

1946.

SCHOOLS—ANNEXATION OF TERRITORY—ASSUMPTION OF INDEBTEDNESS—PENDING CONTRACTS—PROCEEDS FROM SALE OF BONDS.

SYLLABUS:

1. *When territory is annexed to a city or village, such annexed territory thereby becomes a part of the city or village school district, and the city or village school district thus acquiring territory becomes vested with the legal title to school property lying within the territory annexed and automatically assumes any indebtedness on such property, including obligations growing out of existing contracts for the improvement of said school property.*

2. *Where a contract has been let for the improvement of school property within territory annexed to a city or village, since the obligation to proceed with the contract for the improvement of such school property in the annexed territory follows the property, the proceeds from the sale of bonds issued for such improvement, or from notes issued in anticipation of the issuance of such bonds, should be paid to and distributed by the board of education of the school district assuming the obligation; and a tax should be levied by such board to pay such bonds and the proceeds thereof should be paid to the board of education of the school district from which such territory was detached. The tax levied by the city or village school district to which the territory was annexed must be levied within the fifteen mill limitation.*

3. *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.*

COLUMBUS, OHIO, April 9, 1928.

HON. RALPH E. HOSKOT, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"I am respectfully asking your opinion with regard to the following matters:

The City of Dayton has petitioned the county commissioners for the annexation of certain territory to the city. Part of the territory proposed to be annexed is within the Harrison Township Rural School District. Upon annexation the City School District will take over so much of the indebtedness of the Harrison Township District as may be upon the school property within the annexed territory.

The Harrison Township District voted a bond issue last fall and is proceeding to improve school property located within the proposed annexed territory. There is some old indebtedness existing upon this property at the present time in the amount of approximately \$100,000.00. The improvement will cost approximately \$75,000.00. Of course the City School

District will take over the old indebtedness but the question arising is to when this new indebtedness fastens to this school property?

The Harrison Township District has sold the notes and very shortly will let the contracts for this improvement. Does the indebtedness fasten to this school property so that the City District will be compelled to take it over as soon as the contract is let for that particular improvement or does it fasten to the property at the time the improvement is completed?

If the indebtedness fastens to the school property at the time the contract is let, which shall proceed with the improvement, the township board or the city board?

Upon the county commissioners granting the petition for annexation, the balance of the school district will be transferred to the City School District by the County Board of Education and the indications are that the City Board of Education will accept the transfer. This will extinguish the Harrison Township School District as a district and the district being extinguished, the Board of Education apparently becomes dissolved. However the outstanding bonded indebtedness has been created in the name of the Harrison Board. Will the Harrison Township Board of Education continue to exist for the purpose of retiring this indebtedness or will the indebtedness be retired directly by the City School Board? If the Harrison Board continues in existence for the purpose of retiring the indebtedness, will the same members continue to occupy their positions as members of the school board until the indebtedness is paid, or can an election be held from time to time as terms expire of members of what formerly was the Harrison Township Rural School Board?

Assuming that the entire Harrison Township Rural School District is finally merged with the City of Dayton School District and that the Harrison Township Board has entered into contract with teachers for a period of three years, will such contracts be assumed by the City Board or are they ended upon the merger? If they are ended is the Rural School District liable by reason thereof? Similarly what is the position of the District Superintendent of Schools in Harrison Township when the entire district becomes merged with the city district?"

Section 4690, General Code, 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."

It appears from your inquiry that the annexation spoken of therein has not as yet been accomplished, but is merely in contemplation. Neither have contracts been let for the proposed improvements to the school property lying within the territory which will be annexed to the City of Dayton when the contemplated annexation is accomplished.

It is clear from the provisions of Section 4690, *supra*, that whatever indebtedness exists on the school property, in the territory annexed at the time of the effective date of the annexation, shall be assumed by the City of Dayton. The only question to be determined is when the indebtedness incident to the improvement of the school property attaches; whether it becomes a debt on the particular school property as soon as legislation is enacted looking to the improvement, or when notes or bonds are sold for the improvement, or when the contract is let therefor.

