

1377.

APPROVAL, BONDS OF McDONALD VILLAGE SCHOOL DISTRICT,
TRUMBULL COUNTY, OHIO—\$330,000.00.

COLUMBUS, OHIO, December 15, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

1378.

APPROVAL, BONDS OF NORTH OLMSTED VILLAGE SCHOOL DISTRICT,
CUYAHOGA COUNTY, OHIO—\$15,697.00.

COLUMBUS, OHIO, December 15, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1379.

APPROVAL, BONDS OF BAZETTA TOWNSHIP RURAL SCHOOL DIS-
TRICT, TRUMBULL COUNTY—\$36,000.00.

COLUMBUS, OHIO, December 16, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

1380.

SCHOOLS—TAX AND INDEBTEDNESS LEVIES—CONSIDERATION OF
QUESTIONS INVOLVED IN ANNEXATION OF PORTION OF RURAL
SCHOOL DISTRICT TO CITY SCHOOL DISTRICT.

SYLLABUS:

Various questions involving the indebtedness and tax levies of school districts, where annexation by a city automatically transfers a portion of a rural school district to a city school district, considered.

COLUMBUS, OHIO, December 16, 1927.

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

DEAR SIR:—This will acknowledge your letter of November 19, 1927, as follows:

"The following situation has arisen in this county upon which I respectfully request your opinion.

The City of Dayton has petitioned the county commissioners of this county for the annexation of certain territory in Harrison Township in this county.

Harrison Township is also embraced in the Harrison Township Rural School District.

The tax duplicate of Harrison Township Rural School District is approximately \$21,000,000.00. The territory proposed to be annexed will take from this tax duplicate approximately fifty per cent thereof. Harrison Township school district has at present bonds issued and outstanding of approximately \$400,000.00.

On November 8th this year, the people of that school district voted favorably upon an issue of \$675,000.00 of bonds for the construction and improvement of schools in that district.

Under the opinions of the Attorney General the city school district takes over the school property within the territory to be annexed and also the indebtedness upon such school property and there can be no further division of the indebtedness of the school district. Following this ruling, of the outstanding bonds of the Harrison School District in the amount of \$400,000.00, approximately \$100,000.00 would follow the school property within the proposed annexed territory and would be assumed by the Dayton city school district, leaving \$300,000.00 as the bonded indebtedness of the Harrison school district.

Section 2293-15, General Code, (House Bill 80) provides that the indebtedness of a school district may not exceed six per cent of the tax duplicate.

The resolution submitting the issue of bonds in the sum of \$675,000.00 as voted favorably by the people of the Harrison Township school district on November 8th contained no stipulations as to the amount to be used for new schools or improvement of existing schools, leaving the matter for the determination of the school board after election.

If the county commissioners grant the petition of the city for annexation prior to the action of the Harrison Township school board in passing a resolution that bonds shall be issued in accordance with the vote of the people, can the Harrison Township school board proceed with such resolution to issue bonds in the sum of \$675,000.00? If the county commissioners grant annexation after such resolution to issue bonds is passed but before notes are issued, contracts let and bonds sold, can the township school board proceed to issue notes, let the contracts and sell bonds?

Will the township school district be limited to the issue of only such an amount of bonds as would make a total of six per cent of the tax duplicate of the rural school district after annexation?

If the township school board issues notes, lets contracts and sells bonds in the amount voted by the people pledging the redemption thereof with the school district as it exists now, can the county commissioners grant annexation notwithstanding such obligation has been incurred by the township school district? If resolutions have been passed for the issuance of bonds as approved by the people of the school district and resolution for the issuance of the notes, contracts let, for the construction and improvements desired, must the township school board stop its proceedings and work if annexation is granted?

If the township school district allots part of the proposed issue of \$675,000.00 for the improvement of schools within the territory proposed to be annexed to the city of Dayton and the county commissioners grant annexation, will the city school district be compelled to assume that proportion of the bonds so allotted to the schools in the proposed annexed territory?

