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TRANSFER OF TERRITORY OR CREATION OF NEW DISTRICT—SUBSEQUENT TO LEVY OF TAXES—COUNTY AUDITOR EXTENDS RATES UPON GENERAL TAX LIST AND DUPLICATE—NO AUTHORITY TO MAKE CHANGE THEREAFTER. MERGER OF TWO SCHOOL DISTRICTS—BOARD OF EDUCATION OF MERGED DISTRICT IS LEGAL SUCCESSOR TO FORMER BOARDS—TAX LEVIES TO BE PAID TO NEW BOARD.

TERRITORY TRANSFERRED SUBSEQUENT TO LEVY OF TAXES IN SAID TERRITORY—PROCEEDS OF LEVY PAID TO BOARD OF EDUCATION AUTHORIZING SUCH LEVY. TERRITORY TRANSFERRED OR NEW SCHOOL DISTRICT CREATED—DISTRIBUTION OF FUNDS AND INDEBTEDNESS WITHIN DISCRETION OF COUNTY BOARD OF EDUCATION—PROCEEDS OF TAX LEVIES NOT THEN IN POSSESSION OF PREVIOUSLY EXISTING BOARDS DO NOT CONSTITUTE “FUNDS” OF DISTRICT—POSSIBILITY OF FUTURE PROCEEDS CONSIDERED—O. A. G. NO. 3409, 1954 APPROVED AND FOLLOWED.

SYLLABUS:

1. Where a transfer of territory from one school district to another district or the creation of a new district from two former districts is effective subsequent to the authorization by resolution pursuant to Section 5705.34, Revised Code, of a levy of taxes by the respective boards of education of the school districts as previously constituted, the county auditor should extend these rates upon the general tax list and duplicate, and that officer is without authority thereafter to make any change in said general tax list or duplicate to reflect such subsequent changes in the territory of the school districts or the creation of a new school district.

2. Where a new school district is created by the merger of two existing school districts, the board of education of such district is the legal successor to the boards of education of the former districts, and the proceeds of all tax levies imposed on property located in the former districts should be paid to the board of education of the new district as provided by law.

3. Where territory is transferred from one school district to another district subsequent to the authorization by resolution of a levy of taxes upon the real property in said territory by the board of education of the district as theretofore constituted, the proceeds of such levy of taxes should be paid, as provided by law, to the board of education which authorized such levy.

4. Where territory is transferred from one school district to another or a new school district created from territory in another district, the distribution of funds and indebtedness between the affected school districts is within the discretion of the county board of education as provided in Sections 3311.22 and 3311.26, Revised Code, but the proceeds of tax levies not then in possession of the previously existing boards of education for such districts do not constitute "funds" of the districts and are not subject to division under such sections. The circumstance that such proceeds will be paid in the future to the district which authorized such levies by resolution are provided in Section 5705.34, Revised Code, may be accorded such weight as the county board of education may deem proper in arriving at its distribution of such funds and indebtedness of the districts as are properly the subject of division. Opinion No. 3409, Opinions of the Attorney General for 1954, page 16, approved and followed.

Columbus, Ohio, Nov. 23, 1956

Hon. Gibson L. Fenton, Prosecuting Attorney
Williams County, Bryan, Ohio

Dear Sir:

I have before me your request for my opinion, together with supplemental communications which present the following fact situations:

"Millcreek Local School District was merged with West Unity Local School District on September 3rd, 1955. Filed with County Auditor on September 12th, 1955.

"Transfer of territory from Jefferson Local School District to Pulaski-Jefferson Local School District as per resolution by County Board of Education on November 18th, 1955. Filed with County Auditor on November 28th, 1955.

“Transfer of territory from Jefferson Local School District to West Unity Local School District as per resolution by County Board of Education on November 18, 1955. Filed with County Auditor on November 28, 1955.

“Northwest Local School District was merged with Florence-Edon Local School District New district ‘Edon-Northwest Local School District’ on February 11th, 1956. Filed with County Auditor on February 18, 1956.”

The questions presented in regard to these situations read as follows:

“(a) Must the County Auditor correct the tax duplicate for the then current year to reflect such transfers by setting up a new school district, by transferring the territory transferred to a new school district; or by eliminating a school district? If the change became effective near the end of a year, such correction of the tax duplicate might be a physical impossibility before tax collection date.

“(b) If the Auditor is not to make any corrections in his duplicate reflecting changes effective after tax lien date, then to whom should tax collections for current taxes be distributed in the case of a district which no longer exists?

“(c) Should any changes in the tax rates be made on the duplicate for the then current year?

