

After an examination of the statutes and the duties of these positions, it would appear that there is nothing to prevent one and the same person from holding the three positions in question at the same time if it is physically possible to perform the duties of the three positions. This office has, in numerous opinions, held that the question of physical possibility to discharge the duties of various positions is a question of fact rather than of law. A few of the recent opinions of this office to this effect are as follows: Opinions of the Attorney General for 1933, Vol. 1, page 360; Vol I, page 763; Vol. II, page 1213; Opinion No. 2289, rendered February 16, 1934. I call your attention to my opinion No. 2471, rendered April 7, 1934, the syllabus of which reads:

“A member of a county board of elections may at the same time hold the position of clerk of a city council and that of employe in the County Auditor’s office, as distinguished from a deputy in the County Auditor’s office, if, as an employe in the County Auditor’s office, he is not in the classified civil service and if it is physically possible to perform the duties of all three positions.”

In view of the above and in specific answer to your inquiry, it is my opinion that an Investigator in the Public Utilities Commission, who is not in the Classified Civil Service, may at the same time be a member of a County Board of Elections and Chairman of a County Executive Committee, if it is physically possible to perform the duties of all three positions.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3617.

SCHOOL DISTRICT—ANNEXATION OR CONSOLIDATION OF DISTRICTS TERMINATES POWER TO LEVY, ASSESS AND COLLECT TAXES.

COLUMBUS, OHIO, December 12, 1934.

SYLLABUS:

1. *Where the entire territory of a school district is annexed to another school district in the manner provided by law, or where the whole territory of a school district is absorbed in the creation of a new school district as provided by law, the district so annexed or absorbed is thus dissolved and destroyed and the board of education of such district is abolished, unless otherwise provided by law.*
2. *Where school districts are consolidated or the entire territory of one district is annexed to another district, the districts so consolidated or annexed cease to exist and the power of such districts to levy, assess and collect taxes is thereupon terminated unless otherwise provided by statute.*
3. *The dissolution or abolition of a school district is effective immediately upon the completion of statutory proceedings therefor.*
4. *Where the taxing authorities of two school districts had, prior to September 15, 1934, passed the necessary resolutions for the submission to the electors*

of their respective districts at the succeeding November election the proposition of making additional tax levies within their districts for current expenses, and certified the same to the proper election authorities as provided by Sections 5625-15 and 5625-17, General Code, and later and prior to the said election, the said districts were dissolved by incorporation in a new school district created by favor of Section 4736, General Code, a vote that may have been taken at the November, 1934, election in pursuance of the resolutions and certification first above referred to, is a pure nullity, and regardless of how the vote may have stood in the territory of the dissolved districts, no authority exists to extend the said additional levies on the tax duplicate or collect the said tax, by reason of said vote, in any portion of the territory of the newly created district.

COLUMBUS, OHIO, December 12, 1934.

HON. C. WOOD BOWEN, *Prosecuting Attorney, Logan, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Perry Rural School District and Laurelville Village School District in this county each regularly adopted resolutions to submit an additional three mill levy for school purposes to the electors at the November election. Thereafter the County Board of Education created a new school district combining the Perry Rural District and the Laurelville Village District into one school district. The new Board of Education met and organized but did not organize in time to pass a resolution to submit the question of an additional three mill levy to the voters of the new school district.

The Board of Elections sent out ballots to the voters of each of the old school districts. Each old district voted as a separate unit. In the section of the new district which formerly composed the Perry District the three mill levy lost by a vote of 54 for, to 97 against. The Laurelville part of the new district voted 261 votes for, to 101 against the three mill levy.

“The new district is a legal entity and a new Board of Education is functioning. Our County Auditor desires to be informed if the votes of the entire new district shall be lumped and an additional three mill levy placed on the entire new district. If not, how shall the tax rate be made up?”

It appears from your letter that at the time the boards of education as the taxing authorities of the Perry Rural School District and the Laurelville Village School District in Hocking County, adopted the necessary resolutions to have submitted to the electors of their respective school districts the proposition of levying taxes outside the ten mill limitation for current expenses and certified the same to the proper election authorities of Hocking County, those districts existed and functioned as separate school districts. These acts must necessarily have been done not later than September 15, 1934, as that is the latest date fixed by statute when such action may be taken by the taxing authority of a subdivision for the purpose mentioned. (Sections 5625-15 and 5625-17, General Code.)

