of securities acceptable to secure government deposits in national banks and deposits of postal savings funds in national and state banks. Without quoting the portions of the regulations relative to such securities, it is sufficient to say that they prescribe what *classes* of securities are acceptable rather than to specify specific securities. The determination as to whether or not a specific security offered meets the test laid down in the regulations is purely a ministerial function which a building and loan association, having access to the regulations, is able to determine for itself.

Answering your question specifically, it is my opinion that building and loan associations in the investment of idle funds in "such other securities as now are or hereafter may be accepted by the United States to secure government deposits in national banks," as provided in Section 9660, General Code, are not limited to investments in such securities only as have actually been accepted, that is, hypothecated and later released for the market by substitution or otherwise, but may invest such funds in the classes of securities specified in the regulations promulgated by the secretary of the treasury to secure government deposits in national banks and in the regulations promulgated by the board of trustees of the Postal Savings System to secure deposits of postal savings funds in national and state banks.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2241.

SCHOOLS—MERGER OF DISTRICTS—INCLUSION OF ENTIRE VILLAGE OR RURAL DISTRICTS—SUCCESSION TO ASSETS AND LIABILITIES —APPOINTMENT OF NEW BOARD OF EDUCATION.

SYLLABUS:

1. *Upon the creation of a new school district, by authority of Section* 4736, *General Code, comprising all the territory formerly included within a village or rural school district, and parts of other districts, the corporate existence of the rural or village school district, whose entire territory is embraced within the newly created district, is merged into the newly created corporation, the new corporation, as successor to the former school district, succeeds to all the funds and property of the former district which is merged into it, and is answerable for all its liabilities, including obligations growing out of contracts with teachers and duly designated depositories.*

2. *When a new school district is created, consisting in part of all the territory of a former school district, the board of education of the former district is abolished and the position of its clerk is likewise abolished. A board of education should be appointed for the new district as provided in Section* 4736, *General Code, which board after appointment should organize in the manner provided for in Section* 4747, *General Code.*

COLUMBUS, OHIO, June 18, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

> "Under the provisions of Section 4736, General Code, a county board of education created a new district out of a whole village district and a part of a

rural district and on May 12th, 1928, appointed a new board for the newly created district, the former village board of education on January 25th, 1928, had regularly designated a depositary for the school funds of such district for a period of two years; and on January 4th, 1928, said village board had employed a clerk for a period of one year and on May 9th, 1928, had hired their teachers for the school year of 1928-1929.

Question: Do these contracts made by the village board continue for the periods specified or may the appointive board of education of the newly created district establish a new depositary, appoint a new clerk and employ teachers for the school year of 1928-1929?"

Sections 4736, 4747, 7604, 7605, 7607, 7608 and 7705, General Code, read in part as follows:

Sec. 4736. "The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall make an equitable division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. * * * Members of the board of education of the newly created district shall be appointed by the county board of education. * * * "

Sec. 4747. "The board of education of each city, exempted village, village and rural school district shall organize on the first Monday of January after the election of members of such board. One member of the board shall be elected president, one as vice-president and a person who may or may not be a member of the board shall be elected clerk. The president and vice-president shall serve for a term of one year and the clerk for a term not to exceed two years. The board shall fix the time of holding its regular meeting."

Sec. 7604. "That within thirty days after the first Monday in January, 1916, and every two years thereafter, the board of education of any school district by resolution shall provide for the deposit of any or all moneys coming into the hands of its treasurer. * * * "

Sec. 7605. "In school districts containing two or more banks such deposits shall be made in the bank or banks, situated therein, that at competitive bidding offer the highest rate of interest which must be at least two per cent for the full time funds or any part thereof (as) are on deposit. * * * "

Sec. 7607. "In all school districts containing less than two banks, after the adoption of a resolution providing for the deposit of its funds, the board of education may enter into a contract with one or more banks that are conveniently located and offer the highest rate of interest. * * * "

Sec. 7608. "The resolution and contract in the next four preceding sections provided for, shall set forth fully all details necessary to carry into effect the authority herein given. * * * "

Sec. 7705. "The board of education of each village, and rural school district shall employ the teachers of the public schools of the district, for a term not longer than three school years, to begin within four months of the date of appointment. * * * "

It will be observed from the provisions of Section 4736, supra, that when a new school district is created, as provided therein, an equitable division shall be made of the

funds or indebtedness between the newly created district and any district from which any portion of the newly created district is taken. Nothing is said in this statute or in any other pertinent statutory provision respecting the apportionment of the liabilities of the several school districts whose territory becomes a part of a newly created school district, in so far as such liabilities may arise by reason of contractual obligations of the several school districts involved, not included within the term indebtedness.

Obviously, when an entire district becomes a part of a new district, the only equitable division of the funds and indebtedness between it and the newly created district would be the transfer to the newly created district of all the funds of the old district as well as all of its indebtedness.

If the term indebtedness is to be held to include all the liabilities, such as the liability attaching to contracts with teachers and the like then it clearly follows that it becomes the duty of a county board of education, upon the creation of a new school district to equitably apportion such liabilities as well as other indebtedness between the new districts and any district from which any portion of such newly created district is taken. In that case, if an entire old district were made a part of a newly created district the new district would become charged with all the obligations of the old district, including contracts with teachers and depository contracts, by reason of the equitable distribution of these obligations made by the county board of education at the time of the creation of the new district.

In my opinion the term indebtedness, as used in this and cognate statutes, is not meant to include all liabilities, but only such liabilities as come within the term debts, that is, fixed liquidated amounts represented by bonds, notes, judgments, or outstanding accounts either due or to become due, and does not include liabilities such as obligations arising on contracts still to be performed.

At common law, when territory was annexed to a school district or other public corporation, or where a new school district was created from parts of old districts, no division of funds and indebtedness was made between the corporations involved. This common law rule is stated in 35 Cyc. 850, as follows:

> "In the absence of some statutory provision to the contrary, the general rule is that when a part of the territory of a school district is separated from it by annexation to another district, or by the creation of a new district, the old district retaining its organization, such old district retains all its property, powers, rights and privileges, and continues to be responsible for all its debts and liabilities."

In 24 R. C. L. 566, it is said:

> "The Legislature, having plenary power over school districts, may provide for the division of the property and the apportionment of debts, when a portion of the territory and property of one district is transferred to the jurisdiction of another; but, in the absence of such a provision, the rule of the common law obtains, and that rule leaves the property where it is found, and the debt on the original debtor."

Our statutes, wherein it is provided that an equitable division of the funds and indebtedness shall be made between school districts involved when new school districts are created, or when territory is annexed from one to another, being in derogation of the common law, should be strictly construed, and the term indebtedness, confined to its strict technical meaning.

The word "indebtedness," means the state of being in debt, and implies an absolute or complete liability, and not a contingent liability, such as exists upon contracts not yet performed and upon which there is nothing due. While a contract to pay a teacher for services to be rendered in the future, is a contractual obligation, no indebtedness accrues until the services are rendered, and our statutes speak not of contractual obligations in general, but of obligations which have become indebtedness.

"Indebtedness," is defined by Bouvier, as:

> "The state of being in debt. * * * But in order to create an indebtedness, there must be an actual liability at the time, either to pay then, or at a future time."

In *Hornbeck vs. State,* ex rel. 33 Ind. App. 609, indebtedness is defined thus:

> "'Indebtedness,' or debt, is whatever one owes, or in a purely technical sense is that for which an action of debt will lie; a sum of money due by certain and express agreement. It is not a contract, though it may be the result of a contract."

In *Town of Vaughn* vs. *Town of Montreal,* 124 Wis. 302, it was held:

> "A contract obligating a town to pay annual hydrant rental to fall due in subsequent years, does not constitute an 'indebtedness then legally incurred, within Rev. Stat. 1898, Sec. 672, providing that whenever the county board shall form a new town from parts of a town already organized it shall determine what portion of the indebtedness then legally incurred by the old town shall be chargeable to the portion detached to form the new town, which shall pay the portion so declared chargeable."

Moreover, when but a portion of a school district is detached, by annexation to another district, the corporate entity of the old school district still remains, and the privity between it and its contractual obligees is undisturbed. No more administrative order could operate to bring into privity the contractees of the district, as it existed prior to detachment of a portion of its territory, and the other districts to which the territory had been annexed.

A different situation exists with reference to the property and liabilities of a school district that is absorbed in its entirety by annexation to an adjoining district, or by its being made a part of a newly created district. In that case, the old district as a corporate entity is abolished, and its corporate existence is merged into the corporation to which the old district has been annexed, or into the newly created corporation, as the case may be, and the new corporation, or the corporation with which the old corporation has become merged, becomes the successor of the abolished corporation, and thus becomes vested with all its funds and property and charged with all its duties and liabilities, as well as thus becoming, as successors, privy to all its contractual obligations.

This, however, is not because of the statutory duty imposed on a county board of education equitably to distribute the funds and indebtedness between school districts involved in annexation of territory from one to another, or between districts involved in the creation of new districts, but by reason of the rules of law pertaining to the merger of corporate entities, the same rule being applicable to public corporations as to private corporations.