I seek by these questions an opinion as to the rights and obligations of the respective political subdivisions raised by this petition for annexation. If the county commissioners grant annexation before the township school district proceeds to issue the bonds as voted by the people of that district, I wish to know whether or not they have authority to do so and what if any limitations are imposed upon them? If the county commissioners do not grant annexation until after action of the township school district in pursuance of the favorable vote of the people, I desire to know what if any limitations are imposed upon the school district and as to what division, if any, is to be made and in what event division of indebtedness and obligations may be made?

May I respectfully request your early opinion in this matter as the county commissioners will soon be ready to act on the petition for annexation and the township school district is ready to proceed with the issuance of notes, letting of contracts and sale of bonds."

Subsequently you supplemented your inquiry with the following communication :

"Supplementing my letter of November 19th asking for your opinion in the matter of annexation of certain territory of Harrison Township to the City of Dayton, this county, I desire to inquire as to another situation which will develop in this matter.

The City of Dayton school district is collecting a two mill levy for expenses which will continue until 1930.

In the election of November 8th, Harrison Township rural school district voted a three mill levy for current expenses for the next three years.

If the county commissioners grant annexation as set forth in my letter of November 19th, can the three mill levy as voted be placed on the remaining part of the school district?

If the Harrison school district places the levy before annexation is granted, can such levy be collected on the annexed territory if annexation is granted?

If the levy is made before annexation and then annexation is granted and later the balance of the Harrison Township school district is transferred to the city school district, will such levy be operative?

If annexation is granted and the balance of the Harrison school district is transferred to the city school district, will the city school levy be operative in the territory taken into the city school district both by annexation and transfer?

In other words considering the city school levy and the Harrison township school levy, what will be the status of the respective subdivisions both before and after annexation or transfer takes place?"

From the statement in your first letter, I assume that you are familiar with the rulings of this department announced earlier in the year with respect to the general rules applicable in the case of the annexation of territory to a city or village as effecting the consequent change of the property therein located from a rural school district to a city or village school district. These rulings are found in Opinions 756, rendered July 21, 1927; 803, rendered July 28, 1927, and 1127, rendered October 10, 1927. The

general discussion found in these opinions need not, therefore, be reiterated, but I enclose a copy of each for your information.

In the case which you cite, however, it appears that no annexation has been accomplished, but is merely in contemplation. The Harrison township rural school district will, if annexation be accomplished, suffer a loss of approximately one-half of its tax duplicate. Of the total present bonded indebtedness of \$400,000, only \$100,000 is upon property located within the territory proposed to be annexed, so that there will remain at all events a bonded indebtedness of \$300,000.

The voters of the Harrison school district on November 8, 1927, authorized a further issue of \$675,000 for the construction and improvement of schools in the district. Your specific question is what effect the pendency of the annexation has upon this authority. That such action on the part of the voters constitutes merely an authority and does not actually necessitate the issuance of the bonds is made clear by the provisions of Section 2293-23, which states in part as follows:

"If fifty-five per cent of those voting upon the proposition vote in favor thereof, the taxing authority of such subdivision shall have authority to proceed under Sections 2293-25 to 2293-29, inclusive, with the issue of such bonds and the levy of a tax outside of the fifteen mill limitation, sufficient in amount to pay the interest on and retire such bonds at maturity."

Hence the taxing authority (in this instance the board of education) may or may not issue these bonds, or any of them, if in its judgment the best interests of the district will be served thereby. While in contemplation of law the mere pendency of annexation proceedings has no effect, yet I believe it the duty of the board of education of the Harrison school district to take this fact into consideration in the determination of whether or not it is wise at this time to issue the whole or a part of the authorized bond issue. The proceedings to date, so far as your letter indicates, have been conducted in strict accordance with law and I feel that the board of education has the legal authority to proceed in the usual way to issue the bonds, entirely disregarding the pending annexation proceeding. At the same time, however, I feel it my duty to suggest that, from the facts before me, such a course would scarcely be a fulfillment of the board's obligation to serve the district faithfully, since, in the event of annexation, there would necessarily be imposed upon the remaining part of the school district an obligation excessively burdensome. In so stating, however, I am assuming that the expenditure would be upon buildings not located in the territory to be annexed, so there could in no event be an assumption of the liabilities existing thereon by the city school district.

