C.'

Question 1. We desire to know whether or not under the statement of facts heretofore set out the bonded indebtedness of Van Buren school district No. 8 would be an obligation against the property in the district where the indebtedness was created or an obligation against the new district?

Question 2. If it is held that the indebtedness would stand against the property of the district where created, would the board of education of that district go out of existence?

Question 3. Can the \$37,956.82 now in the building fund be transferred to the board of education of Van Buren township and be used by them in building a new building or repairing an old building outside of the special school district?

Question 4. Can the three mill additional levy which has three years more to run still be levied and collected in the special school district and be used by the Van Buren township school district?"

Mr. Clifton, of your office, also transmitted transcript relative to the vote of the electors to abandon and join under the provisions of section 4735-1 General Code, also transcript of resolution of the board of education for issuance of the bonds referred to.

An examination of the transcript *in re* election indicates a proper ballot was submitted and resulted in a majority of 409 votes out of a total of 745 votes cast, thereby determining to dissolve and join.

Your statement of fact refers to an opinion rendered by this department under date of February 2, 1915, and found in Opinions of the Attorney General for 1915 (Vol. I, p. 86). In that opinion the sections referred to, 4735-1 and 4735-2 General Code, are discussed at some length.

Concurring in the opinion there expressed, I assume that what you refer to as "Van Buren Special School District No. 8" means a rural school district and that "Van Buren township school district" is likewise a rural school district as classi-

fied in section 4679, General Code. If this be true, the vote of the electors of the first mentioned district to dissolve and join the second mentioned district simply means the dissolution of one rural district and its joining to a contiguous rural district.

Answering your first question, your attention is directed to the provisions of section 4735-1 and 4735-2, General Code, which read as follows:

Sec. 4735-1. "When a petition signed by not less than one-fourth of the electors residing within the territory constituting a rural school district, praying that the rural district be dissolved and joined to a contiguous rural or village district, is presented to the board of education of such district; or when such board, by a majority vote of the full membership thereof, shall decide to submit the question to dissolve and join a contiguous rural or village district, the board shall fix the time of holding such election at a special or general election. The clerk of the board of such district shall notify the deputy state supervisors of elections, of the date of such election and the purposes thereof, and such deputy state supervisors shall provide therefor. The clerk of the board of education shall post notices thereof in five public places within the district. The result shall be determined by a majority vote of such electors."

Sec. 4735-2. "The legal title of the property of the rural school district, in case such rural district is dissolved and joined to a rural or village district as provided in section 4735-1, shall become vested in the board of education of the rural or village school district to which such district is joined. The school fund of such dissolved rural district shall become a part of the fund of the rural or village school district which it voted to join. The dissolution of such district shall not be complete until the board of education of the district has provided for the payment of any indebtedness that may exist."

Concurring in the opinion above indicated, you are advised that the action alone of the electors in Van Buren special school district No. 8, whereby said district is dissolved and joined to Van Buren township school district, will not justify the transfer of the bonded indebtedness of Van Buren special school district No. 8 to the new district thus created. Therefore, said bonded indebtedness remains a charge upon the property only of the district creating it and may not become a charge upon the property of the district thus newly created under the provisions of sections 4735-1 and 4735-2, General Code.

In answer to your second question, see also a former opinion of this office found in Opinions of the Attorney General for 1915, Vol. I, p. 554, the syllabus of which is as follows:

"Upon the dissolution of a village school district, the title to the school property of said district passes to and vests in the board of education of the contiguous rural school district to which such village school district is joined, but only the property within the limits of said village school district will be subject to a tax levy for the payment of any indebtedness incurred by the board of education of said village school district, and the board of education of said rural school district will have no authority in law to assume said indebtedness or to levy a tax to provide a fund for the payment thereof either upon the property within the limits of said village school district or upon the general duplicate of said rural school district.

"If the levy for the payment of such indebtedness has not been made by said board of education of said village school district at the time of dissolution, said village school district as a separate taxing district, and its board of education as its taxing authority, must continue for the purpose only of levying a tax for the payment of such indebtedness until such time as said indebtedness will have been paid."

Although the dissolution of the school district referred to in the last mentioned opinion was brought about under the provisions of section 4682-1, General Code, et seq., I am of the opinion that the reasoning expressed in the second part of the syllabus will apply to your second question. I am of the opinion that if the levy for the payment of the bonded indebtedness had not been made by said board of education of said Van Buren special district No. 8 at the time of dissolution, said district as a separate taxing district, and its board of education as its taxing authority, must continue for the purpose of levying a tax for the payment of such indebtedness until such time as such indebtedness shall have been paid.

In answer to your third question, your attention is directed to section 5654 G. C., which provides as follows:

"The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund."

This section clearly provides the proceeds of a bond issue *shall not be used for any other purpose than that for which the same was issued*. For what purpose were the bonds in the instant case issued? Clearly they were issued for the purpose indicated in the several resolutions and these purpose resolutions, by the very nature of the situation, could have no effect beyond the confines of the district of the board of education passing such resolutions. Therefore the purpose of the bonds were unquestionably confined to the Van Buren special school district No. 8 and could not be used by the newly created district caused by the dissolution of Van Buren special school district No. 8 and the joining thereof to Van Buren township school district. In this connection it may be well argued that inasmuch as the \$40,000 bond issue was voted by the electors of Van Buren special school district No. 8, it was a self imposed burden, the benefit of which could not by any rule of equity and justice be shared in by the schools of the new district created by the dissolution and joining.

