

96.

APPROVAL, BONDS OF NEWARK RURAL SCHOOL DISTRICT, LICKING COUNTY—\$55,000.00.

COLUMBUS, OHIO, February 15, 1929.

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

97.

APPROVAL, BONDS OF MIAMI TOWNSHIP RURAL SCHOOL DISTRICT, GREENE COUNTY—\$16,000.00.

COLUMBUS, OHIO, February 15, 1929.

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

98.

SCHOOL DISTRICT—INDEBTEDNESS DISCUSSED—TRANSFER OF TERRITORY TO ANOTHER DISTRICT—PROPORTIONING ASSETS AND DEBITS—DIVISION DETERMINED BY ANNEXING BOARD UNDER SECTION 4696, GENERAL CODE.

SYLLABUS:

1. *Indebtedness chargeable to a subdivision, as being incident to an issue of bonds authorized by a vote of the people, becomes a charge against the subdivision as soon as notes are sold in anticipation of the sale of the bonds. An obligation to repay according to the tenor of the notes is created at that time. Of course so long as the proceeds of the sale of the notes remain in the treasury of the subdivision unencumbered by any obligation to expend the money, the net indebtedness of the subdivision remains the same as before the notes were sold.*

2. *When school territory is transferred from one school district to another, by authority of either Section 4692 or 4696, General Code, and an equitable division of the funds and indebtedness is made between the districts involved in the transfer, the funds and indebtedness so divided should be considered of the effective date of the transfer.*

3. *In making an equitable division of funds and indebtedness between school districts, many elements are to be considered, and what is an equitable division in any specific case is dependent upon the facts peculiar to the immediate case.*

4. *When school territory is transferred from one county school district to an adjoining county school district, by authority of Section 4696, General Code, an equitable*

division of the funds and indebtedness between the districts involved shall be made by the board of education of the county school district to which the territory is transferred, and in the absence of an abuse of discretion in making such division, the division so made by said county board of education is final.

COLUMBUS, OHIO, February 15, 1929.

HON. R. S. CUNNINGHAM, *Prosecuting Attorney, Lancaster, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication of recent date requesting my opinion on the following:

“The residents of Bloom Township of Fairfield County are unable to agree on the subdivision of the township into school districts. Part of this township is assigned to the Carroll school district, part to the Bloom Township district, and part to the Canal Winchester (Franklin County) district.

The residents of the village of Lithopolis want to build a first grade high school and for this purpose \$60,000.00 worth of bonds were voted in November, 1928, but have not been sold nor have any notes been issued anticipating such a sale. A part of the Canal Winchester district wants to join the Lithopolis faction and 75% of the residents of that district have signed a petition for that purpose. A certain part of the Carroll district wants to join the Lithopolis faction but a petition for that purpose received only 50% of the property owners' names.

To complicate the situation Mrs. Mabel Wagnalls Jones has offered a \$40,000.00 gift to the Lithopolis faction provided the \$60,000.00 bonds are sold, and these cannot be sold until the valuation of that district has reached approximately \$2,000,000.00.

In November, 1928, Canal Winchester district voted bonds in the amount of \$150,000.00. This district sold anticipatory notes and are advertising for bids for their building. The Carroll district in November, 1928, voted bonds in the amount of \$115,000.00 and are selling their anticipatory notes and are advertising for bids to let their contract.

Now under Section 4696 of the General Code of Ohio no transfer can be made without a petition of the people living in the territory. With a 50% petition the transfer is optional with the county board of education making same. With the 75% petition the transfer is mandatory. No remonstrance is possible in either case.

Under Section 4692 of the General Code territory can be transferred at the option of the county board of education within the same county school district. No petition is necessary or mandatory. A remonstrance against the transfer, signed by a majority of the qualified electors residing in the territory transferred, and filed with the county board within thirty days after the transfer is made makes the transfer null and void.

Now on this statement of facts we request an opinion on the following questions?

(1) When does indebtedness first exist on a district after voting a bond issue, when the bonds are actually issued or when anticipatory notes on such bonds are issued?

