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SCHOOL DISTRICT, PARTS OF WHICH HAVE BEEN INCORPORATED IN NEW SCHOOL DISTRICT, SECTION 4736 G.C.— COUNTY BOARD OF EDUCATION HAS DISCRETION TO MAKE EQUITABLE DISTRIBUTION OF FUNDS AND INDEBTEDNESS — IN ABSENCE OF FRAUD OR ABUSE OF DISCRETION, SUCH DISTRIBUTION IS FINAL — NO STATUTORY METHOD FOR REVIEW OR APPEAL — REMEDY, PROPER COURT ACTION — BONDED INDEBTEDNESS — TAX LEVY.

SYLLABUS:

1. *The making of an equitable distribution of funds and indebtedness between school districts, parts of which have been incorporated in a*

new school district created by authority of Section 4736, General Code, and the new district, is purely within the discretion of the county board of education charged by law with the duty of making this equitable distribution and in the absence of fraud or abuse of discretion the distribution as made by such board of education is final.

2. When a new school district is created by authority of Section 4736, General Code, and an equitable distribution of funds is made between the district or districts from which territory is taken to constitute the new district, and the new district, there is no method provided by statute for review of the action of a county board of education in making such a division, and there is no method provided by statute for an appeal therefrom. If the county board of education abuses its discretion in making such an equitable division of funds and indebtedness between the districts involved, such abuse of discretion may be remedied by proper action in court.

3. Where, subsequent to the issuance of bonds for the erection of a school building and the levy of a tax to pay the same by a rural school district, the county board of education pursuant to authority conferred by Section 4736, General Code, creates a new school district from the territory embraced within such rural school district and makes an equitable division of the funds and bonded indebtedness between such district and the new district as the statute provides shall be done, the property of the new district is subject to the levy of a tax to meet its share of the indebtedness so apportioned to it, and it is the duty of the board of education of the new district to remit the proceeds of such tax to the board of education of the original district for the purpose of meeting the indebtedness as it becomes due.

Columbus, Ohio, June 13, 1941.

Hon. Lester S. Reid, Prosecuting Attorney,
Chillicothe, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

“On the first day of January, 1930, Huntington Township Rural School district issued bonds for the construction of a school

building in Huntington Township, Ross County, Ohio. Subsequent to the issuance of these bonds and on October 27, 1934, a portion of Scioto Township hereinafter referred to as South Scioto was taken into the Huntington Township School District. When this new district was created all property owners within the district including South Scioto were assessed by the Auditor's Office of Ross County, Ohio, for payment of the bonds. The proceeds of the bond issue was used in the construction of a school building located in the original Huntington Township District. Thereafter the residents of South Scioto petitioned the County Board of Education for a division or separation from Huntington Township School District, and on February 8, 1938, the County Board of Education of Ross County, Ohio, created a new school district, known as the South Scioto Rural School District and separated it from the Huntington Township Rural School District. This new district consisted of the same territory which had been, on October 27, 1934, annexed to said Huntington District. In this resolution, the County Board of Education ordered the Clerk of its Board to make an equitable distribution of the funds and indebtedness between the Huntington Rural School District, and the South Scioto Rural School District. This equitable distribution the Clerk found to be .4965 as the share of the South Scioto Rural School District; that is to say, that property in the South Scioto District was and is now assessed for the purpose of paying the bonded indebtedness of the Huntington School District, and .4965 of this assessment is paid by the County Auditor of Ross County, Ohio, to the Board of Education of the South Scioto District which is placed in the Sinking Fund of South Scioto.

The exact question which I wish to know is whether the Board of Education of South Scioto is by virtue of General Code Section 7600-3, 4, and 8, and the resolutions of the County Board of Education of Ross County, Ohio, required by law to pay to the Board of Education of the Huntington Rural District the amount which it has on hand in its Sinking Fund received by virtue of the assessment which amounts to .4965 of the total assessment and should continue to pay said amounts so received from the County Auditor as a result of said assessment until said bonds are paid in full on September 1, 1953."

