

In the course of the opinion the court said:

"Giving this construction to the statutes, we conclude that the board, being a creature of statute, an agent whose powers are not general, but special, should be held to represent the county in respect to its financial affairs, only in such matters as are distinctly provided by statute. Authority is thus given to it to entertain and pass upon claims, which for some amount, may be the subject of legal demand against the county. Its jurisdiction being thus necessarily limited, is not of such a character as to permit a finding of jurisdiction by the board to be conclusive of the fact. Speaking more specifically, the board may properly pass upon a question whether in fact a given service has been rendered, and upon the amount which ought to be paid upon an unliquidated claim, where in law a claim may exist, i. e., where it has a legal basis on which to stand. But it is wholly without authority to sanctify a demand illegal because of being upon a subject which can admit of no claim, and thus give away the people's money. It can no more do so than can any other agent bind his principal by acts unauthorized because without the scope of his authority."

There can be no question but that your advice to the board with reference to this matter was correct and should be followed by the board. For a board of education to pay a doctor bill, or any part of the expenses incident to an accident occurring in the transportation of pupils under the supervision of the board, would be an unauthorized diversion of public funds.

Respectfully,
EDWARD C. TURNER,
Attorney General.

691.

SCHOOLS—INCORPORATION OF NEW VILLAGE FROM RURAL SCHOOL DISTRICT—CREATES SEPARATE SCHOOL DISTRICT—ELECTION OR APPOINTMENT OF BOARD OF EDUCATION—TERRITORY REMAINING IN RURAL DISTRICT—INDEBTEDNESS OF DISTRICTS.

SYLLABUS:

1. *Upon the incorporation of a new village from territory lying within the territorial boundaries of a rural school district, the territory within the new village thereby becomes a separate village school district if the tax valuation of the property lying within such territory is \$500,000.00 or more.*

2. *When a new village is incorporated and a new village school district thereby automatically created, a board of education shall be elected therefor at the time when the first election is held for the election of municipal officers for the village, which may be at the next regular time for municipal elections or at a special election held at any time not exceeding six months after the incorporation. If the village school district fails to elect a board of education at the time municipal officers are elected, the county commissioners of the county in which such district is situate should appoint such board, the members of which shall serve until their successors are elected and qualified.*

3. *When the territory remaining in a rural school district, after the incorporation of a village consisting of territory which was formerly contained in the rural school district,*

contains more than sixteen square miles, it remains a separate rural district and its board of education continues to function as before the detachment of the territory which was incorporated as a village.

4. *Where no school property belonging to a rural school district is located within the territory carved from the district and incorporated as a village with a tax valuation of more than \$500,000.00, the new village school district thus created is not chargeable with any of the indebtedness of the rural school district nor can it receive any of the funds belonging to the rural school district. The rural district consisting of the territory remaining after the incorporation of the village retains all the funds in its treasury and is charged with the retirement of its indebtedness, and should be paid the proceeds of all taxes collected from levies which it had made prior to the creation of the village school district carved from its territory.*

COLUMBUS, OHIO, July 6, 1927.

HON. CHARLES B. COOK, *Prosecuting Attorney, Jefferson, Ohio.*

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

“We are in receipt of a letter from the Hon. C. D. Groves, a copy of which we are enclosing, the same being self-explanatory, and would respectfully request your opinion upon the questions raised in said letter.

I might say in explanation of the situation that Geneva township rural school district is on the shore of Lake Erie, and the village of Geneva-on-the-Lake, which has been incorporated is a summer resort there along the lake. The original Geneva township rural school district before the incorporation of said village had a tax valuation of about \$5,240,000.00 in round numbers. The tax valuation of the incorporated village is substantially \$1,700,000.00, there is outstanding of the \$85,000.00 about \$72,000.00 of the school house bonds.