(2) Would time of filing petition or suit for transfer under G. C. No. 4696 or No. 4692 in any way affect this indebtedness or should indebtedness be considered at time of transfer only?

(3) What should be considered 'an equitable division of indebtedness?'

Should the county board decide on a percentage basis as to territory, population, school enrollment, etc.?

(4) If the division is made must both county boards agree on this division, or is the action of the receiving board final?"

It appears that Carroll district and Bloom Township district are school districts of the Fairfield County school district. Canal Winchester district is a village school district of the Franklin County school district and contiguous to Bloom Township district in the Fairfield County school district.

I am advised that Bloom Township district does not now have a high school. There have been offered to the district as a gift, funds for the endowment of certain high school scholarships, together with funds to assist in the establishment of a high school. The conditions of the gift are such that it will not be received unless the district raises approximately \$60,000 with which, together with the money which will be received by way of the proposed gift, a high school building may be erected and a high school established. It is proposed to raise this \$60,000 by the sale of bonds. A proposed issue of \$60,000 of bonds of the Bloom Township school district was authorized by vote of the electors at the November, 1928, election, but cannot be issued until, as you state, "the valuation of that district has reached approximately \$2,000,000.00." It does not appear from your letter just why it is necessary to have a tax valuation in the district of approximately \$2,000,000 before the bonds can be sold, but at any rate it is now proposed to annex certain territory to Bloom Township district by detaching the same from Canal Winchester district and Carroll district and attaching these portions of territory to Bloom Township district, thereby increasing the tax valuation of the property within the district to such an extent as to permit the issuance of the proposed \$60,000 of bonds within the limits of the net indebtedness allowed by law.

For the most part, if not altogether, the territory which it is now proposed to detach from both Canal Winchester and Carroll districts had formerly been a part of Bloom Township District and it is claimed by some of the residents, could now, because of its location, be most conveniently served with high school privileges from a high school located in Lithopolis in Bloom Township district, as is proposed.

The majority of the electors residing in these portions of territory lying within Canal Winchester and Carroll districts apparently now desire to be transferred to Bloom Township district, as is evidenced by petitions filed by them with their respective county boards of education, and it only remains for the Franklin County Board of Education and the Fairfield County Board of Education to take the necessary steps to effect the transfers asked for by the petitioners to enable the Bloom Township district to receive the proposed gift and proceed with the establishment of the proposed school.

Inasmuch as Canal Winchester is in the Franklin County School District and Bloom Township district is in the Fairfield County School District, a transfer of territory from the Canal Winchester district to Bloom Township district must be effected in accordance with the terms of Section 4696, General Code.

If a petition is filed with the Franklin County Board of Education signed by at least 50% of the electors residing in a portion of Canal Winchester School District which territory is contiguous to Franklin County School District, asking to be transferred to Fairfield County School District, the Franklin County Board of Education thereby becomes vested with jurisdiction to make the transfer asked for, and if the petition is signed by more than 50% and less than 75% of the electors residing in the territory described in the petition, the board may make the transfer if it appears to be for the best interests of the schools concerned and the board sees

fit to do so. If, however, the petition is signed by 75% or more of the electors residing in the territory proposed to be transferred, it becomes the mandatory duty of the Franklin County Board of Education to make the transfer asked for in the petition.

Inasmuch as it appears from your inquiry that 75% of the electors residing in that portion of Canal Winchester District which desires to be transferred to Fairfield County School District have signed a petition to that effect, and filed the same with the Franklin County Board of Education, it became the mandatory duty of the Franklin County Board to comply with the petition within a reasonable time after the same was filed. The Franklin County Board is vested with no discretion in the matter. The statute is very clear in this respect. The duty thus imposed may be enforced by an action in mandamus if necessary. *State ex rel Brenner et al., vs. The County Board of Education of Franklin County et al.* 97 O. S. 336.

An examination of Section 4696, General Code, will disclose that five separate and distinct steps in order to complete the transfer from Canal Winchester District to the Fairfield County School District, will have to be taken:

First, a petition must be filed with the Franklin County Board of Education describing the territory proposed to be transferred, and signed by at least 75% of the electors residing in said territory asking for the transfer, which it appears has already been done.