Sometime subsequent to this time the new district spoken of was organized, which new district embraced all the territory which formerly had been in the

said Perry Rural and Laurelville Village Districts. Apparently, the creation of the new district was accomplished by favor of Section 4736, General Code, which reads 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 or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. * *

Members of the board of education of the newly created district shall be appointed by the county board of education. * *”

School districts and similar political subdivisions are mere agencies of the state for governmental purposes, and subject only to constitutional limitations, the state legislature has plenary power to dissolve or abolish school districts or provide for the transfer of a part or all of their territory to another district or create new districts from others or parts of others. This may be done for any reason satisfactory to the legislature and even without the consent of the district or the people residing therein. The legislature may exercise its power to dissolve or abolish a school district or annex territory to or from a school district or create new districts from the territory of others by direct legislation, subject, of course, to constitutional limitations or it may provide for its exercise by particular officers or boards. *State vs. Powers*, 38 O. S., 54; *Worthington School District vs. Eureka School District*, 173 Calif., 154; *People vs. Cowen*, 283 Ill., 308; *Rawson vs. Spencer*, 113 Mass. 40; *Maumee School District vs. School Town of Shirley City*, 159 Ind., 423-426.

When, upon the creation of new school districts or other political subdivisions, the entire territory of a school district or political subdivision is merged into the new district or subdivision thus created, or where the entire territory of a school district or subdivision is annexed to an existing subdivision by authority of law, the district or subdivision so merged or annexed is dissolved and destroyed and it no longer exists or functions as a separate entity unless it continues as a separate unit for some special purpose expressly provided for by statute. This rule is stated in McQuillin on Municipal Corporations, Second Edition, Section 315, as follows:

“Where the whole territory of a municipal corporation has been annexed to another or others, upon a subsequent division, the annexed municipal corporation becomes absorbed and is thus destroyed.”

See also *Schriber vs. Longlade*, 66 Wis. 616; *Allied Amusement Company vs. Bryan* (Cal.) 256 Pac., 1097; *People vs. Wren*, 5 Ill., 269-279; *Walnut Tp. vs. Jordan*, 38 Kans. 562-565. In *Corpus Juris*, Vol. 56, page 731, it is stated:

“When school districts are consolidated they cease to exist and have no power thereafter to levy taxes and on the creation of a new district by the consolidation of other districts the power of the latter district to levy, assess and collect school taxes is terminated.”

There is cited in support of the above statement, *Thames vs. Simpson Co.*, 124 Miss., 576; *Bacon vs. Barnstable Thirteenth School District*, 97 Mass., 421.

It has been held that the dissolution or abolition of a school district is effective immediately upon the completion of the statutory proceedings therefor. *Cousey vs. Guilford Co.*, 192 N. C., 298; *State vs. Goff*, 110 Oreg., 349, 218 Pac., 556.

The Perry Rural School District and the Laurelville Village School District were dissolved and ceased to exist and their respective boards of education were abolished immediately upon the completion of the proceedings taken by the Hocking County Board of Education to consolidate them into a new district which apparently was accomplished sometime prior to election day—November 6, 1934. It follows that the vote to authorize additional levies of taxes, as taken, was a pure nullity in all the territory formerly comprised in the two districts which at the time of the election did not exist.

Authority for the submission to the electors of a subdivision, of the proposition of levying taxes outside the constitutional and statutory limitations, is found in Sections 5625-15 and 5625-17, General Code. In Section 5625-17, General Code, the form of the ballot to be used at such an election is prescribed as follows:

“An additional tax for the benefit of (name of subdivision) . . .
for the purpose, etc. * *”

Inasmuch as the taxing authority of the new district formed from the Perry and Laurelville Districts did not provide for the submission of the question of levying additional taxes within the new district, and could not have done so because of the limitation of time, the ballots used (the only ones that could have been used) purported to provide for the authorization of an additional tax in Perry Rural District and Laurelville Village District, which districts were non-existent at the time the vote was taken. The vote, even if it had been unanimously affirmative, could have no effect whatever, as it could not authorize a levy of taxes in a subdivision that had previously been abolished and was not at the time the vote was taken, in existence.

I am therefore of the opinion in specific answer to your question that, no tax may be levied or extended on the duplicate in addition to the limitation of ten mills as contained in Section 2 of Article XII of the Constitution of Ohio, by reason of the vote taken within the new school district created by the consolidation of the Perry Rural School District and the Laurelville Village School District in Hocking County.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3618.

DEPOSITORY—PAYMENT OF INTEREST UPON DEMAND DEPOSIT
BY MUNICIPAL DEPOSITORY ALSO MEMBER OF FEDERAL RE-
SERVE SYSTEM.

SYLLABUS:

Although a separate account for the payment of coupons and redemptions of bonds is maintained in a municipal depository, all such deposits are made pursuant