May we also add another query to those asked by superintendent Groves. This would probably be No. 5, in event that if you should hold, that Geneva-on-the-Lake property continues to help retire the School house construction bonds, then would the board of education of the original Geneva township rural school district still continue in existence for the purpose of making levies for the same?”

The letter from your county superintendent of schools a copy of which you enclose, is as follows:

“Geneva-on-the-Lake is a recently incorporated village within the Geneva township rural school district, the incorporation became effective May 2, 1927. This new village has an assessed valuation of approximately \$1,700,000.00 and a school enrollment of approximately 12 pupils. Geneva township rural school district will have left more than 19 square miles of territory.

Geneva township rural school district issued \$85,000.00 of school house construction bonds in 1923 and built a school building that cost approximately \$85,000.00. The new village of Geneva-on-the-Lake will have no school building within its territory.

1. Does Geneva-on-the-Lake automatically become a separate school district?
2. If so, how are the members of the new board of education selected?

3. If so, when does the Geneva township rural school district lose the taxes from this incorporated territory?

4. Will Geneva-on-the-Lake village property continue to help retire the school house construction bonds?"

Section 4687, General Code, provides:

"Upon the creation of a village, it shall thereby become a village school district, as herein provided, and, if the territory of such village previous to its creation was included within the boundaries of a rural school district and such rural school district included more territory than is included within the village, such territory shall thereby be attached to such village school district for school purposes, provided such territory has an area of less than 16 square miles. The legal title to school property for school purposes in such newly created village school districts shall be vested in the board of education of the newly created village school district. Provided, however, if there be any indebtedness on the school property located within the newly created village school district, the board of education of the newly created 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 district or districts from which it acquired the school property, the amount of money collected from such levy as it becomes due."

As will be noted, the above section provides that upon the creation of a village "it shall become a village school district as herein provided." Sections 4681 and 4682, General Code, prescribe when a village shall become a village school district. It is to these sections that section 4687, General Code, refers to by the words "as herein provided." The provisions of section 4687, General Code, must be read in connection with the provisions of sections 4681 and 4682, General Code, which provide in substance that each village, together with the territory attached to it for school purposes and excluding the territory detached for school purposes and having in the district thus formed a tax valuation of \$500,000 shall constitute a village school district, but if the tax valuation is less than \$500,000 the new village shall not constitute a village school district unless the question is submitted to the electors at a regular or special election and they by a majority vote determine that a separate village school district be created.

It has been held by this department in an opinion found in Opinions of Attorney General, 1916, p. 629 that the provisions of sections 4681 and 4682, General Code, apply when the village is created by act of incorporation as well as when the tax valuation within the school district of which the territory within the village is a part reaches the sum of \$500,000.00.

It appears that the tax valuation of the property within the newly created village of Geneva-on-the-Lake is more than \$500,000.00 and that the territory remaining in Geneva township rural school district after the incorporation of the village will have an area of more than sixteen square miles. It therefore follows that Geneva-on-the-Lake becomes a village school district and that the territory remaining in Geneva township rural school district does not become attached for school purposes to the village school district thus created, but will continue as the territory comprising the Geneva rural school district until some further action is taken with reference to the matter.

The Geneva township rural board of education would of course continue in existence and the board of education for the newly created district should be provided in accordance with the provisions of sections 4708, 4709 and 4710 of the General Code. Provision is therein made for the selection of a board of education for the village school

district which board "shall consist of five members elected at large at the same time municipal officers are elected, and in the manner provided by law" to serve for a term of four years. At the first election in a newly created district two members shall be elected for two years and three members for three years, and if a newly created village fails to elect a board of education the county commissioners may appoint a board to serve until their successors are elected and qualified.