If bonds are actually issued, or notes in anticipation of bonds are outstanding prior to annexation, and the property to which the proceeds of such bond or note issue were applied is located within the territory to be annexed, it would be the duty of the board of education of the city school district to assume such indebtedness and levy a tax, sufficient to pay it, the proceeds of which, by the provisions of Section 4690 of the Code, are to be paid to the board of education of the Harrison school district.

If the Harrison township board proceeds to issue notes, let contracts and issue bonds to the extent of the authority conferred by the people, there is nothing to prevent the annexation by the city upon authority of the county commissioners and such action would necessarily result in an increased burden upon the tax duplicate of the Harrison township school district in the event the school property, to which the proceeds of the bond issue are devoted, is not located in the territory so annexed. This is indicative of the caution which should be exercised by the Harrison township school board under the circumstances here existing.

You ask whether the township school district may allot part of the proposed issue of \$675,000 for the improvement of schools within the territory proposed to be annexed and thereby compel the city school district to assume that proportion of the bonds so allotted. The answer to this question is dependent upon what you mean by the word "allotted." If neither notes or bonds are issued with reference to this property located within the territory to be annexed, there would exist no obligation upon the city school district to issue such bonds or any bonds at all. The authority conferred by the vote of the people was to the Harrison township school district. By virtue of the annexation proceedings the territory in question is detached from such school district and attached to the city school district and thereby becomes an integral part of the latter district. The bond issuing authority conferred by the vote of the electors becomes, therefore, of no effect whatsoever as to the territory detached prior to the issuance of the bonds or notes.

You further inquire what effect, if any, the annexation of the territory in question would have upon the present existing authority, assuming that the Harrison township school board does not act prior to the completion of the annexation proceedings. In my opinion, the fact that a portion of the territory of the rural school district has been detached by annexation proceedings does not vitiate the authority to issue the bonds by virtue of the November election. That is to say, within general limitations, the taxing authority (the board of education) still retains the right to issue the bonds. You suggest, however, that by reason of the annexation of the territory in question the duplicate of Harrison township rural school district is cut in half so that, if the bonds are to be issued thereafter, there would be outstanding an aggregate of bonds in excess of the six per cent limitation found in Section 2293-15 of the General Code. The pertinent part of that section is as follows:

"The net indebtedness created or incurred by any school district shall never exceed six per cent of the total value of all property in any such school district as listed and assessed for taxation, provided that bonds shall not be submitted to popular vote in an amount which will make the net indebtedness after the issuance of such bonds exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, unless the tax commission of Ohio consents thereto."

The legislative mandate that the net indebtedness of any school district may not exceed six per cent of the total value of the property is most emphatic. This limitation must, in my opinion, be applied at the date of actual issuance of the bonds and not at the time mere authority is conferred upon the taxing authority to incur such an indebtedness. It necessarily follows, therefore, that under the circumstances suggested, the issuance of the bonds would be in violation of this limitation, for at that time these bonds, together with the other indebtedness, would greatly exceed six per cent of the duplicate remaining after the annexation proceedings. This would not, however, render ineffective the whole authority conferred by the vote at the November election. The Harrison township school district would still be authorized to issue bonds pursuant to such vote, provided that such issue, together with outstanding issues, would not make the net indebtedness of the district in excess of six per cent of the total value of all the property in the school district as listed and assessed for taxation. Whether or not the issuance of bonds to this amount would be advisable in view of the changed circumstances of the district, is a matter resting within the judgment and discretion of the board.

I note in your supplementary letter that the city of Dayton school district is collecting a two-mill levy for expenses which will continue until 1930 and that at the November election of this year the Harrison township school district voted a three

mill levy for current expenses for the next three years. On these facts you inquire, in the event that annexation is granted, if the three-mill levy as voted may be placed on the remaining part of the school district. I find no statutory provision from which it may be argued that the authority for the levy ceases by reason of the fact that territorial changes in the district in question are subsequently made. Obviously the subsequent change would not result in this instance in an increased tax burden upon the remaining part of the district, since in any event the levy cannot exceed three mills and authority therefor was specifically conferred by the vote at the election.