Sections 7600-3, 7600-4 and 7600-8, General Code, referred to in your inquiry relate to a "plan of organization" of county school district territory. County boards of education throughout the state were directed by Sections 7600-1 et seq. of the General Code of Ohio, enacted in 1935, to adopt a "plan of organization" of county school district territory for their respective county school districts in each of the years 1935, 1936, 1937 and 1938. The procedure for adopting such plan of organization was included within the statutes named. Each such yearly plan as so adopted was to be approved by the Director of Education before it became ef-

fective. Provision was also made for the modification or changing of any such plan after adoption and approval by the county board or the Director of Education by following the same procedure as for its adoption and approval in the first instance. It was provided in Section 7600-7, General Code, that while any such yearly plan or a proper modification thereof was in effect, "no school district or parts thereof shall be transferred or the boundary lines thereof changed unless such transfer or change of boundary lines is in accordance with such adopted plan of organization."

On February 8, 1938, there should have been and no doubt was in effect a plan of organization in the Ross County School District for the organization year 1937-1938, which had been adopted in the manner provided by law in 1937. As nothing appears to the contrary, I assume for the purposes of this opinion, that the creation of the South Scioto Rural School District by resolution of the Ross County Board of Education on said date was in conformity with the county school district plan of organization then in effect for the Ross County School District or that the 1937-1938 plan which had been adopted in 1937 and was then in effect, was so modified at the time as to make the change of boundary lines brought about by the creation of the new district, a lawful change.

We must regard public officials as having acted regularly and in accordance with law in the absence of any showing to the contrary and especially in the present instance inasmuch as the South Scioto Rural School District has existed and functioned as a separate school district for more than three years apparently without any action having been taken by way of injunction or otherwise to correct any irregularity in its creation if in fact any such irregularity existed at the time in the manner of its creation. We may, therefore, for the purposes of this opinion, give no further consideration to the provisions of Sections 7600-1 to 7600-8, inclusive, of the General Code of Ohio, relating to plans of organization for county school districts and regard the said South Scioto Rural School District as having been created in accordance with law on February 8, 1938, from territory formerly comprising a part of Huntington Township Rural School District in Ross County.

At the time of the creation of the South Scioto Rural School District there existed statutory authority for the creation of new school districts provided by Section 4736, General Code, which read in part, as follows:

“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 and indebtedness between the newly created district and any districts from which any portion of such newly created district is taken.”

The County Board of Education of the Ross County School District having followed the statute in the creation of the South Scioto Rural School District and in making a division of funds and indebtedness between the newly created district and the Huntington Township District from the territory of which the new district was created, the legal question presented by your inquiry is whether or not the Board of Education of the newly created South Scioto Rural School District is bound by the division of indebtedness and the method of meeting its share of the same prescribed by the county board of education. Incidentally, the question is involved whether or not the county board's division of indebtedness was in accordance with law.

Practically the same language as that contained in Section 4736, General Code, with respect to the division of funds and indebtedness between school districts is found in Sections 4692 and 4696, General Code, which relate to the transfer of territory from one district to another. The statutory law of the state affords no definition of an “equitable division of funds and indebtedness” or any direction to the county board of education as to the manner and method of making such a division. Just what constitutes an “equitable division of funds and indebtedness” has occasioned considerable controversy and has been the subject of discussion by former Attorneys General in a number of opinions. See particularly:

Annual Reports of the Attorney General
1914, p. 1333;

Opinions of the Attorney General
1915, p. 1970;

Opinions of the Attorney General
1918, p. 1247;

Opinions of the Attorney General
1927, pp. 318 and 1806;

Opinions of the Attorney General
1928, pp. 733, 1985, 2959;

Opinions of the Attorney General
1929, pp. 136, 1117;

Opinions of the Attorney General
1930, 1117, 1864;

Opinions of the Attorney General
1931, p. 295; and

Opinions of the Attorney General
1933, p. 980.