The "time when municipal officers are elected" and "the manner provided by law" for the election of municipal officers in a newly created village are set out in section 3536, General Code, which provides:

"The first election of officers for such corporation shall be at the first municipal election after its creation, * * * and the first election may be a special election held at any time not exceeding six months after the incorporation. * * *"

As it appears from your statement that no school property belonging to the Geneva township rural school district as formerly constituted lies within the territorial boundaries of the newly created village, no question arises as to the title to school property or the assumption by the new village district of any of the debts of the old district. There is no statutory provision for the division of the funds in the treasury of a school district upon the creation of a new district from a part of the territory included within the old district by the process whereby the new village district was created in this instance.

It is said in Ruling Case Law, Schools, Section 10:

"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 another. In the absence of such 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."

It therefore follows that the Geneva Township Rural School District retains all the funds now in its treasury, retains title to the school property lying within its territory and is charged with the payment of all the debts of the original district.

Within the provisions of Section 7600, General Code, is included the provision that:

"the school tax levied by boards of education and collected from the several districts or parts of districts in the county shall be paid to the district from which it was collected."

It would therefore follow that the moneys arising from tax levies made by the Geneva Township Rural School District to be distributed at the semi-annual distribution of tax moneys in August, 1927, should be paid to the Geneva Township Rural School District, the levy therefore having been made by this district board of education prior to May 2, 1927, the effective date of the incorporation of the village of Geneva-on-the-Lake. Any levies of taxes made after May 2, 1927, will be made by the boards of education of the respective districts and the proceeds therefrom should be paid when collected and ready for distribution to the district making the levy.

Answering your questions specifically:

1. The territory within the newly created village of Geneva-on-the-Lake became a separate village school district when the incorporation of the village became effective.

2. The members of the board of education for the newly created Geneva-on-the-Lake Village School District should be elected at the first election held for the election of municipal officers for the village which may be the regular election in November, 1927, or a special election held for the purpose within six months after May 2, 1927. In the event a board of education is not elected for the Geneva-on-the-Lake Village School District at the time the village municipal officers are elected, the county commissioners of Ashtabula County should appoint a board of education for such district and the members so appointed will serve until their successors are elected and qualified.

3. Tax moneys arising from tax levies made by the Geneva Township Rural Board of Education and distributed at the August, 1927, semi-annual settlement of taxes should be paid to the Geneva Township Rural Board of Education. The proceeds of levies made after May 2, 1927, should be paid to the district making the levy.

4. The property lying within the village of Geneva-on-the-Lake will not continue to help retire bonds issued by the Geneva Township Rural Board of Education prior to the incorporation of the new village. The proceeds of district school tax levies made prior to such incorporation accrue to the Geneva Township Board of Education even though payable after the date of the incorporation of the village.

5. In view of the answer to your fourth question, your fifth question does not require an answer.

In conclusion, I might state that inasmuch as the newly created Geneva-on-the-Lake Village School District will only have approximately twelve pupils and this territory had been served before the incorporation by the rural district, it would seem in the interests of economy and good management for the county board of education to take some action under the provisions of Section 4692 of the General Code.

Respectfully,

EDWARD C. TURNER,
Attorney-General.

692.

RECEIVER—LIQUIDATING RECEIVER NOT SUBJECT TO TERMS OF SECTION 5404-1, GENERAL CODE—RETURN FOR TAXATION OF PERSONAL PROPERTY.

SYLLABUS:

A liquidating receiver of the assets of a corporation is not within the terms nor the effect of Section 5404-1, General Code, requiring personal property returns of incorporated companies to be made as of the first day of January. He is, however, subject to Section 5372-1 General Code, requiring receivers, assignees and other similar officers, to list for taxation property held or controlled by them for others (including a corporation) on the day preceding the second Monday of April.

COLUMBUS, OHIO, July 6, 1927.

HON. CHAS. P. TAFT, *2d, Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication with which you inclose a letter from the county auditor of Hamilton County, Ohio, which reads as follows:

“In connection with the personal property tax return made by the Receivers of the Virginia-Carolina Chemical Company as of January 1, 1926, we wish to present the following facts and ask that you secure an opinion from