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TRANSFER, TERRITORY TO SCHOOL DISTRICT—COMPLETED BY VOTE OF ELECTORS—PRIOR TO ORDINANCE OR RESOLUTION AUTHORIZING REAL PROPERTY TAX LEVY WITHIN DISTRICT—LEVY AT RATE AUTHORIZED SHOULD BE APPLIED TO ENTIRE DISTRICT AS ENLARGED FOR CURRENT YEAR—FAVORABLE VOTE OF ELECTORS ON ISSUE OF TRANSFER IS FINAL ACT TO COMPLETE TRANSFER—SECTION 3311.29, 5705.34 RC.

SYLLABUS:

Where a transfer of territory to a school district has been completed by vote of the electors concerned as provided in Section 3311.29, Revised Code, prior to the authorization, by "ordinance or resolution" as provided in Section 5705.34, Revised Code, of a real property tax levy within such district, such levy at the rate so authorized should be applied to the entire district as thus enlarged for the current year. The favorable vote of the electors on the issue of such transfer is the final act in the completion of such transfer.

Columbus, Ohio, February 25, 1956

Hon. Danny D. Johnson, Prosecuting Attorney
Tuscarawas County, New Philadelphia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Tuscarawas County Board of Education by Resolution dated August 3, 1955 dissolved the Oxford Local School District by Section 3311.29 of the Revised Code; subsequent thereto on November 8, 1955 the electors of the Oxford Local School District approved the transfer of their school district to the Newcomerstown Exempted Village School District.

"On December 7, 1955 the Tuscarawas County Board of Education dissolved the Oxford Local School District and transferred the territory to the Newcomerstown Exempted School District together with title of all property, funds and indebtedness of the Oxford Local School District.

"In light of Opinions numbered 4645-4646 of 1954, the county auditor after the election on November 8, 1955 set the tax rate for the Oxford Local School District at that of the Newcomerstown Exempted Village School District for the year 1955. Tax statements were mailed to the residents of the dissolved Oxford Local School District at the new rate of the Newcomerstown Exempted Village School District.

"The question is, what tax year should the Newcomerstown Exempted Village School District rate be collected of the residents of the dissolved Oxford Local School District which by a vote on November 8, 1955 transferred them to the said Exempted Village School District?"

In Opinion No. 4645, Opinions of the Attorney General for 1954, p. 667, my conclusions were set out in the syllabus as follows:

"Where, pursuant to the provisions of Section 3311.29, Revised Code, a majority of the electors in a district having no

schools have voted in favor of joining the territory of such district to an adjoining city school district, *such favorable vote is the final act in dissolving such district and transferring its territory* to the city district and the consent of the board of education of such city district is not required.

“When pursuant to the provisions of Section 3311.29, Revised Code, the territory of a dissolved school district has been joined to the territory of a city school district, such city district succeeds to all the property and rights of such dissolved district, and is entitled to receive from the county treasurer the proceeds of all current taxes levied on the property in such dissolved district.” (Emphasis added.)

Of primary interest in the case at hand is the conclusion that “such favorable vote is the final act in * * * transferring its territory.” Hence, it would seem that the transfer here involved was effected by the favorable vote of November 8, 1955.

A situation quite similar to that here involved was under consideration in Opinion No. 6209, Opinions of the Attorney General for 1943, p. 384, the syllabus in which is as follows:

“When an entire school district is transferred from one school district to another by authority of Section 4692, General Code, and such transfer is completed subsequent to the second Monday of April of any year but *prior to the levy of taxes for the current year as provided by Section 5625-25, General Code*, all levies of taxes should be extended for collection in the current tax year on all the taxable property in the combined district, including that of the territory in the district transferred.” (Emphasis added.)

In the course of this opinion the writer said, pp, 386, 387:

“If and when the Brady Township District is transferred to the West Unity District, as suggested, the Brady Township District will thereupon be dissolved and will cease to exist and the present existing territory comprising the two districts will be included in one district—the West Unity Village District. It would then become necessary to spread tax levies to meet the needs of the entire territory over the then existing one district. Until such time, however, as the contemplated transfer is consummated, procedure looking to the levy of taxes for each of the two districts should be followed and if the contemplated transfer is completed prior to the actual levy of taxes in each of the two districts in accordance with Section 5625-25, General Code, the procedure followed to that time and then existent should be consolidated and adjusted by the proper authorities and made applicable to the one district, the West Unity District, which will then be the only one of the two districts in question having

authority to make tax levies as prescribed by said Section 5625-25, *supra*, to cover the territory which formerly had been included in the Brady and West Unity Districts.

“If the proposed transfer of territory is completed prior to October 1, 1943, or such later date as may be approved by the Department of Taxation of the State of Ohio *for the making of tax levies* within the then existing West Unity District *as mentioned in Section 5625-25, supra*, and proper adjustment made in tax budgets if necessary, it is then the duty of the taxing authority of the West Unity Village School District to authorize the tax levies for the entire district for the ensuing fiscal year. * * *” (Emphasis added.)

In support of these conclusions the writer appears to have relied largely on the reasoning set out in *State v. Roose*, 90 Ohio St., 345, and Opinion No. 2358, Opinions of the Attorney General for 1928, p. 1745.

I find myself in agreement with this reasoning and these conclusions and, therefore, conclude that where levies are made *after* the effective date of the transfer of territory to a school district, the rate fixed for such district should be applied to the entire territory then comprising such district. This conclusion is in complete harmony with those reached in my opinion No. 4646, Opinions of the Attorney General for 1954, p. 674, although in that case I did not discuss in any detail the precise point at which a tax levy becomes effective. The syllabus in that opinion reads:

“Where the territory of a local school district has been joined to a city school district by procedure set forth in Section 3311.29, Revised Code, the rate of taxes as levied by the taxing authority of such city school district pursuant to Section 5705.34, Revised Code, should be uniformly applied to the entire district as enlarged, and when so levied the county auditor is authorized and required to place such levy on the tax duplicate for the entire district.”

It remains only to determine the precise point at which it can be said that a real property tax has been “levied.” In this connection it is provided in Section 5705.34, Revised Code, formerly Section 5625-25, General Code:

“When the budget commission has completed its work it shall certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit, and what part thereof is in excess of, and what part within,

the ten-mill tax limitation. *Each taxing authority by ordinance or resolution shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in each year, or at such later date as is approved by the board of tax appeals. * * ** (Emphasis added.)

This language quite clearly indicates that the real property tax, at a particular rate, is "levied" by the passage of the "ordinance or resolution" thus referred to; and it would follow that if this action took place in the instant case after the transfer of territory had been completed in the manner above pointed out, then the levy throughout the district as enlarged should be applied at a uniform rate.

Accordingly, in specific answer to your inquiry, it is my opinion that where a transfer of territory to a school district has been completed by vote of the electors concerned as provided in Section 3311.29, Revised Code, prior to the authorization, by "ordinance or resolution" as provided in Section 5705.34, Revised Code, of a real property tax levy within such district, such levy at the rate so authorized should be applied to the entire district as thus enlarged for the current year. The favorable vote of the electors on the issue of such transfer is the final act in the completion of such transfer.

Respectfully,

C. WILLIAM O'NEILL
Attorney General