Second, a resolution must be passed by a majority vote of the full membership of the county board of education of the Franklin County School District making the transfer as requested by the petition.

Third, a resolution must be passed by the Fairfield County Board of Education accepting the transfer made by the Franklin County Board and annexing the said territory to Bloom Township School District.

Fourth, an equitable division of the funds and indebtedness between the districts involved must be made by the Fairfield County Board of Education.

Fifth, a map must be filed with the county auditor of both Franklin and Fairfield Counties showing the school district boundaries as they will exist after the transfer has been made.

Transfers of territory from one school district of a county school district to another school district of the same county school district are governed by Section 4692, General Code. Bloom Township District and Carroll District both being school districts of the Fairfield County School District, a transfer of territory from one to the other may be effected in accordance with the terms of said section.

To effect a transfer of territory from one school district to another district in the same county school district, a petition is not necessary. The county board of education of the county school district, in which the districts affected by such a transfer lie, is vested by the law itself with jurisdiction to make such transfers of territory as will in the discretion of the board be for the best interests of the schools concerned. Neither will a petition, no matter how many electors sign the same, serve to impose a mandatory duty upon the board to comply therewith. The only purpose such a petition serves is to guide the board in complying with the wishes of the patrons of the school, and would no doubt have some moral effect as well as be an indication to the board, if signed by a majority or more of the electors residing in territory wishing to be transferred, that if a transfer is made as asked for in the petition no remonstrances will later be filed to defeat the transfer.

Transfers made by authority of Section 4692, General Code, may be defeated by the filing of written remonstrances signed by a majority of the electors residing in the territory transferred within thirty days after the filing of a map with the county auditor as is required by law.

Where transfers are made by authority of either Section 4696 or 4692, General

Code, an equitable division of funds and indebtedness between the districts involved should be made. This division of funds and indebtedness should be made as of the date when the transfer becomes effective. The Supreme Court of Ohio in the case of *State ex rel. Board of Education of Swanton Village School District vs. Board of Education of Sharpless Village School District*, 114 O. S., 602, at page 606, in speaking of the date when a transfer of territory under Section 4696, General Code, becomes effective, says:

“The date of the transfer is the date the transfer becomes effective by its due legal acceptance.”

Transfers under Section 4692, General Code, become effective as stated in the statute:

“Such transfer shall not take effect until a map is filed with the auditor of the county in which the transferred territory is situated, showing the boundaries of the territory transferred, and a notice of such proposed transfer has been posted in three conspicuous places in the district or districts proposed to be transferred, or printed in a paper of general circulation in said county, for ten days; nor shall such transfer take effect if a majority of the qualified electors residing in the territory to be transferred, shall, within thirty days after the filing of such map, file with the county board of education a written remonstrance against such proposed transfer.”

By indebtedness is meant money owed or obligations existing. It is defined by the Supreme Court in the Swanton Village School case, *supra*, as follows:

“‘Indebtedness’ includes all liabilities incurred prior to the date of the transfer, including bonded indebtedness, contractual obligations, such as building contracts, teachers’ contracts, janitors’ contracts, and the like, though not as yet fully performed.”

The mere authorization of a bond issue by vote of the people or by resolution of the governing body of the political subdivision does not create an indebtedness of the subdivision. Indebtedness does arise however as soon as the bonds are sold or notes are sold in anticipation of the sale of the bonds, and thus an obligation exists to repay the bonds or notes, as the case may be. Of course, if the money arising from the sale of notes or bonds is in the treasury unencumbered by any obligation to expend the money in pursuance of contracts which may be let, the money on hand offsets the indebtedness on the bonds or notes and there is really no net indebtedness on that account. The statute, however, requires that an equitable division of both funds and indebtedness must be made and therefore in such a case an equitable division of both the indebtedness existing by reason of the obligation to pay the bonds or notes, and of the money in the treasury consisting of the proceeds of the sale of the bonds or notes should be made, even though no net indebtedness actually exists on account of the bonds or notes which have been sold.