It generally has been held that the carrying out of the statutory injunction for a board of education to make an equitable division of funds and indebtedness where new school districts are created or territory transferred from one district to another, is within the discretion of the board making the division. Matthias, J., in his opinion in the case of *Ross v. School District*, 113 O.S., 466, in speaking on this question on page 481 of the Report said:

“It has frequently been announced by this court that the exercise of the powers conferred upon the county board of education will not be interfered with unless it clearly appears that it has abused the discretion so conferred upon it.”

In the *Ross* case, *supra*, there was involved a situation very similar to that about which you inquire. Territory had been transferred from Jefferson Rural School District in Muskingum County to Adams Mills District. Previous to the transfer bonds had been issued by the Jefferson District for the erection of a school building. The building was erected in a part of the district that was not transferred. Adams Mills District, to which the territory was transferred, received no benefit from the proceeds of the bond issue. The tax valuation of the territory transferred was \$1,489,000.00. The territory remaining in the Jefferson District after the transfer, had a tax duplicate value of \$1,252,210.00. At the time of the transfer there remained unpaid of the bond issue bonds in the amount of \$96,000.00. In making an equitable division of indebtedness between the districts, the County Board of Education ordered that \$25,000.00 of these bonds should be paid by the Adams Mills District and directed the county auditor of Muskingum County to levy a tax of 3 mills on all the property of the Adams Mills District to pay the interest on such portion of said bonds, and to pay the principal of those which were due

or would become due. In a suit to enjoin the levy of taxes in the Adams Mills District to meet its share of the indebtedness of the Jefferson District which had been allotted to it by the county board of education, it was held by the Court of Appeals to which the case had been appealed from the Common Pleas Court of Muskingum County that the division of indebtedness was equitable and the county auditor was ordered to make the necessary levies to carry out the equitable division of indebtedness as made by the county board of education and it was further said that:

“The funds collected from said levies be used for the payment of said indebtedness.”

The Supreme Court affirmed the judgment of the Court of Appeals, and Judge Matthias speaking for the court, said:

“The facts disclosed would not warrant the conclusion that the county board had abused its discretion in the matter of the division of indebtedness. It follows that the levy made upon property in the Adams Mills district to pay the proportion of the bonded indebtedness of the territory detached from the Jefferson district and transferred to the Adams Mills district, in accordance with the apportionment made by the county board of education, was a valid levy, and that the proceeds thereof must be applied to the discharge of the bonds apportioned to that district as an equitable share of the indebtedness of the territory which was transferred to and became a part of the Adams Mills district.

The judgment of the Court of Appeals in the error proceeding is therefore affirmed. * * * ”

It was held in the Ross case, as stated in the syllabus:

“2. Where, subsequent to the issuance of bonds for the erection of a school building and the levy of a tax to pay same by a rural school district, the county board of education, under authority of Section 4692, General Code, transfers a portion of such district to an adjoining district and makes an equitable division of the funds and of such bonded indebtedness between the district from which and the district to which the territory was transferred, all the property of each district, is subject to the levy of a tax to meet its share of the indebtedness as so apportioned.”

See also *Gigondet v. Brewer, Co. Treas.*, 134 O.S. 86.

An examination of the many opinions of former Attorneys General hereinbefore noted, discloses that it has been consistently held that no hard and fast rule can be laid down as to how an equitable division of funds and indebtedness between political subdivisions should be made, and existing circumstances must be taken into consideration in each particular case and the division made accordingly. It is pointed out in several of these opinions that no appeal from the action of a county board of education in making an equitable division of funds and indebtedness in pursuance of either Section 4692, 4696 or 4736, of the General Code, is provided for by law, and that the discretion vested in such boards will not be interfered with by the courts unless a clear abuse thereof is shown. Reference to a comparatively few of these opinions which are typical of all which deal with the question, will suffice to show the attitude of former Attorneys General with respect to the matter. In an opinion reported in Opinions of the Attorney General for 1927, Vol. III, page 1806, it is said:

“In making a division of the funds and indebtedness between two school districts involved in the transfer of territory from one to the other, consideration should be given not solely to the comparative tax valuation of the property located within the territory transferred and that of the entire districts before transfer, but to other factors bearing on the situation as well.”