Section 5654, General Code, also provides that when there is in the treasury of any school district *the proceeds of a bond issue which cannot be used*, or which is not needed for the purpose for which the bonds were issued, all of such surplus shall be transferred *immediately* by the board of education having charge of said surplus to the sinking fund of such school district and thereafter shall be subject to the uses of such sinking fund.

Section 7614, General Code, provides for sinking funds as follows:

"The board of education of every district shall provide by a tax levy for the payment of the annual interest on its bonded indebtedness, for the payment of its serial bonds as they mature, and for a sinking fund for the extinguishment of its other bonded indebtedness, which funds shall be managed and controlled by a board of commissioners designated as the board of commissioners of the sinking fund of _____' (inserting the name of the district), which shall be composed of five electors thereof, and be appointed by the Common Pleas Court of the county in which such district is chiefly located, except that, in city or village district the board of commissioners of the sinking fund of the city or village may be the board of the school district. Such commissioners shall serve without compensation and give such bond as the board of education requires and approves. Any surety company authorized to sign such bonds may be accepted by such board of education as surety. The cost thereof, together with all necessary expenses of such commissioners, shall be paid by them out of the funds under their control."

In a former opinion of this office, found in Opinions of the Attorney General for 1913, Vol. II, page 1139, the syllabus reads:

"Under section 7614, General Code, it is the mandatory duty of a board of education having a funded debt, to levy for the retirement of the bond and payment of interest, and to create a sinking fund commission, and even though such commission be not created, a levy specifically made for the payment of bonds and interest must be credited to the sinking and separated from other funds of the district."

Therefore, in answer to your third question, you are advised that the surplus now in the building fund of the board of education of the Van Buren special school district No. 8 cannot be transferred to or used by the board of education of the Van Buren township school district for any purpose and should be immediately transferred to the sinking fund of the Van Buren special school district No. 8.

In answer to your fourth question, which is as follows:

"Can the three mill additional levy which has three years more to run still be levied and collected in the special school district and be used by the Van Buren township school district?"

Your attention is directed to sections 5649-5 and 5649-5a, General Code, under the provisions of which the electors of the district voted the additional three mill levy. Under a former opinion of this office, Opinions of the Attorney General for 1920, Vol. I, p. 349, it was held that the effect of the vote in the last above mentioned sections is merely to authorize the making of the levy and it is not in and of itself effective as a levy, but would require further action by the levying authority.

In view of this I am of the opinion that the levying authority (board of education) would have power to discontinue such levy and should discontinue it at once.

I am also of the opinion that in view of the provisions of section 5654, General Code, hereinbefore quoted, the special three mill levy, if continued, would also fall within the provisions of said section and *could not be used for any other purpose than that for which the same was levied*. The same reasoning and the same argu-

ment I have used in answer to your third question would be as fully applicable to your fourth question.

Therefore, in answer to your fourth question, you are advised that the special three mill levy should be discontinued and in any event could not be used by the board of education of the Van Buren township school district.

In connection with the answer to your second question, it is not meant that the board of education of Van Buren special school district No. 8 be continued indefinitely. The Constitution of Ohio, Article XII, section 11, provides that no bonded indebtedness shall be incurred unless in the legislation under which same is incurred provision is made for levying and collecting by taxation an amount sufficient to pay the interest and provide a sinking fund. In view of this provision it is presumed that a sufficient tax levy was provided at the time of issuing said bonds and before said board of education ceases to function it would only seem necessary for it to confirm sufficient of said several levies to retire said bonds and see to it that a sinking fund is created and sinking fund commissioners appointed.

Respectfully,

C. C. CRABBE,

Attorney General.

90.

COUNTY FAIR SOCIETY HOLDING TITLE TO LAND MAY BORROW MONEY FOR REPAIRS AND IMPROVEMENTS—MAY EXECUTE MORTGAGE TO SECURE PAYMENT—CONSENT OF COMMISSIONERS NECESSARY— ENCUMBRANCES MUST NOT EXCEED 50 PER CENT.

SYLLABUS:

Under the provisions of section 9908 of the General Code and other related sections a county society properly organized and in control of the management of its affairs and real estate used for fair purposes, the title of which is in the county, may legally borrow money for necessary repairs and improvements and execute a mortgage to secure the payment thereof when the consent of the county commissioners has been first duly entered upon their journal. Such encumbrances must not exceed fifty per cent. of the appraised value as provided for in section 9908.

COLUMBUS, OHIO, February 21, 1923.

HON. ALLAN G. AIGLER, *Prosecuting Attorney, Norwalk, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon the following:

“Title to the fair grounds property is held in fee by the county, but the Huron County Agricultural Society has control and management of same. The agricultural society, together with the County Commissioners, desire to mortgage same in order to pay the cost of improvements to said grounds, and they desire to know if this can be legally done under section 9908 G. C.”

Section 9908, to which you refer, provides:

“When the commissioners of a county have paid, or pay, money out of the county treasury for the purchase of real estate as a site for an agricul-