

OPINION 65-111**Syllabus:**

Upon the consolidation of two local school districts the computation of the maximum limit on the authority to levy taxes of the board of education of the new school district should include all existing tax levies authorized by the electors of the former school districts.

To: Edmund G. Peper, Henry County Pros. Atty., Napoleon, Ohio
By: William B. Saxbe, Attorney General, June 29, 1965

Your request for my opinion is as follows:

"Your opinion is requested in respect to a school consolidation in Henry County, Ohio, and the ensuing problem of levying taxes within the newly created school district.

"The local school districts of the Villages of Deshler, Hamler, Malinta and Richfield Township were consolidated by action of the Henry County Board of Education into what is now known as Patrick Henry School District. There was no remonstrance filed with the County Board of Education by the inhabitants of the new district. Each of the former local school districts had in existence at the time the consolidation became effective, voted tax levies outside of the ten mill limitation for current operating expenses. Based upon your predecessor's opinion No. 6354 rendered in 1956, it was understood that the newly created Board of Education has authority to levy a tax upon the property of the entire new district in an amount not in excess of the highest of the voted levies of the former districts.

"In addition to the current operating levy existing prior to the consolidation, the Deshler Local School District also had a one-half mill recreation levy in existence and also a one-half mill for the benefit of its school district library. No such levies exist in any of the other former districts.

"I would like your opinion as to whether the newly created Board of Education of Patrick Henry School District should, in preparing its annual budget, take into consideration the two half mill levies of the former Deshler Local District for recreation and library purposes, in making the computation as to the maximum tax which the new Board of Education may levy over the entire new district.

"In the event you should determine that these two levies would not be included in this computation, I would then like to know if the Board of Education would be authorized to levy a tax for each of these purposes over the entire new district in an amount not in excess of each of the former levies for recreation and library purposes."

Although the consolidation of school districts by county boards of education under Section 3311.26, Revised Code (Section 4831-1, General Code), has been the subject of numerous opinions of this office and of the courts of Ohio, the specific question posed by your letter of request has no predecessor. However, it is my opinion that an examination of the existing statutes and opinions relating to the creation of new school districts does produce the answer to your question.

Section 3311.26, Revised Code, provides in pertinent part:

"A county board of education may, by

resolution adopted by majority vote of its full membership, propose the creation of a new local school district from one or more local school districts or parts thereof. Such proposal shall include an accurate map showing the territory affected. After the adoption of the resolution, the county board shall file a copy of such proposal with the board of education of each school district whose boundaries would be altered by such proposal.

* * * * *

"Upon the creation of such district, the indebtedness of each former district becoming in its entirety a part of the new district shall be assumed in full by the new district. Upon the creation of such district, that part of the net indebtedness of each former district becoming only in part a part of the new district shall be assumed by the new district which bears the same ratio to the entire net indebtedness of the former district as the assessed valuation of the part taken by the new district bears to the entire assessed valuation of the former district as fixed on the effective date of transfer. As used in this section, 'net indebtedness' means the difference between the par value of the outstanding and unpaid bonds and notes of the school district and the amount held in the sinking fund and other indebtedness retirement funds for their redemption. Upon the creation of such district, the funds of each former district becoming in its entirety a part of the new district shall be paid over in full of the new district. Upon the creation of such district, the funds to each former district becoming only in part a part of the new district shall be divided equitably by the county board between the new district and that part of the former district not included in the new district as such funds existed on the effective date of the creation of the new district."

The county board of education as a taxing authority is required to comply with the provisions of Section 5705.28, Revised Code, which states:

"On or before the fifteenth day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year.* * *"

In preparing the budget the board must also follow the directions of Section 5705.29, Revised Code, which

provides in part:

"The tax budget shall present the following information in such detail as is prescribed by the bureau of supervision and inspection of public offices:

* * * * * * * * *

"(4) A statement of expenditures for the ensuing fiscal year necessary for any purpose for which a special levy is authorized, and the fund from which such expenditures are to be made;"

The Supreme Court of Ohio in the case of Gigandet v. Brewer, 134 Ohio St., 86, 92, held that the board of education of a school district created from two former districts may levy a tax upon the electors of the new district to pay for the bonded indebtedness incurred by the electors of one of the former districts prior to consolidation. In reaching this conclusion, the court observed that:

"The buildings and equipment of the two old districts, from which the new district was created, became the property of the new district, and the indebtedness of the old districts became that of the new. If constitutionally possible, since the residents of the new district were to obtain the benefits, equitably they should discharge the obligations which were incurred to create such benefits."