Clearly, the passage of a resolution by a board of education, to build a schoolhouse or to alter, enlarge or improve a school building already built, creates no obligation on the part of the board to proceed with the improvement; nor does the issuing and selling of notes or bonds for the improvement bind the board to make the improvement. Both the passage of the resolution and the raising of the money are necessary preliminaries to the letting of the contract, but no obligation relating to the school property to be improved is created until a contract is let. When that is done the board becomes bound either to proceed with the improvement or be liable to the contractor in a suit for breach of contract.

When the contract is let for the improvement the obligation incurred thereby becomes identified with the particular school property to which it applies and in my opinion is an obligation which is included within the term "indebtedness" as the word is used in Section 4690, *supra*. True, whatever obligation is incurred by the letting of such a contract is an obligation of the entire district, but so also are the obligations incident to all the outstanding indebtedness on the school property in the territory annexed, which the Legislature has said the city or village to which the territory is annexed shall assume.

While there is no statutory procedure for such a course of action, it seems clear that inasmuch as the obligation to proceed with the contract for the improvement of the school property in the annexed territory follows the property, the proceeds from the sale of bonds issued for such improvement, or from notes issued in anticipation of the issuance of such bonds, should be paid to and distributed by the board of education of the school district assuming the obligation. A tax should be levied by such board to pay such bonds, and the proceeds thereof should be paid to the board of education of the school district from which such territory was detached.

The tax for the redemption of such bonds levied by the district assuming the obligation would, of course, be levied over the entire district, that is, both the annexed territory and the territory to which the same was annexed, and would have to be kept within the fifteen mill limitation. Although the authorization of a bond issue by the electors of a school district carries with it the authority to levy a tax to pay such bonds, outside the fifteen mill limitation, it is obvious that when all or a part of such district is annexed to another district and the indebtedness assumed by the latter district, such assumption would not carry with it the authority to levy a tax on all the property within the new district outside of all limitations to redeem such bonds and pay the interest thereon. It follows, therefore, that such a tax would have to be levied within the fifteen mill limitation.

The same is not true as to obligations incident to the maintenance of schools in the annexed territory. It will be observed that the statute provides only that indebtedness on the school property in the annexed territory shall be assumed by the city or village to which the territory is annexed. Other indebtedness of the district, whether it had been incurred by reason of the maintenance of schools in the annexed territory or not, remains the indebtedness of the original district, and other obligations incident to the maintenance of schools in the annexed territory also remain the obligations of the original district, as constituted after a part of

said district has become detached by reason of annexation to a contiguous city or village. Thus the contracts with teachers or superintendents, who, previous to the annexation, had been teaching or supervising in the school building within the territory annexed, are not assumed by the city or village school district to which the territory is annexed.

If later, the remaining portion of Harrison Township rural school district is annexed to the city of Dayton, under authority of Section 4696, General Code, the Dayton board of education becomes the successor of the Harrison Township rural board of education in all respects, and by reason thereof, becomes charged with all the obligations of the Harrison Township rural school district and its board of education, including all its indebtedness and all its contracts with teachers and superintendents.

In this connection your attention is directed to Sections 4692 and 4696, General Code, relating to the transfer of all or part of one school district to another. These sections read:

Section 4692. "The county board of education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred, and a notice of such proposed transfer has been posted in three conspicuous places in the district or districts proposed to be transferred, or printed in a paper of general circulation in said county, for ten days; nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred, shall, within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer. If an entire district be transferred the board of education of such district is thereby abolished or if a member of the board of education lives in a part of a school district transferred the member becomes a non-resident of the school district from which he was transferred and ceases to be a member of such board of education. The legal title of the property of the board of education shall become vested in the board of education of the school district to which such territory is transferred. The county board of education is authorized to make an equitable division of the school funds of the transferred territory either in the treasury or in the course of collection. And also an equitable division of the indebtedness of the transferred territory.