You next inquire whether the Harrison township school district can collect the levy on the annexed territory in the event that the levy is made before the annexation is granted. As you know, levies are made annually and the authority to make a three-mill levy does not necessarily involve the making of such levy in any one year or for the full number of years designated in the ballot. The effect of a vote upon a tax levy is set forth in Section 5625-18 of the General Code, which is as follows:

"If the majority of the electors voting thereon at such election vote in favor thereof, the taxing authority of said subdivision may levy a tax within such subdivision at the additional rate outside of the fifteen-mill limitation during the period and for the purpose stated in the resolution, or at any less rate, or for any of said years or purposes; provided, that levies for payment of debt charges shall not exceed the amount necessary for such charges on the indebtedness mentioned in the resolution. If such additional tax is to be placed upon the tax list of the current year, the result of the election shall be certified immediately after the canvass by board of election to the taxing authority, who shall forthwith make the necessary levy and certify it to the county auditor who shall extend it on the tax list for collection; in all other years, it shall be included in the annual tax budget that is certified to the county budget commission."

Levies are made annually by the various taxing authorities before October 1st of each year unless a later date is approved by the tax commission. The action of levying is accomplished by ordinance or resolution after action has been taken by the budget commission.

You do not advise me whether or not the levy in this instance was to be placed upon the tax list of the current year. If such be the case, then, under the provisions of Section 5625-18, supra, the levy has already been certified to the county auditor and extended on the tax list of the district as it now exists. This would include the territory to be annexed as well as the other portions of the Harrison school district. So far, therefore, as the current levy is concerned, the subsequent annexation would have no effect and the proceeds thereof should be paid to and retained by the Harrison township school district. Subsequent annual levies made pursuant to the authority of the November election could not, however, be properly extended against the territory so annexed, since at the time of the annual levy such territory would not be within the district in question.

You further inquire whether, in the event the levy is made before annexation, and after annexation is granted the balance of the Harrison township school district is transferred to the city school district, such levy will still be operative. The Harrison district is a separate entity and if it is absorbed by the city school district, in my opinion the authority to make the three-mill levy expires and the territory so included in the specific school district becomes an integral part of the city school district. This is subject to qualification, however, that any annual levy actually made prior to annexation or transfer should be collected and paid into the city school district so absorbing the remaining portion of the Harrison township school district.

Finally, you inquire as to whether the city school levy will be operative in the territory taken into the city school district both by annexation and transfer. I have no hesitancy in saying that any territory legally becoming a part of the city school district prior to any annual levy of taxes therein is subject to levy in exactly the same manner as any other part of the territory of such school district and hence the authority to levy two mills for expenses heretofore voted in the Dayton school district extends to and includes the levy upon property subsequently becoming a legal part of such district.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1381.

PAROLE—SECTION 2175, GENERAL CODE, APPLIES TO PRISONER
COMMITTING NEW CRIME—SPECIFIC CASE DISCUSSED.

SYLLABUS:

1. *When a prisoner sentenced to the Ohio penitentiary and transferred to the London prison farm, has been subsequently paroled and while upon parole commits a new crime and is resented to the Ohio penitentiary, the provisions of Section 2175, General Code, to the effect that he "shall serve a second sentence, to begin at the termination of his service under the first or former sentence, or the annulment thereof," apply.*
2. *Specific case construed.*

COLUMBUS, OHIO, December 16, 1927.

Ohio Board of Clemency, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter which reads as follows:

"Prisoner Harry Davis, No. 53,083, was committed to the Ohio penitentiary April 29, 1924, and was paroled August 26, 1925. While out on parole he committed another crime, was convicted and was brought to the Ohio penitentiary May 4, 1926.

This case was one of those which led to a difference of opinion between the board and the keepers of the two prisons, the Ohio penitentiary and the London prison farm, for the reason that he was given his parole from the London prison farm, but when resented was brought back to the Ohio penitentiary. The old board of clemency in an effort to clear the record marked him for a final release from the London prison farm on May 4, 1927.

Question—Was that action null and void, or is he entitled to continue on the new number, 55,606, in the Ohio penitentiary?

Remarks—We feel that we understand your opinion recently given as declaring such actions null and void, but to satisfy the officials of the Ohio penitentiary I am asking an opinion in this specific case."

In considering the question you present your attention is directed to a recent opinion of this department, being Opinion No. 905, dated August 23, 1927, Opinions, Attorney General for 1927, the syllabus of which reads: