

I am of the opinion, therefore, that producers of gas who sell their gas outright, either at the well or at the end of pipe lines constructed and used by them solely for their own use, are not public utilities and are not included in the definition of natural gas companies contained in Section 614-2, General Code, as that section is proposed to be amended by House Bill No. 72; that no specific exemption of such producers is necessary, such as is contained in the proviso now embodied in the bill; but that if such proviso is couched in the language hereinabove suggested, it will not be inconsistent with the language of the section and will not interfere with the purposes sought to be accomplished.

The use of the words "whether of its own production or otherwise" in the paragraph defining a pipe line company, does include a producer who transports only his or its own gas, and to that extent would be unconstitutional.

Respectfully,  
 EDWARD C. TURNER,  
*Attorney General.*

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190.

BOARDS OF EDUCATION— DUTIES OF COUNTY BOARD UNDER SECTION 4692, GENERAL CODE—ASSUMPTION OF INDEBTEDNESS AFTER TRANSFER OF PROPERTY IS MADE.

*SYLLABUS:*

1. *It is the duty of county boards of education upon transfer of property from one district to another pursuant to the provisions of Section 4692, General Code, to make an equitable division of the funds and of the indebtedness of the transferred territory.*

2. *That part of said indebtedness which said county board of education in the exercise of its discretion determines shall be assumed by the school district to which said territory is transferred will become an indebtedness of the entire district to which said territory is transferred, and not merely an indebtedness of the territory transferred thereto.*

COLUMBUS, OHIO, March 15, 1927.

HON. HAROLD A. PREDMORE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR—I am in receipt of your recent communication, which is as follows:

"The following questions are presented in connection with a contemplated transfer of territory by the County Board of Education from Brushcreek Rural School District to the Marshall Rural School District, Highland county, Ohio.

In transferring territory under Section 4692 G. C. if Brushcreek Rural School District, from which territory is to be transferred, has a large building debt, and Marshall Rural School District which is to receive the territory transferred, has no building debt, how shall the equitable division of the indebtedness be divided?

Is it mandatory for the County Board of Education to cause Marshall Rural School District to assume part of the debt? If Marshall Rural School District does assume a portion of the debt, will the entire Marshall

Rural School District be the unit of taxation? Since Brushcreek Rural School District will continue to hold the bonds, how shall the auditor be instructed to transfer funds for Marshall Rural School District's portion of the indebtedness?"

The authority of your county board of education to transfer the territory referred to in your inquiry is found in Section 4692 of the General Code of Ohio, which reads as follows:

"The County Board of Education may transfer a part or all of a school district of the county school district to an adjoining district or districts of the county school district. 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. If an entire district be transferred the Board of Education of such district is thereby abolished or if a member of the Board of Education lives in a part of a school district transferred the member becomes a nonresident of the school district from which he was transferred and ceases to be a member of such Board of Education. The legal title of the property of the Board of Education shall become vested in the Board of Education of the school district to which such territory is transferred. The County Board of Education is authorized to make an equitable division of the school funds of the transferred territory either in the treasury or in the course of collection. And also an equitable division of the indebtedness of the transferred territory."

This statute authorizes the County Board of Education to make an equitable division of the school funds of the transferred territory, and also an equitable division of the indebtedness of such transferred territory, and in view of the fact that Brushcreek Rural School District has a large building indebtedness and the Marshall Rural School District has no building debt, you inquire as to how an equitable division of this indebtedness should be made.

An equitable division means a fair, reasonable division to the end that justice may be done to both parties. The County Board of Education is vested with the discretion to determine what is fair and just, and so long as it acts in good faith and does not abuse the discretion vested in it there is no provision of law by which its discretion in the matter can be controlled. Of course, if it should act fraudulently or dishonestly its orders might be corrected by means of an independent action in a court of law.

The board in exercising its discretion in the matter should take into consideration various factors upon which to base its determination of what is an equitable division of the indebtedness of the districts, such as the tax duplicates of the two districts both before and after the transfer, the difference in the cost of administration of the schools in each district by reason of the transfer, the number and age of the pupils and prospective pupils in the two districts both before and after the transfer, the cost of transporting pupils, the condition of the school properties in the two districts with respect to the proximity of the time when necessary replacements of

such property must be made and any other factors that would enter into a fair and just determination of what would be an equitable division of the indebtedness of the two districts.

The question of what will constitute an equitable division of indebtedness in case of the transfer of territory from one school district to another was considered in an opinion of the Honorable Timothy S. Hogan, under date of October 8, 1914, which may be found in the Annual Report of the Attorney General for 1914, volume II, page 1333. I quote from this opinion as follows:

“The situation presented, then, is that the rural district as originally constituted has no bonded indebtedness, whereas the district from which the territory is transferred is burdened with an indebtedness.

In such a situation the statute requires that a proportional part of the indebtedness of the old district, from which the territory was transferred, shall be assumed by the new district. What proportion shall be thus assumed depends upon various factors. If, for example, a school house, on account of which a bonded indebtedness has been incurred, is located in the transferred territory, then the new district should assume the entire indebtedness, allowance being made for the exclusion from the territory transferred of any territory formerly tributary to such school house. If, on the other hand, the indebtedness is not on account of any building which is located in the transferred territory, the assumption of indebtedness, if deemed equitable, should be made only on the basis of the fact that the new district will reap some benefit from the use of public buildings, i. e., that territory in the former township district and outside of the territory transferred will be served by the school house thus acquired. If no school building is acquired by transfer, then such portion of the bonded indebtedness of the old district should be assumed by the new district to which the transfer is made as will be equitable, having regard to the tax duplicate of the transferred territory, as compared with the tax duplicate of the original indebted district as it existed prior to the transfer, due allowance being made for whatever economy in the administration of the schools of the indebted district may be effected by detaching that territory from it and whatever additional burden the new district to which the transfer is made will assume by reason of the addition of such territory, in the administration of its schools.