Section 4696. A county board of education may, upon 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."

Questions growing out of the annexation of territory to a city or village were considered in Opinion No. 1127 rendered under date of October 10, 1927, a copy of which I enclose herewith. In this opinion it was held:

"* * * * *

4. Obligations arising upon contracts for the hiring of teachers, made by boards of education of school districts a portion of whose territory thereafter automatically becomes a part of an adjoining city or village school district by reason of annexation to the city or village, remain the obligations of the board of education by which the contracts were made.

5. The city or village board of education of the district of which the annexed territory becomes a part does not succeed to the obligations growing out of contracts for the hiring of teachers made by the board of education of the district from which the annexed territory was taken, even though such annexed territory has within its boundaries the only school building in the district as before constituted.

6. Where 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 transfer becomes complete after (1) a resolution is 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 is made by the county board of education, which in the case of territory transferred to a county school district to which such territory is transferred, and (3) a map is filed with the county auditor of each county affected by the transfer. Thereupon, 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. An equitable division of the funds and indebtedness between the two districts in such a case would be a transfer to the district receiving the territory of all the funds and indebtedness of the district transferred."

In the course of said opinion, it was stated:

"If the transfer of an entire district is affected by virtue of Section 4696, General Code, the district to which the transfer is made likewise becomes the successor of the district transferred, and while the statute provides the procedure for an equitable division of the funds and indebtedness of the two districts affected, an equitable division in such a case could be nothing else than a transfer of all the funds, indebtedness and obligations of the transferred district to the district receiving the territory, including all obligations theretofore incurred in the hiring of teachers. Such a transfer, however, will not be complete until the county board of education

formally makes the division of funds and indebtedness as directed by the statute. When the board of education of the district transferred passes the necessary resolution and the county board of education thereafter makes an equitable division of the funds and indebtedness of the two districts and a proper map is filed with the county auditor, the transfer becomes complete, and as of that date the district to which the transfer is made becomes vested with the legal title to the property of the district transferred, and is entitled to the funds accruing to it by reason of the division so made by the county board of education and from said date is charged with whatever obligations the transferred district may have had."

In specific answer to your inquiries, it is my opinion that:

1. When territory is annexed to a city or village, such annexed territory thereby becomes a part of the city or village school district and the city or village school district thus acquiring territory becomes vested with the legal title to school property lying within the territory annexed, and automatically assumes any indebtedness on such property including obligations growing out of existing contracts for the improvement of said property.

2. If contracts have been let for the improvement of school property, which lies within that portion of Harrison Township rural school district in Montgomery County, which is to be annexed to the city of Dayton, prior to the effective date of such annexation, the board of education of the Dayton city school district succeeds to the obligations incident to said contracts and is required to proceed with the said improvement.

2. Where a contract has been let for the improvement of school property within territory annexed to a city or village, since the obligation to proceed with the contract for the improvement of such school property in the annexed territory follows the property, the proceeds from the sale of bonds issued for such improvement, or from notes issued in anticipation of the issuance of such bonds, should be paid to and distributed by the board of education of the school district assuming the obligation; and a tax should be levied by such board to pay such bonds and the proceeds thereof should be paid to the board of education of the school district from which such territory was detached. The tax levied by the city or village school district to which the territory was annexed must be levied within the fifteen mill limitation.

3. If, after annexation of a portion of the territory embraced within Harrison Township rural school district to the city of Dayton has been accomplished, all the remaining portion of Harrison Township rural school district is annexed to the Dayton city school district by authority of Section 4696, General Code, the Harrison Township rural school district is thereby extinguished and its board of education abolished and the board of education of the Dayton city school district becomes the successor of the Harrison Township rural board of education in all respects, and becomes charged with all its obligations, including obligations arising from contracts with teachers and superintendents.

Respectfully,
EDWARD C. TURNER,
Attorney General.