As soon, however, as the money becomes encumbered by the letting of a contract which obligates the subdivision to pay out the money, even though the contract has not been performed, this money cannot thereafter be classed as a “fund” of the subdivision and cannot be divided between the school districts when a part of a school district which had sold the notes or bonds is annexed to an adjoining district.

In the Swanton Village School District case, *supra*, it appears that Sharpless

Village School District in Lucas County had sold bonds for the construction of a school building. After the sale, and before a contract had been entered into for the construction of the building, a portion of Sharpless Village School District was transferred to Fulton County School District and an equitable division of the funds and indebtedness made between Sharpless Village School District and Swanton Village School District to which the Fulton County Board of Education had attached the transferred territory. The Supreme Court said with reference to what should be considered "funds" of the Sharpless Village School District:

"Funds include all moneys rightfully in the possession of the board of the original district, and all moneys to which the board of the original district is entitled at the date of the transfer, and in this case include the money realized from the sale of the construction bonds since no obligation to expend such money in the construction of a school house had been incurred at the date of the transfer."

On just what basis an equitable division of the funds and indebtedness as described by the statute, should be made, has been the subject of considerable controversy. What is equitable, in other words, what is just and fair, depends entirely upon the circumstances. Several factors should enter into the determination, such as the value of school property that may be transferred with the territory and the state of the debt, if any, on such property at the time of the transfer, the tax duplicate of the transferred territory as compared with the tax duplicate of the district from which the territory is detached prior to the transfer, due allowance being made for whatever economy in the administration of the schools of the district from which the territory is detached will result from such detachment as well as whatever burden the district to which the territory is added will be required to assume in the administration of its schools. The time of year when a transfer is made is an element that should not be overlooked in making an equitable distribution under these statutes. Tax budgets are made up based on the needs of the district for the ensuing fiscal year and tax levies made accordingly; when the taxes are collected, the proceeds of the taxes are paid to the district which made the levy regardless of whether or not any territory had been detached from the district after the levy was made. Section 7600, General Code, provides, among other things:

" * * * 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 districts from which it was collected."

In construing that portion of Section 7600, General Code, above quoted, it has been held in a number of former opinions of this department that the proceeds of a tax levy made by a board of education should be paid to the district making the levy. Opinions of the Attorney General, 1926, page 452, 1927, pages 1183, 1812 and 1979.

This question of the making of an equitable distribution of funds and indebtedness has been quite extensively considered in a number of opinions of former Attorneys General. Your attention is particularly directed to an opinion of my predecessor found in the Opinions of the Attorney General for 1927, Volume 3, page 1806, where former opinions are reviewed and the decision of the Supreme Court in the Swanton Village School District case noted. In the aforesaid opinion the Attorney General concludes:

"My conclusion is that the determination of what is an equitable division of the funds and indebtedness of two school districts involved in a transfer is dependent upon the facts existing in each particular case. * * * "

In the specific case here under consideration, it appears that Canal Winchester District, Carroll District and Bloom Township District were each authorized by vote of the people in November, 1928, to issue certain bonds. This authorization created no liability on the part of the district on account of which an indebtedness of the district existed. Both Canal Winchester and Carroll Districts enacted the necessary legislation looking to the issue of the bonds, as authorized by vote of the people, and both districts have sold notes in anticipation of the sale of these bonds. The notes having been sold, an indebtedness in these districts now exists to the extent of the liability to pay the notes. At the present time, however, no contracts have been let to construct the school building, no obligation to expend the money has been incurred, and therefore the proceeds of the notes constitute "funds" of the districts. If transfers from Canal Winchester and Carroll Districts to Bloom Township District were to be effected now, both these funds and the indebtedness incident to the notes should be apportioned between the districts involved in the transfer. If the transfer is not made until after these "funds" are expended or encumbered by the letting of contracts obligating the districts to expend the money in pursuance of the contract, the proceeds of the notes would not longer be "funds" of the districts that might be divided. The indebtedness would be theirs to divide but not the corresponding funds, and obviously a different basis of apportionment would necessarily have to be used in order to make an equitable apportionment of indebtedness between the districts than when the "funds" arising from the sale of the notes were available for division.

