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1. VILLAGE CORPORATE POWER—SURRENDER—ANY VILLAGE FUNDS REMAINING AFTER PAYMENT OF ALL OBLIGATIONS BELONG TO SCHOOL DISTRICT EMBRACING VILLAGE.
2. DEBT AT TIME OF SURRENDER OF CORPORATE POWERS—SHOULD BE EXTINGUISHED BY LEVY AND COLLECTION OF TAXES FOR THAT PURPOSE.
3. DUTY OF OFFICERS OF VILLAGE IN OFFICE AT TIME OF SURRENDER OF CORPORATE POWERS TO LEVY AND ASSESS TAX RATE TO PAY OBLIGATIONS.
4. VILLAGE OFFICIALS IN OFFICE AT TIME OF SURRENDER OF CORPORATE POWERS—HAVE DUTY AFTER SURRENDER OF CORPORATE POWERS TO DETERMINE VALIDITY OF OUTSTANDING OBLIGATIONS AND REMIT PAYMENT TO CREDITORS.

SYLLABUS:

1. Following the surrender of corporate power by a village, any village funds remaining after the payment of all obligations belong to the school district embracing such village.
2. If a village is in debt at the time of surrender of its corporate powers, such debt should be extinguished by the levying and collecting of taxes for that purpose.
3. It is the duty of officers of the village in office at the time of surrender of corporate powers to levy and assess a tax rate sufficient to pay these obligations.
4. The village officials in office at the time of the surrender of the corporate powers, whose duty it was to determine the validity of and remit to creditors the payment of the outstanding obligations of the village, have that duty after the surrender of corporate powers.

Columbus, Ohio, January 4, 1951

Hon. Joseph T. Molitoris, Prosecuting Attorney
Trumbull County, Warren, Ohio

Dear Sir :

Your request for my opinion reads :

“The County Auditor has requested my opinion on the following situation :

“Halls Corners having been in existence for sometime as a duly incorporated Village was by vote of the residents thereof, at a special election held under General Code Section 3513, on April 1, 1950, dissolved.

“The County Auditor now wants to know :

“1. What disposition should be made of Village funds if any balance exists?

“2. If the Village is in debt, how should liquidation of this indebtedness be accomplished?

“3. If under G. C. Sections 3514 taxes are to be levied and collected for liquidation of indebtedness, who must levy and assess such tax rate?

“4. Who must determine validity of outstanding obligations of the Village and remit to creditors of the Village amounts derived from taxation to be applied to payment of obligations?

“Under an opinion of the Attorney General rendered in 1939, Volume 2, #872, it seems that if any balances exist they would be credited to the School Board embracing the Village. However, I can find no opinion or decision interpreting Section 3514 General Code as to the method of levying and assessing taxes, determining what valid claims there are and distribution of monies to be applied to payment of creditors. Also whether or not the auditor should continue to carry Halls Corners as a separate tax unit with property therein subject to a special Village tax rate until all existing obligations of the Village have been paid.”

The two sections of the General Code bearing on the surrender of corporate powers by villages reads as follows :

Section 3513 :

“Villages may surrender their corporate powers upon petition to council of at least forty per cent of the electors thereof, to be determined by the number voting at the last municipal election,

and an affirmative vote of a majority of such electors at a special election which shall be provided for by council, and conducted, canvassed, and the result certified and made known as regular municipal elections within the corporation. If the result of the election is in favor of such surrender, the clerk of the village shall certify the result to the secretary of state and the recorder of the county, who shall record it in their respective offices, and thereupon the corporate powers of such village shall cease."

Section 3514:

"Such surrender of corporate powers shall not affect vested rights or accrued liabilities of such village, or the power to settle claims, dispose of property, or levy and collect taxes to pay existing obligations, but after the presentation of such petition, council shall not create any new liability until the result of the election is declared, nor thereafter, if such result is in favor of the surrender of corporate powers. Due and unpaid taxes may thereafter be collected, and all moneys or property remaining after such surrender shall belong to the school district embracing such village."

Your first inquiry is answered by the wording of Section 3514, General Code, which says in part:

"* * * all moneys or property remaining after such surrender shall belong to the school district embracing such village."

As mentioned in your letter, Opinion No. 872, found in Vol. 2, Opinions of Attorney General for 1939, at p. 1179, holds the same in regard to this question. There being no opinion to the contrary, this office still holds that any remaining balance of village funds or property belongs to the school district embracing such village.

Your second inquiry presents the question of how a debt of a dissolved village should be liquidated. The only statutory provision for this is found in the wording of Section 3514, General Code, which in part states:

"Such surrender of corporate powers shall not affect vested rights or accrued liabilities of such village, or the power to settle claims, dispose of property, or levy and collect taxes to pay existing obligations, * * *."

