

2453.

TERRITORY, WHERE NO PART OF ANY MUNICIPALITY, ANNEXED TO CONTIGUOUS CITY OR VILLAGE—AUTOMATICALLY BECOMES PART OF CITY OR VILLAGE SCHOOL DISTRICT—BY FORCE, SECTION 4690 G. C.—DUTIES, EDUCATIONAL ADVANTAGES, SCHOOL CHILDREN, DEVOLVE UPON SCHOOL DISTRICT WHERE TERRITORY ANNEXED AT TIME, DATE, OF ANNEXATION—NO PROVISION IN LAW TO DIVIDE FUNDS BETWEEN TWO SCHOOL DISTRICTS THROUGH SUCH ANNEXATION—WHERE PORTION SCHOOL DISTRICT, LATER ANNEXED, PROCEEDS OF TAX LEVIES SHOULD BE PAID TO AND BE RETAINED BY DISTRICT WHICH MADE LEVY.

SYLLABUS:

1. *When territory which is no part of any municipality is annexed to a contiguous city or village and such territory thus automatically becomes a part of the city or village school district by force of Section 4690, General Code, the duties and obligations with respect to the furnishing of educational advantages for school children residing in the territory annexed, devolve*

upon the school district of which the annexed territory becomes a part at the time of the effective date of the annexation.

2. *The law makes no provision for the division of funds between two school districts a portion of one of which automatically becomes a part of a city or village school district by reason of the annexation of a portion of its territory to the city or village.*

3. *The proceeds of tax levies for school purposes made by a school district, a portion of whose territory has later been annexed to an adjoining city or village, should be paid to and retained by the district which made the levy.*

Columbus, Ohio, June 25, 1940.

Hon. E. N. Dietrich, Director of Education,
Columbus, Ohio.

Dear Sir:

I have your request for my opinion which reads as follows:

“We should appreciate your opinion on the following specific question:

‘When territory is annexed to a village, should the operating funds for school purposes be distributed by the county auditor at settlement time, or should they be turned over entirely to the district from which the territory was annexed, to be distributed by agreement between the two school districts?’

The history of this case is as follows:

In August of 1938 there was annexed to the Ottawa Hills Village School District a portion of the Sylvania Village School District, the valuation of which was \$926,890. The taxes collected on this valuation for the year 1939 were all turned over to the Sylvania Village School District but the schools were operated by the Ottawa Hills Village School District in that year.

In December of 1939 there was annexed to the Village of Ottawa Hills a portion of Sylvania Township. This portion was a part of the Sylvania Village School District and it automatically became a part of the Ottawa Hills Village School District. In accordance with statutory provisions, the Ottawa Hills Village School District is assuming its proportionate share of the Sylvania Village School District's debt as of the date of annexation. However, inasmuch as there is no statutory provision for the distribution of operating funds, the question arises as to whether the

operating funds should be distributed by the county auditor at settlement time or turned over entirely to Sylvania Village School District to be distributed by agreement between the two school districts.

You will understand that the school taxes for 1940 were levied and collected on the 1939 duplicate made up before annexation took place, and ordinarily the taxes would be distributed to Sylvania Village Board of Education for 1940, though Ottawa Hills would be operating the schools.

Now Ottawa Hills Village School District is making claim to the operating taxes collected in this annexed territory and turned over to the Sylvania Board and is contending that these taxes should be computed and withheld by county auditor's office from the 1940 taxes of the Sylvania Village School District."

From the situation as outlined by you in your letter, I judge that inasmuch as the Ottawa Hills Village School District and the Sylvania Village School District are districts of the same county school district, the transfer of territory made in August, 1938, to which you have referred, was effected under and in pursuance of Section 4692, General Code, and as this statute authorizes a county board of education when making such a transfer to make an equitable distribution of funds and indebtedness as between the districts involved proper action was taken with respect thereto at the time, and when the annexation of territory to the village of Ottawa Hills was made in December, 1939, the former transfer of 1938 was a closed incident.

The question here presented relates to the relative rights and liabilities of the Ottawa Hills Village School District and the school district from which territory was annexed thereto with respect to the funds of the two districts including those in their respective treasuries as well as those in process of collection. The only pertinent statutory provisions with respect thereto are contained in Section 4690 of the General Code of Ohio, which 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 will be observed from the terms of the foregoing statute that no provision is made therein concerning the distribution of the funds belonging to the districts affected by the detachment of territory from one district and its attachment to another. The statute makes no provision for the assumption by the district receiving the territory of a proportionate amount of the indebtedness on the "school property" in the territory annexed. Prior to the decision of the case of *State ex rel. v. Bateman*, 119 O. S., 475, there had existed some doubt as to just what was meant by the expression, "school property" as used in this statute. The Court, in the *Bateman* case, said:

"We are of the opinion that school property does not mean the school buildings and equipment utilized in conducting the schools, but rather all the taxable property within the district subject to taxation."