If transfers are made from Canal Winchester and Carroll Districts, or either of them, to Bloom Township District before contracts are let for the construction of school buildings, and equitable division of the indebtedness and funds incident to the sale of notes, other considerations being equal, would properly be made in the proportion that the taxable value of the territory transferred bears to the taxable value of the districts as they were before the territory was detached, as was done in the Swanton Village School District case above referred to, and that is the only *basis* upon which an equitable division can be made under these circumstances as stated by the court in the case referred to above, but it is not, in my opinion, the only *method* which may be adopted in making an equitable division of the funds and indebtedness between the districts involved in the transfer.

I do not wish to be understood as saying that if a transfer were to be effected now between Bloom Township School District and Canal Winchester District, or between Bloom Township and Carroll District, an actual physical transfer of any funds or any indebtedness would necessarily have to be made, because after all the distribution should be "equitable", and if the county board of education making the division should determine that to leave a portion or the entire amount of the "funds" on hand, being proceeds of the issue of notes, with Canal Winchester or Carroll District, as the case might be, so as to enable the district to have the use of these funds for the construction of its proposed buildings, would be proper and prudent under the circumstances, it might lawfully do so by allotting to the district the proportionate share of the indebtedness represented by these funds. I simply mean that the "funds" are available for division in any manner the county board of education authorized to make the division may, in its wisdom determine to be necessary and proper in order to make the result an "equitable division", as provided by the statute.

The discretion of the county board of education in matters of this kind is broad, and in the absence of its abuse will not be interfered with by the courts; however, it should at all times be remembered that if the county board of education should abuse its discretion its finding will be set aside in a proper action brought for that purpose.

If, however, the transfers, or either of them, are not made until after the funds arising from the sale of the notes are encumbered by the letting of contracts against them, it manifestly would be unfair and inequitable to require Bloom Township District to assume a proportionate share of the indebtedness on the basis of tax valuation alone, and not give to it the corresponding share of funds, and this of course could not be done as the funds incident to the indebtedness would no longer be available for division.

Coming now to a consideration of your specific questions, in the order asked, I am of the opinion:

First, indebtedness chargeable to a subdivision, as being incident to an issue of bonds authorized by a vote of the people, becomes a charge against the subdivision as soon as notes are sold in anticipation of the sale of the bonds. An obligation to repay according to the tenor of the notes is created at that time. Of course, so long as the proceeds of the sale of the notes remain in the treasury of the subdivision unencumbered by an obligation to expend the money, the net indebtedness of the subdivision remains the same as before the notes were sold.

Second, when school territory is transferred from one school district to another, by authority of either Section 4692 or 4696, General Code, and an equitable division of the funds and indebtedness is made between the districts involved in the transfer, the funds and indebtedness so divided should be considered as of the effective date of the transfer.

Third, in making an equitable division of funds and indebtedness between school districts many elements are to be considered, and what is an equitable division in any specific case is dependent on the facts peculiar to the immediate case, as I have indicated above.

Fourth, when school territory is transferred from one county school district to an adjoining county school district by authority of Section 4696, General Code, an equitable division of the funds and indebtedness between the districts involved shall be made by the board of education of the county school district to which the territory is transferred, and in the absence of an abuse of discretion in making such division, the division so made by said county board of education is final.

Respectfully,

GILBERT BETTMAN,
Attorney General.

99.

**BUILDING COMMISSION—FOR ERECTION OF BUILDING AS ADDITION
TO COUNTY INFIRMARY—APPOINTMENT BY COMMON PLEAS
COURT—WHEN GOVERNOR SELECTS HOSPITAL TRUSTEES.**

SYLLABUS:

1. *Unless the procedure prescribed in Sections 3127 and 3131, General Code, for a tax levy or bond issue to purchase, appropriate or construct a county hospital or hospital buildings, is taken, the Governor of the State is without power or authority to appoint a Board of County Hospital Trustees.*
2. *When the County Commissioners have determined the necessity therefor, and the electors of the County have by an election, authorized the issuance of bonds for the purpose*