For the purposes of this opinion I must assume that the first dates referred to above are the dates upon which the county board of education by resolution ordered the transfers of territory or mergers described. I must further assume that the dates referred to in connection with a filing with the county auditor concern the filing of a map showing the boundaries of the territory transferred. Thus the transfers of territory indicated are effective on the thirty-first day following the filing of the map with the county auditor, no remonstrance having been filed. Sections 3311.22 and 3311.23, Revised Code. The creation of a new school district pursuant to Section 3311.26, Revised Code, is effective on the thirty-first day following the action of the county board of education provided no remonstrance is filed. Opinion No. 6354, Opinions of the Attorney General for 1956. Considering the dates supplied in each situation, it must also be assumed, in the absence of any information to the contrary, that the school districts as formerly constituted had submitted a tax budget for the year 1955, the same had been approved by the budget commission, and the necessary tax levy authorized by resolution of the

board of education of each school district as formerly constituted and certified to the county auditor prior to October 1, 1955, as required by Section 5705.27, et seq., Revised Code. These tax levies have evidently been extended upon the general tax list and duplicate by the county auditor, and the duplicate certified for collection.

An extended discussion of the procedure for the assessment and levy of taxes upon real property in this state would not profit this opinion. It is sufficient to note that the ministerial or clerical duties required in such assessment and levy of taxes upon real property are vested in the county auditor. In this regard, Section 319.28, Revised Code, provides for the annual preparation of a general tax list and duplicate on or before the first Monday of August, which shall contain separate lists of the holders in whose names real property has been listed in each township, municipal corporation, special district or separate school district, indicating a description of each tract, lot, or parcel, the value of each tract, lot, or parcel, and the value of improvements. The county auditor, after being advised the rates or amounts of taxes to be levied by each taxing authority for the current year, is directed by Section 319.30, Revised Code, to determine the sums to be levied against each tract or lot of real property and enter this sum upon the general tax list and duplicate, which is certified to the county treasurer on or before October first of each year, as required in Section 319.28, Revised Code.

Concurrently with the preparation of the general tax list and duplicate for the current year, the taxing authorities of the various taxing subdivisions which include the boards of education, the county auditor, and the budget commission are required to carry out the procedure provided in Chapter 5705., Revised Code, for the levy of taxes upon the real property in the county. Briefly stated, the taxing authority is required to adopt a tax budget on or before July 15, and submit the same to the county auditor on or before July 20. Sections 5705.28 and 5705.30, Revised Code. The tax budgets are presented to the budget commission and reviewed by the commission; and the proper tax levy for each taxing subdivision is then certified to each taxing authority prior to September 1, or such later date as approved by the Board of Tax Appeals. Section 5705.27, et seq., Revised Code. Each taxing authority is then required by ordinance or resolution to levy the tax, and certify the levy made to the county auditor before October 1, or such later date as approved by the Board of Tax Appeals. Section 5705.34, Revised Code. It is

this levy which is extended upon the general tax list and duplicate by the county auditor and certified to the county treasurer for collection. Sections 319.28 and 319.30, Revised Code.

The problem presented by the instant request is the interjection of a change in the territory included within a taxing unit into this statutory scheme for assessment and levy of taxes on real property for the current year. The problem is therefore one of determining the time at which taxes on real property are levied, or the time at which the tax authority has finally exercised its authority as to the levy of taxes upon real property in the taxing unit. Although Section 5719.01, Revised Code, provides for the attaching of the lien for real property taxes as of January 1, of each year, this date is not significant in the actual procedure for the levy of taxes, or the time when such taxes are levied. See, *State, ex rel., v. Roose*, 90 Ohio St., 345; *City of Cincinnati v. Roettker*, 41 Ohio App., 269.

The significant and substantive step in the procedure required for the levy of taxes, and the final exercise of authority by the taxing authority, is authorization by such taxing authority of the levy previously approved by the Budget Commission by resolution or ordinance and its certification to the auditor. Section 5705.34, Revised Code. It is at this point that the taxing authority pursuant to statute and in due course of law imposes a tax upon all property within its territory; any subsequent changes both as to territory or the tax authority itself cannot affect this levy, and upon the extension of the levy upon the general tax list and duplicate, and its certification to the treasurer for collection, the taxes on real property for the current year have accrued. *Hoglen v. Cohan*, 30 Ohio St., 436; see generally *Accrual of the General Property Tax in Ohio*, by Lawrance E. Broh-kahn, 15 Cin. L. Rev., 359.

In each of the situations presented by this request, it appears that the effective dates of the transfers of territory or the mergers of the various districts were subsequent to the time at which the procedure for the levy of taxes was completed as required in Section 5705.27, et seq., Revised Code, by the boards of education of the school districts as previously constituted, and the duplicate certified to the county treasurer for collection by the county auditor. The county auditor, pursuant to Section 319.30, Revised Code, must extend upon the general tax list and duplicate those rates certified to him by the existing taxing authori-

ties and such extension can be made only upon those lots or parcels within the various school districts as they were constituted at that time. Upon certification of the duplicate to the county treasurer for collection pursuant to Section 319.28, Revised Code, the county auditor can make no fundamental or substantive change to the general tax list or duplicate. The authority of the county auditor to make any changes in the general tax list or duplicates is limited solely to clerical errors. Section 319.35, Revised Code.

Thus, in specific answer to the questions presented by the request, the county auditor is without authority to make any changes reflecting the transfers of territory or mergers described on the general tax list and duplicate for the current year, 1955, and certified to the county treasurer for collection. The further question is then presented as to the procedure for the distribution of taxes collected for the year 1955, in view of the transfers of territory and mergers which have taken place.

