

1979

EDUCATION — TRANSFER OF TERRITORY; ANOTHER COUNTY DISTRICT — §3311.23 R.C. — APPORTIONMENT OF INDEBTEDNESS; PAYMENT OF WHICH MAY NOT BE RENDERED AN IMMEDIATE OBLIGATION TO BE PAID WHEN NOT DUE—EFFECTIVE DATE OF TRANSFER.

SYLLABUS:

1. When territory of a local school district in one county has been duly transferred to another county district by proceedings under former Section 3311.23, Revised Code, pending at the date of its repeal, January 1, 1958, the board of education of the county in which such territory is situated is authorized to make an equitable division of the indebtedness of the district from which such territory was taken, but such board has no authority to order the immediate payment by the district receiving such transfer, of portions of such indebtedness which are not yet due.

2. When the provisions of former Section 3311.23, Revised Code, relative to transfer of part of the territory of a local school district including the division of the indebtedness, have been complied with, such transfer will become effective on the next succeeding July 1.

Columbus, Ohio, April 23, 1958

Hon. Robert A. Fries, Prosecuting Attorney  
Wood County, Bowling Green, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"On December 9, 1957 the Wood County Board of Education transferred a portion of the Jackson Township School District to the Deshler Local School District of Henry County, under the provision of Section 3311.23 of the Revised Code.

"A copy of the resolution of the Wood County Board of Education showing the division of indebtedness is attached hereto.

"The Jackson Township Board of Education takes the position that all of the money (\$18,276.96) mentioned in the resolution should be paid by the Deshler board on July 1, 1958.

"The Deshler board takes the position that they must pay all of the indebtedness, \$18,276.96, with the exception of the portion of bonded indebtedness and interest. The board feels that it would be proper to pay the \$12,914.58 and \$4,061.25 in 19 yearly installments. I would like your opinion as to which is the correct method of payment.

"Let us assume that in your opinion the payment of the full amount, the \$18,276.96, should be made on July 1, 1958, and let us further assume that the Deshler Local School District is unable to pay said amount.

"What effect, if any, does this have upon the original transfer made by the Wood County Board of Education. If the transfer is not set aside I would like your suggestions as to how the payment should be handled."

Section 3311.23, Revised Code, as it was in effect on December 9, 1957, provided for the transfer by the county board of education of "part or all of the territory comprising a local school district to an adjoining county school district or to an adjoining city or exempted village school district."

The same section further provided:

"The board of education of the county, city, or exempted village school district to which the territory is transferred shall within forty-five days following the adoption of such resolution by the county board of education making the transfer, pass a resolution by a majority vote of the full membership, accepting or rejecting such transfer.

"The county board of education making the transfer shall within sixty days after adopting the resolution to transfer such territory make an equitable division of the funds and indebtedness between the districts involved."

The same section required the board of education of the county, city or exempted village district to which the transfer was made, within fifteen days after such acceptance, to file a map showing the boundaries of the

territory transferred, with the county auditor of each county effected by the transfer.

Said Section 3311.23, *supra*, further provided:

“When the requirements provided herein have been met the transfer shall be effective on the next succeeding July 1.

“When such transfer is complete the legal title of the school property in the territory transferred shall be vested in the board of education of the school district to which the territory is transferred.”

It may be noted that Section 3311.23, *supra*, was repealed by Senate Bill 278, *supra*, which became effective January 1, 1958; but that act also enacted a new Section 3311.341, Revised Code, which provided that:

“Nothing herein shall nullify or affect any proceedings or action pending under the provisions of present Sections 3311.22, 3311.23 and 3311.26 of the Revised Code.”

Accordingly, said Section 3311.23, *supra*, under which the proceeding referred to in your letter was begun, is still operative for the purpose of completing the “equitable division of the funds and indebtedness between the districts involved.”

