

it deems the establishment of such school or schools proper or necessary for the convenience or progress of the pupils attending them, or for the conduct and welfare of the educational interests of the district."

It will be observed that although each board of education is required by law to establish a sufficient number of elementary schools to provide for the free education of the youth of school age within the school district, the provisions of the statute with reference to the establishment of high schools are not mandatory. It is provided, however, by Section 7664, General Code, that if a high school is established it shall not be discontinued under three years from the time of its establishment.

It is provided by Section 7747, General Code, that the tuition of pupils who are eligible for admission to high school and who reside in districts in which no high school is maintained shall be paid by the board of education of the school district in which they have a legal school residence.

From the foregoing, it would seem clear that the board of education of the village of Middlepoint, about which you inquire, has authority to discontinue the maintenance of a high school under its supervision, unless that high school has been established with the past three years, and to contract with another board of education either in a city district, exempted village district, village district or rural district for the schooling of its resident high school pupils.

The Attorney General in his official capacity is not of course concerned with the advisability of discontinuing the high school at Middlepoint, but there can be no question about the power of the Middlepoint Board of Education to do so, and if such action is taken it will not be contrary to law.

Respectfully,
GILBERT BETTMAN,
Attorney General.

344.

TAX AND TAXATION—PROCEEDS OF GENERAL TAX LEVIES PAID THROUGH ERROR TO WRONG POLITICAL SUBDIVISION—CAN BE RECOVERED.

SYLLABUS:

When the proceeds of general tax levies are collected and inadvertently paid to the wrong political subdivision, the political subdivision receiving such payments should, in accordance with the principles of equity and fair dealing, return the same to the political subdivision which should have received the payment in the first instance.

COLUMBUS, OHIO, April 24, 1929.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

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

"On May 25, 1921, a tract of land situated in the city of Ashtabula was detached from the municipality by an act of the city council and the Ashtabula township trustees. This property, prior to its detachment, was in the city school district, and no action was ever taken to transfer it into the Ashtabula township school district.

During the years 1923, 1924 and 1925, the money received from taxation for school purposes from this particular district was paid to the Ashtabula township board of education, aggregating about \$15,000.00. This was discovered in 1925, and since that time the school money derived from this source has been paid to the city school board. The city board of education feels that this money should be returned to it by the township board, and inasmuch as it is a matter of considerable importance, I am asking that you give me your opinion concerning it."

When detachment of the territory you speak of from the city of Ashtabula was effected in 1921, which territory had before detachment been a part of the Ashtabula city school district, such detachment did not have the effect of transferring the territory from the Ashtabula city school district to another school district.

The statute does not make provision for the change of city school district territory when the boundaries of the city or municipality are changed by detachment of territory therefrom. In fact, there is no provision of law whereby territory may be transferred from a city or exempted village school district.

In an opinion of the Attorney General reported in Opinions for the year 1918, at page 600, it was held :

"There is no authority contained in our school laws to transfer territory from a city or exempted village school district."

See also Attorney General's Opinion No. 2093, rendered under date of May 14, 1928.

Inasmuch as this territory remained, after the corporate limits of the city of Ashtabula were changed, as a part of the Ashtabula city school district, the taxes collected from the territory should have been paid to the Ashtabula city school district instead of the Ashtabula township rural school district, as was done.

Section 7600, General Code, provides in part :

" * * * 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. * * * "

The question involved in your inquiry is whether or not, when through error taxes that have been collected are paid to the wrong political subdivision, there is any means by which the error may be corrected and, if so, how.

The collection and distribution of the proceeds of tax levies are, generally speaking, controlled by statute. There is no statute in Ohio which makes provision for the correction of an error of this kind, nor has the question been the subject of judicial decision in this state so far as I know.

It is stated in 37 Cyc, at page 1591 :

"Where general taxes are collected by a larger municipal division of the state, such as a county, their apportionment and distribution among the different municipalities interested, such as cities, towns, villages, boroughs, and school districts, will be made according to the principles and rules prescribed by the statutes and in the manner there directed. Generally speaking, the collecting district is not the agent of the other municipalities, but their debtor, and if the taxes are lost through the fault or fraud of its officers it is responsible for them. * * * A city is entitled not only to the taxes collected for it by a county, but also to any penalties and interest accruing on those taxes by reason of their delinquency, if actually collected by the county.

But the county is not liable for interest on each collection made for the city, from the date of such collection, but is liable only when the city demands payment of any sums due to it which have actually been collected and not paid over by the county.

A city or other municipality may maintain an action at law against a county which has collected taxes for it and failed to pay them over, as soon as the liability of the county becomes fixed and absolute, and upon a presentation of its claims in appropriate form, and within the time limited by law for such proceedings."

It would seem clear that to permit the Ashtabula township rural school district to be enriched from taxes collected from territory lying in another school district would be most unfair and inequitable. There are many authorities cited in support of the text above quoted from Cyc. Without reviewing these authorities, it is my opinion that the city school district of Ashtabula should be paid the taxes collected upon the property located within the entire district, and any of such tax moneys which were inadvertently paid to the wrong district should be returned to the Ashtabula city school district. If action were instituted therefor, recovery could only be had for such an amount as had been wrongfully diverted from the district during the six years prior to the institution of such action.

I am advised by the Bureau of Inspection and Supervision of Public Offices that similar situations have frequently arisen over the state and, although there was no direct statutory authority for so doing, the officials have uniformly been advised that the financial transactions, with respect to taxes collected and inadvertently paid to the wrong political subdivision, should be adjusted in a fair and equitable manner and, in making such adjustment, reimbursement from one political subdivision to another might lawfully be spread out in such a manner and over such a period of time as to not make it unduly burdensome to the taxing subdivision which was required to reimburse the subdivision which had wrongfully been deprived of its proper share of the taxes.

Respectfully,
GILBERT BETTMAN,
Attorney General.

345.

COUNTY COMMISSIONERS—POWER TO ADOPT RULES REQUIRING SHERIFF TO FILE REQUISITIONS FOR FOOD FOR PRISONERS—SHERIFF PRESCRIBES MENU IN ABSENCE OF SUCH REGULATION BY COMMON PLEAS COURT.

SYLLABUS:

1. *A board of county commissioners may lawfully adopt rules requiring the sheriff to file with that board requisitions for the food to be purchased for feeding the State prisoners in the county jail, as well as for the compensation of persons for cooking and serving such food.*

2. *The authority given to county commissioners, by the provisions of Section 2850, General Code, to prescribe rules and regulations with reference to the sheriff purchasing food for State prisoners and other persons confined in the county jail, does not extend to the making of rules regulating the diet of such persons or prescribing the menu to be served. In the absence of rules and regulations with reference to diet*