The proper distribution of taxes collected for the year 1955 presents no difficulty in the first situation presented where two existing school districts were merged or consolidated. The presently existing school district and its board of education is by this act the legal successor to the board of education of the former school district. All money derived from taxes levied on real property within the former district should be delivered to the existing board of education as otherwise provided by statute. Similarly, in the fourth situation where two school districts were merged and a new school district created, the board of education of the new district as the legal successor to the boards of education of the former school districts must per force receive the proceeds of taxes levied on property in the former districts for the year 1955, and in the process of collection.

The second and third situations noted in the request in which a transfer of territory had become effective after the levy of taxes by the respective boards of education and the certification of the duplicate to the county treasurer present a more complex problem. The statutes are silent as to the legal effect on the distribution of proceeds of tax levies by such transfer of territory within the various taxing units which takes place after the levy of taxes and commencement of the collection process.

It is my opinion that in the absence of any express statutory direction for the division of the proceeds of a levy, the proceeds of all tax levies must go to the taxing authority of the taxing unit which levied the tax

as provided in Section 5705.34, Revised Code. Any subsequent changes in the territory of a taxing unit, such as the school district territory here involved, does not then affect the distribution of proceeds of taxes levied. Manifestly, taxes may be levied upon real property only as provided by law, and the authority to levy taxes is so limited by Section 5705.03, Revised Code:

“The taxing authority of each subdivision may levy taxes annually, subject to the limitations of sections 5705.01 to 5705.47, inclusive, of the Revised Code, *on the real and personal property within the subdivision* for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements. * * *” (Emphasis added.)

The authority to levy having been exercised, the statutes clearly contemplated that all such proceeds be paid, after each settlement, on demand by the clerk of the various school districts, by the county treasurer upon the warrant of the county auditor to the school district in which the levy was made. Section 321.31, Revised Code.

A partial solution of the general problem presented has been provided within the school law dealing specifically with the transfer of territory or the creation of new school districts. The county board of education in each instance in which a change of territory is made has the discretion to make an equitable division of the funds and indebtedness of the school district from which the territory is transferred, or between the newly created districts and any district from which territory is taken. Sections 3311.22 and 3311.26, Revised Code. Such proceeds of tax levies to be collected subsequent to the transfers or mergers involved do not then constitute “funds” of the school districts subject to division. However, the circumstance that such proceeds will be paid to the taxing authority which imposed the levy may be accorded such weight as the county board of education may deem proper in arriving at a determination of an equitable distribution of such funds and indebtedness which are then properly the subject of such division. This conclusion is in accord with the reasoning found in Opinion No. 3409, Opinions of the Attorney General for 1954, page 16.

In Opinion No. 3409, *supra*, the question concerned a transfer of territory accomplished prior to the levy of taxes by the respective boards of education, and the transfer of territory had properly been reflected on the current general tax list and duplicate. This fact does not, however,

change the fundamental problem created, for in every instance but with varying results one of the boards of education involved in the transfer of territory will provide school facilities for residents of territory, the real property of which is not then subject to a levy of taxes for the current year by such board. In the instant problem, the school district to which a portion of the territory of another district was transferred has given educational service during a portion of the year 1955, for which the board will receive no proceeds from taxes levied on the real property in such territory for the year, 1955. Thus, under any circumstances, this problem could well be considered by the county board of education in making the equitable division of funds and indebtedness required by statute.

For these reasons, and in specific answer to your request, it is my opinion that:

1. Where a transfer of territory from one school district to another district or the creation of a new district from two former districts is effective subsequent to the authorization by resolution pursuant to Section 5705.34, Revised Code, of a levy of taxes by the respective boards of education of the school districts as previously constituted, the county auditor should extend these rates upon the general tax list and duplicate, and that officer is without authority thereafter to make and any change in said general tax list or duplicate to reflect such subsequent changes in the territory of the school districts or the creation of a new school district.

2. Where a new school district is created by the merger of two existing school districts, the board of education of such district is the legal successor to the boards of education of the former districts, and the proceeds of all tax levies imposed on property located in the former districts should be paid to the board of education of the new district as provided by law.

3. Where territory is transferred from one school district to another district subsequent to the authorization by resolution of a levy of taxes upon the real property in said territory by the board of education of the district as theretofore constituted, the proceeds of such levy of taxes should be paid, as provided by law, to the board of education which authorized such levy.

4. Where territory is transferred from one school district to another or a new school district created from territory in another district, the distribution of funds and indebtedness between the affected school districts

is within the discretion of the county board of education as provided in Sections 3311.22 and 3311.26, Revised Code, but the proceeds of tax levies not then in possession of the previously existing boards of education of such districts do not constitute "funds" of the districts and are not subject to division under such sections. The circumstance that such proceeds will be paid in the future to the district which authorized such levies by resolution as provided in Section 5705.34, Revised Code, may be accorded such weight as the county board of education may deem proper in arriving at its distribution of such funds and indebtedness of the districts as are properly the subject of division. Opinion No. 3409, Opinions of the Attorney General for 1954, page 16, approved and followed.

Respectfully,
C. WILLIAM O'NEILL
Attorney General