See also Rapp v. Bethel-Tate School Dist., 58 Ohio App., 126, 134 (1937).

One of my predecessors, in Opinion No. 6703, Opinions of the Attorney General for 1944, discussed in detail Section 4831-1, General Code. Two paragraphs of the syllabus of that opinion are relevant here. Paragraph 11 states that:

"Where a county board of education, by authority of Section 4831, et seq. of the General Code, creates a new school district by combining into one district all the territory of two existing districts, one of which had an unexpired voted tax levy outside the ten-mill limitation, the taxing authority of the newly created district may lawfully spread the said voted levy over all the territory of the consolidated district."
(Emphasis added.)

Paragraph 12, provides:

"When two school district are consolidated in pursuance of plans for school district territorial reorganization, as provided by Section 4831, et seq. of the General Code, tax levies which had been made outside the ten-mill limitation for the retirement of bonds in one of the districts may be spread over the entire combined district even though the debt had been contracted in one of the districts only." (Emphasis added.)

This opinion has been followed by the opinion to which you refer in your letter of request, Opinion No. 6354, Opinions of the Attorney General for 1956, and Opinion No. 7420, supra, p. 194. In Opinion No. 6354, supra, my predecessor concluded:

"I am still of the same opinion, and hence will hold that where two school districts are united to constitute a new district, pursuant to Section 3311.26, Revised Code, and such districts have each the unexpired portion of a voted levy of taxes in excess of the ten mill limitation, the board of education of such consolidated district is authorized to spread over the entire area of such consolidated district the larger of such voted levies."

You will note that I have cited statements of law regarding your question which are virtually identical. Furthermore, in each of these holdings "tax levy" is referred to unconditionally. Not one of the statements of law cited suggests that there are some tax levies of former school districts which may not be applied to the residents of the consolidated district. Rather, it is clear that no differentiation is to be made with respect to the purposes for which the various levies of the combined districts have been approved. It follows that since the residents of the new school district will benefit from a levy for recreation and library purposes, said residents may be legally presumed to share the burden of making these benefits available.

The question of whether or not these levies should be included in the computation of the maximum limit imposed on the board of education of the new school district is answered by application of the rationale of the cases of Gigandet v. Brewer, supra, and Rapp, v. Bethel-Tate School Dist., supra.

Your attention is directed also to the opinion of the Ohio Supreme Court in the case of Board of Education of Swanton v. Board of Education of Sharples Village School District, 114 Ohio St., 602. The court at page 605 interpreted the word "funds" as it was used in a statute which is similar to a portion of the present Section 3311.26, supra. The def-

inition is as follows:

"'Funds' include all moneys rightfully in the possession of the board of the original district, and all moneys to which the board of the original district is entitled at the date of the transfer* * *"

This statement is significant to the extent that it indicates all moneys (including those derived from special levies) pass to the board of education of the new district, and to the extent that it thereby corroborates the conclusion produced by an analysis of the authority previously cited herein.

That is, the school board of a newly created school district succeeds to all property, voted levies, funds, and obligations and liabilities of the districts from which said new school district is formed.

Since the new board of education succeeds to all levies of the former district, it follows that all levies authorized by any one of the former districts should be included in the computation of that district's total tax levy authority for purposes of computing the total tax to be levied by the new school district.

It is therefore my opinion and you are hereby advised that after consolidation the one-half mill levy for recreational purposes and the one-half mill levy for the school district library in the Deshler Local School District should be included in the computation of the maximum limit on the authority of the Board of Education of the newly created Patrick Henry School District to levy taxes over the entire new district.