That case did not involve the question of distribution as between the districts affected of moneys or funds on hand or in process of collection and no case has ever reached the courts involving that question wherein this particular statute was involved.

It is a general rule of law as stated in *Ruling Case Law*, Volume 24, pages 566 and 567, that:

"The legislature having plenary power over school districts, may provide for the division of the property and the apportionment of the debts when a portion of the territory and property of one district is transferred to the jurisdiction of another; but in the absence of such provisions, the rule of common law obtains, and that rule leaves the property where it is found and the debt on the original debtor."

In support of the text, there is cited the case of *Pass School District v. Hollywood City School District*, 156 Cal., 416, 105 Pac., 122, which case is reported in 26 L. R. A., N. S., 485, 20 Annotated Cases, 87. The notes in the last volume referred to, contain many cases supporting the text. See also *Shaw v. City of Mayfield*, 191 Ky., 389, 230 S. W., 539, where the text of *Ruling Case Law* referred to above is cited.

In many instances the legislature has expressly provided for a division of both funds and indebtedness between political subdivisions wherein territory of one is annexed to another. In Sections 4692, 4696 and 4736, of the *General Code*, relating to annexation and transfers of school territory, ex-

press provision is made for an equitable division of the funds and indebtedness of the districts involved, and of course, in so doing, funds or tax levies in process of collection may and should be taken into consideration. Similar provisions are made in Sections 3557-1, 3576 and 3577-2, General Code, with respect to the distribution of indebtedness and funds either in the treasury or in process of collection, where territory is annexed to a municipality.

Where no definite statutory provisions exist as to division of funds and indebtedness where territory is detached from one subdivision and annexed to another, the general provisions of law as stated in Ruling Case Law, supra, have been generally regarded by this office and by the courts of Ohio as being controlling. In the case of State of Ohio, ex rel. Board of Education of Macedonia v. Board of Education of Northfield Township, 22 O. C. C., 224, 12 O. C. D., 423, it is held as stated in the headnotes:

“A special school district set off and created May 12, 1898, out of territory of a township is not entitled to any of the funds held by a board of education of such township September 1, 1898, which had been raised for school purposes by levies theretofore made upon the property of such township, including the property embraced in such special school district, there being no provision in the statute under which such special school district was created, for a division of the same.”

The question here involved was considered by a former Attorney General in two opinions wherein the provisions of Section 4690, General Code, and the law applicable to situations of this kind were considered. Said Section 4690, General Code, has not since been amended or in any wise construed by the courts, so far as this question is concerned. These opinions will be found in the published Opinions of the Attorney General for 1927, pages 1414 and 1979. In the first of these opinions it was held, as stated in the syllabus:

“There is no provision of law whereby a division may be made of the funds or indebtedness of a rural school district, and a city or village school district, when a portion of the rural school district automatically becomes a part of the city or village school district, by reason of the annexation by the municipality comprising the city or village school district of a portion of the territory comprising the rural school district, unless there is indebtedness on the school property located in the territory annexed,

in which event the board of education of the city or village school district shall assume such indebtedness.”

In the second mentioned opinion it was held:

“1. When territory is annexed to a city or village and such territory thus automatically becomes a part of the city or village school district, in so far as the maintenance of schools is concerned, the duties and obligations with respect thereto, pass to the city or village board of education of the district of which the annexed territory becomes a part at the time of the effective date of such annexation.

2. The law makes no provision for the division of funds between two school districts a portion of one of which automatically becomes a part of a city or village school district by reason of the annexation of a portion of its territory to the city or village.

3. The proceeds of tax levies for school purposes made by a school district, a portion of whose territory has later been annexed to an adjoining city or village, should be paid to and retained by the district which made the levy.”

By applying the law as hereinbefore stated and discussed to the facts set out in your inquiry, it is my opinion that the Ottawa Hills Village School District has no claim to any part of the proceeds of tax levies made by a school district prior to the annexation of a portion of that district to the Ottawa Hills Village School District even though the taxes so levied were collected from owners of property which was annexed to the Ottawa Hills Village District after the annexation became effective, from and after which time it was the obligation of the Ottawa Hills Village District to provide at its expense educational advantages in its schools for the children residing in the territory annexed.

Respectfully,

THOMAS J. HERBERT,
Attorney General.