This rule, as applied to school districts, is stated in 35 Cyc. 851, as follows:

"When an old school district is entirely abolished, or two old districts consolidated, and a new district or districts is formed from the territory of such old district or districts, the new district or districts becomes entitled to all the property of such old district or districts and liable for all the existing legal debts and liabilities thereof."

In Opinion No. 1127, rendered under date of October 10, 1927, and addressed to the Director of Education, it was held:

"When an entire school district is transferred to an exempted village, city or county school district the territory of which is contiguous thereto, by virtue of Section 4696, General Code, * * * the district to which the transfer is made becomes vested with the legal title to the property of the district transferred and becomes charged with all the obligations of the transferred district, including contracts for the hiring of teachers."

Again, in Opinion No. 1946, rendered under date of April 9, 1928, addressed to the Prosecuting Attorney of Montgomery County, it was held:

"When all the territory embraced within a rural or village school district is annexed to a contiguous city or village school district, by virtue of Section 4690, Section 4692 or Section 4696, General Code, the rural or village school district thus annexed is extinguished and its board of education abolished, and the board of education of the city or village school district acquiring such territory becomes the successor of the board of education of the district embraced within the territory annexed, and becomes charged with all the obligations of the school district which thereby becomes extinguished, including obligations growing out of contracts with teachers and superintendents."

In the case of *Thompson vs. Abbott,* et al. 61 Mo. 176, wherein the question arose as to the rights of a teacher with whom a contract to teach had been made by a board of education of a school district, which later had been annexed in its entirety, to another school district, it was held that the district which had absorbed the other district was liable on the teacher's contract by reason of its having become the successor of the district which had been merged into it.

The same reasoning is applicable to depository contracts made by a board of education of a school district which thereafter is merged into another district.

The clerk of the school board is not a public officer. See *Board of Education* vs. *Featherstone,* 110 O. S. 669. Even though he were a public officer, such officers do not have a vested interest in their office, in the sense that the office may not be absorbed. He is, however, an administrative officer of the board from whom he receives his appointment. When the board is abolished, his office is also abolished, and he has no claim that need be recognized by the successor of the board of education, which has been abolished.

I am therefore of the opinion, in specific answer to your question that when a county board of education creates a new school district which comprises the whole of a village district and part of a rural district and appoints a board of education for the newly created district, the former village district ceases to exist, and is merged into the newly created district, which thereby becomes the successor of the former village district and succeeds to all the funds and property of the former village district and is answerable for all its liabilities, including obligations growing out of contracts with teachers and duly designated depositories. Under such circumstances, the

board of education of the former village school district is abolished, and the position of its clerk is likewise abolished. The newly created board of education should organize as such, under the provisions of Section 4747, General Code, and may, in so doing, appoint a new and different clerk from the one who had been previously appointed as clerk for the former village board of education.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2242.

CORPORATION—DOMESTIC—SHALL APPOINT TWO NATURAL PERSONS TO RECEIVE PROCESS NOTICES, WHEN LESS THAN TWO OFFICERS ARE RESIDENTS OF COUNTY CONTAINING ITS PRINCIPAL OFFICE—PENALTY FOR FAILURE TO APPOINT.

SYLLABUS:

It is the duty of every domestic corporation which has less than two of its officers or directors resident of the county in which the principal office of the corporation is located, to appoint immediately two natural persons who are residents of such county as its agents upon whom process or tax notices or demands may be served. It is further the duty of such corporation to report the names and addresses of its officers and directors within the county and, in case there are less than two thereof, the names and addresses of statutory agents, together with written consent to the service of process upon such officers, directors or agents. Failure of the corporation to select or appoint such officers, directors or agents or to make a report, upon written request therefore, subjects the corporation to a penalty.

COLUMBUS, OHIO, June 18, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent communication, as follows:

"Having reference to Section 129 of the general corporation act you will note that the section requires the naming of agents by corporations not having at least two of its officers or directors residents in the county in which is located the corporation's principal place of business. However, the consent to service and designation of agent is required to be made to the Tax Commission at the time that the corporation makes its annual report. This will mean that frequently a year will elapse during which time certain corporations will not have named agents. It not infrequently happens that during the first year of the life of a corporation it is most frequently in litigation.

While it is possible under the section in question to serve the Secretary of State, yet on the other hand the department has had a number of requests for advice as to whether or not agents may be designated prior to the company's first annual report.

Your opinion is requested as to whether or not it is possible for a corporation to make such designation at a time other than filing of the annual report and also whether or not the designation can be made by a filing made in this office, or on the other hand whether designation can be made with the Tax Commission.