The only case in Ohio that bears on this question is not directly in point. However, it does lay down a general rule that by inference affects the situation of a village being dissolved before its debts and obligations

are paid. This case, *Gorgas v. Blackburn*, 14 O., 252, holds that officials of a town cannot relieve themselves of the responsibility of paying the debts of the town by resigning.

In this case, one Gorgas recovered a judgment against the town of Massillon, which was uncollected at the time of the repeal of the act of incorporation, the repealing act containing the following clauses:

“that the officers of said town shall have power, by their corporate name, to sue and be liable to be sued, to levy and collect all taxes necessary to discharge the present liabilities of said town;” and “that all rights acquired and liabilities incurred by virtue of said act shall remain valid in all respects, * * *.”

The opinion in this case states in part on page 256 as follows:

“The repeal of the charter, therefore, did not discharge the officers of the corporation from the duties of collecting the debts due the town, and paying off the liabilities it had incurred. It was the duty of the *then* officers of the town to provide for the payment of its debts—those in office when the charter was repealed—and they are continued as such officers by the act for that purpose. * * * for the statute makes no provision for successors or any other persons than the *then* officers, to levy taxes or pay the debts of the corporation.”

Under the wording of Section 3514, General Code, the surrender of corporate powers does not affect the vested rights or accrued liabilities or the power to levy or collect taxes. In this respect the Code section governing the surrender of corporate powers is similar to the saving clause of the repeal act noted in the *Gorgas vs. Blackburn* case mentioned above. Section 3514, however, does not specifically mention that this power remains in the officers of the town or village as does the repeal act of the *Gorgas* case.

A review of the duties and authority of the County Auditor as provided for by statute fails to reveal any provision for assuming, by that officer, the duty to levy or assess taxes in the case of a surrender of corporate powers by a village.

The General Code, under the sections providing for township trustees, provides for the alteration of township boundaries and for the payment of liabilities of the sections so altered. These sections, however, are specific in that they provide for the enlargement or contraction of township lines. There is no mention of procedure in the case of a village

or town that gives up its corporate powers, even though in so doing the property would become part of township jurisdiction. Therefore, I believe that since the township trustees are limited in scope of authority, the provisions of the Code sections relative to apportionment of debt and the payment of liabilities upon changing of township lines and boundaries do not apply to the situation you present in your letter.

However, despite the failure of Section 3514, General Code, to state that the village officials in office at the surrender of corporate powers have the powers and duties as set out in Section 3514, I am inclined to follow the decision in the Gorgas case in that since the statute makes no provision for successors or any other persons to perform those duties, they fall upon the officials in office at the time of the surrender of corporate powers.

Therefore, in answering your second inquiry regarding how the liquidation of debt be accomplished, should the village be in debt at the time of surrender of its corporate powers, I am inclined to believe that this liquidation should be accomplished by the levying and collecting of taxes as provided by Section 3514.

Your third inquiry concerns who must levy and assess such tax rate. From the review of the Gorgas case, mentioned before, it would appear that the village officials in power and office at the time of the surrender of the corporate powers of the village bear that responsibility. No other officials are provided by statute to so levy and assess, and since the statute states that the surrender does not affect "accrued liabilities * * * or the power * * * to levy and collect taxes," I am inclined to believe that the officials in office at the time of surrender must so levy and assess such taxes as are necessary to pay the obligations, as required by Section 3514.

Your fourth question can be answered along the lines of the second and third questions. In other words, the officials in office at the time of surrender of the corporate powers of the village who bore the responsibility of determining the validity of the outstanding obligations and remitted to creditors the amounts derived from taxation, still have those obligations after the surrender of the village corporate powers.

In summary, it is my opinion, in answer to your first inquiry, that following the surrender of corporate power by a village, any village funds remaining after the payment of all obligations belong to the school district embracing such village.

In answer to your second inquiry, it is my opinion that if the village is in debt at the time of the surrender of corporate powers, such debt should be extinguished by the levying and collecting of taxes for that purpose.

It is further my opinion, in answer to your third inquiry, that it is the duty of the officers of the village in office at the time of the surrender of corporate powers to levy and assess a tax rate sufficient to pay these obligations.

It is my opinion, in answer to your fourth inquiry, that the village officials in office at the time of the surrender of the corporate powers, whose duty it was to determine the validity of and remit to creditors payment of the outstanding obligations of the village, have that duty after the surrender of corporate powers.

Respectfully,

HERBERT S. DUFFY,
Attorney General.