The indebtedness so transferred becomes an indebtedness of the whole district thus formed and is not to be met by levies upon the transferred territory only.

In all such cases there is no hard and fast rule to be applied. The statute requires an equitable division of property and indebtedness, and this requirement has the effect of reposing in the County Board of Education making the transfer, a sound discretion with respect to the determination which it is required to make, which will only be disturbed by the courts in case of its abuse.”

I would not say that it is mandatory for the County Board of Education to cause Marshall Rural School District to assume part of the debt of the Brushcreek School District. It is entirely within the discretion of the County Board of Education to make a division of the indebtedness of these two school districts if a transfer is made of some part of the territory of one district to another, and it might be possible that under certain conditions it would not be equitable to require one district to which territory had been transferred to assume any part of the debt of the other district. For instance, if a very small part of one district was transferred to another and by

reason thereof the tax duplicates of the two districts were not materially changed and in the territory transferred were a considerable number of youths of school age, the burden of whose school expense was by reason of the transfer of territory shifted to the district to which the territory was being transferred, it would not be equitable in my judgment to require the district to which the transfer of territory was being made to assume any portion of the debt of the district from which the territory was being transferred. However this is a matter which, as I said before, is purely within the discretion of the board and that part of the indebtedness which said board in the exercise of its discretion determines shall be assumed by the district to which the territory is being transferred will become an indebtedness of the entire district and not merely an indebtedness of the territory transferred thereto. In other words, each district is a taxing unit, and when the statute says that a portion of the debt of one district shall be transferred to another district it means the district as a taxing unit which includes the entire district.

A very able and thorough discussion of the question arising where property is transferred from one school district to another pursuant to the provisions of Section 4692, *supra*, may be found in the opinion of the Supreme Court of Ohio in the case of *Ross et al. v. Adams Mills Rural School District*, 113 O. S., 466. The syllabus of this case reads as follows:

"1. It is the duty of County Boards of Education upon transfer of property from one district to another pursuant to the provisions of Section 4692, General Code, to make an equitable division of the funds and of the indebtedness of the transferred territory.

2. Where, subsequent to the issuance of bonds for the erection of a school building and the levy of a tax to pay same by a rural school district, the County Board of Education, under authority of Section 4692, General Code, transfers a portion of such district to an adjoining district and makes an equitable division of the funds and of such bonded indebtedness between the district from which and the district to which the territory was transferred, all the property of each district is subject to the levy of a tax to meet its share of the indebtedness as so apportioned.

3. Section 4692, General Code, is not violative of any provision of either the state or federal Constitution."

Coming now to your last question, which reads:

"Since Brushcreek Rural School District will continue to hold the bonds, how shall the auditor be instructed to transfer funds for Marshall Rural School District's portion of the indebtedness?"

As Brushcreek School District does not hold the bonds you no doubt meant to say that since Brushcreek District was primarily obligated to redeem the bonds before the transfer of any territory from it to the Marshall District, and meant to ask how the county auditor may make his books conform to the new arrangement after territory had been transferred from Brushcreek District to the Marshall District and an equitable division of the funds and indebtedness of the two districts had been made.

It is required by Section 2, Article XII of the Constitution of Ohio that legislation whereby bonded indebtedness is created must make provisions for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds and provide a sinking fund for their redemption at maturity. Pursuant to that requirement, it was provided by Section 5649-1b, General Code, that upon the issuance

of bonds a certificate of the resolution providing therefor shall be filed with the county auditor and that "thereafter the county auditor without further action by the tax levying authority of the subdivision shall include said annual levies in the appropriate annual budgets submitted by him to the budget commission as provided in Section 5649-3c, General Code."

I assume that in this instance the provision of the Constitution above referred to and the provisions of Section 5649-1b, supra, have been complied with and the duty of the county auditor with reference thereto has been fully performed and that by subsequent action of the County Board of Education the transfer of territory from the Brushcreek District to the Marshall District has been made. When this has been done and the indebtedness apportioned pursuant to the provisions of Section 4692, supra, no new or additional order of the Board of Education is necessary to authorize the levy of taxes for the payment of the bonds.

The duties of the county auditor are purely clerical and he should follow the provisions of Section 5649-3c, supra, and include annual levies for the redemption of these bonds in accordance with the order of the County Board of Education making the equitable division of the indebtedness of these two districts in the appropriate annual budget submitted by him to the budget commissioner.

The principles involved in the determination of the question which you have propounded have been considered by this department in a number of former opinions. I would particularly refer you to the Opinions of the Attorney General for 1915, Volume II, at page 1970, where will be found an opinion which covers practically the same questions which you have asked.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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191.

APPROVAL, BONDS OF BEACH CITY VILLAGE SCHOOL DISTRICT,  
STARK COUNTY, OHIO—\$48,000.00.

COLUMBUS, OHIO, March 15, 1927.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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192.

MOTOR VEHICLE FUEL TAX—BASIS OF DISTRIBUTION.

SYLLABUS:

*There is no provision of law fixing a basis upon which any municipality may be paid its proportionate share of the motor vehicle fuel tax other than the provisions of Section 5537 of the General Code of Ohio, which provides that municipalities shall be paid their share of such tax in proportion to the total number of motor vehicles*