In an opinion which will be found in the reported Opinions of the Attorney General for 1928, at page 2959, it is held:

“3. The making of an equitable distribution of funds and indebtedness between two school districts, when a part of the territory of one district is annexed to another, is purely within the discretion of the board of education charged by law with the duty of making this equitable distribution, and in the absence of fraud or abuse of discretion the distribution as made by such board of education will be final.”

In 1929, the then Attorney General rendered an opinion which will be found on page 136 of the published Opinions of the Attorney General for that year, in which it was held:

“In making an equitable division of funds and indebtedness between school districts, many elements are to be considered, and what is an equitable division in any specific case is dependent upon the facts peculiar to the immediate case.”

Again, in 1929, in an opinion found on page 1199, of the published Opinions for that year, it is held:

“Where a transfer of school territory is made by authority of Section 4696, G.C., and an equitable division of funds is made between the districts involved in the transfer, there is no method provided by statute for review of the action of a County Board of Education in making a division of funds and indebtedness, and there is no method provided by statute for an appeal therefrom. If the County Board of Education abuses its discretion in making an equitable division of funds and indebtedness between two school districts involved in a transfer of school territory such abuse of discretion may be remedied by proper action in court.”

An exhaustive and interesting discussion of this question will be found in an opinion of Attorney General Turner, rendered in 1928. This opinion will be found in the published Opinions of the Attorney General for 1928, at page 1806. The opinion concludes:

“It should be understood that this department is not empowered actually to make a division of funds and indebtedness between two school districts involved in a transfer of territory, or to say what would be an equitable division in any particular case. That is a matter purely within the discretion of the board of education making the division, and is dependent on many considerations, as I have indicated.”

From the facts as set out in your inquiry, it appears that certain territory referred to as “South Scioto” was transferred into the Huntington Township Rural School District in Ross County, in 1934. At that time, the Huntington District had a bonded indebtedness. After the transfer, the indebtedness became an obligation of the entire district. Tax levies for the payment of this indebtedness were, of course, spread over the entire district as it was constituted after the addition of the territory transferred into the district. Thereafter, in 1938, certain territory which as it happened was the same territory which had been transferred into the Huntington District in 1934, was severed from the Huntington District and incorporated in a new district known as the South Scioto Rural School District. This was done in pursuance of Section 4736, General Code. At that time, an apportionment was made between the Huntington District and the new district. Under such circumstances, as held in the Ross case, *supra*, “all the territory of each district is subjected to a tax to meet its share of the indebtedness so apportioned.”

It does not appear that any action has ever been taken by way of appeal to the courts, to set aside or modify the findings of the county

board of education of the Ross County District with respect to the apportionment of indebtedness between the Huntington District and the South Scioto District at the time the South Scioto District was created.

I am therefore of the opinion, in specific answer to your question, that the Board of Education of the South Scioto Rural School District is required by law to pay to the Board of Education of the Huntington Rural School District the proceeds of tax levies made within the district for the purpose of paying its proportionate share of the outstanding obligation of the Huntington District which existed at the time of the creation of the South Scioto District as directed by the County Board of Education of the Ross County School District in its resolution of February 8, 1938, making an equitable distribution of indebtedness as between the said districts, and should continue to do so until the said obligation is fully paid unless the order of the county board of education with respect thereto should be modified by order of court in an action instituted for that purpose.

Respectfully,

THOMAS J. HERBERT,

Attorney General.