I cannot undertake to decide what would be an “equitable division” of funds and indebtedness in the case presented. That is a matter that must be left to the sound discretion of the county board of the transferring district. I note from your letter that the two local boards involved appear to be in substantial agreement as to the amount of the indebtedness which is to be divided. The only disagreement, and the only real question which you raise is as to the time and manner in which the Deshler district is to assume and discharge the obligation put upon it by the decision of the county board.

It seems also clear from your statement as to the terms of the order of the county board which is attached to your letter, and from your statement as to the attitude of the two districts directly concerned, that it is settled that the apportionment should be based on the proportion which the tax value of the transferred territory bears to the tax value of the entire Jackson district, to-wit 5.7%.

The order of the county board attached to your letter is not quite clear as to the time and manner in which the Deshler district is to discharge the obligation placed upon it. For the purpose of better understanding, the terms of that order are here set forth:

"a. That since the valuation, for taxing purposes of the territory transferred from Jackson Township Local School District to the Deshler Local School District represents 5.7% of the total valuation of Jackson Township.

b. And since Jackson Township Local School District has a bonded indebtedness of \$238,000.00; Bus notes to the amount \$4,842.00; Accounts Payable 12/31/57 of \$6,526.68; and the General Fund is overdrawn on 12/31/57 to the extent of \$11,070.70.

c. And since the interest on \$238,000.00 for the next 19 years equals \$71,250.00—and the interest on \$4,842.00 for the next 2 years is \$387.46.

Therefore, the Deshler Local School District owes and will pay to the Jackson Township Local School District 5.7% of all indebtedness as follows:

Bond Indebtedness .....	\$238,000.00		
In Bond Retirement Fund .....	11,428.44		
	<hr/>	\$226,571.56	5.7%—\$12,914.58
Interest (19 years) .....	71,250.00	5.7%—	4,061.25
Bus Notes .....	4,842.00	5.7%—	275.99
Interest on Bus Notes (2 years) .....	387.46	5.7%—	22.09
Accounts Payable 12/31/57 .....	6,526.68	5.7%—	372.02
General Fund Overdrawn 12/31/57 .....	11,070.70	5.7%—	631.03
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Total Indebtedness 12/31/57 ....	\$320,648.40		\$18,276.96

d. At the same time the Auditor of Wood County will pay to the Deshler Local School District 5.7% of all tax money in the process of collection for the Jackson Township Local School District during the calendar year 1958.

"When the above requirements have been fulfilled, the transfer shall be effective on the next succeeding July 1st."

If it was intended by this order that Deshler should discharge all of these obligations by *July 1 next*, how could it be obligated to pay *interest on the bonds* for nineteen years, and on the bus indebtedness for two years? I do not think we are either justified or required to give the order of the county board that interpretation.

There is nothing in the statute that authorizes the county board to require the receiving district immediately to pay off its allotted share of the

long term or not yet due indebtedness of the transferring district, or to pay to such district a sum of money equal to such indebtedness. The only authority given by the law is made an "equitable division of the indebtedness."

As a practical solution to the situation here presented, it would appear that Deshler district should pay to Jackson its portion of the miscellaneous small obligations now due, possibly including, at the option of the Deshler district, its share of the bus debt (without interest), and pay when and as due, the installments of principal and interest on its share of the bonds. In my opinion, Deshler has the right to insist that it pay off its allotted portion of all the indebtedness when and as the installments thereof become due; in that case, of course, paying the accrued interest.

It is accordingly my opinion and you are advised:

1. When territory of a local school district in one county has been duly transferred to another county district by proceedings under former Section 3311.23, Revised Code, pending at the date of its repeal, January 1, 1958, the board of education of the county in which such territory is situated is authorized to make an equitable division of the indebtedness of the district from which such territory was taken, but such board has no authority to order the immediate payment by the district receiving such transfer, of portions of such indebtedness which are not yet due.

2. When the provisions of former Section 3311.23, Revised Code, relative to transfer of part of the territory of a local school district including the division of the indebtedness, have been complied with, such transfer will become effective on the next succeeding July 1.

Respectfully,

WILLIAM SAXBE

Attorney General