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1. BUSES, SCHOOL—NOT “FUNDS” WITHIN MEANING OF TERM AS USED IN SECTION 4831-13 G. C.
2. UNPAID BALANCE ON SCHOOL BUS THOUGH NOT YET DUE CONSTITUTES AN “INDEBTEDNESS” — SECTION 4831-13 G. C.
3. “INDEBTEDNESS” INCLUDES ALL LIABILITIES PRIOR TO DATE OF TRANSFER, INCLUDING BONDED INDEBTEDNESS, CONTRACTUAL OBLIGATIONS, I. E., BUILDING CONTRACT, TEACHERS’ CONTRACTS, JANITORS’ CONTRACTS, THOUGH NOT FULLY PERFORMED.

SYLLABUS:

1. School buses are not “funds” within the meaning of that term as used in Section 4831-13 of the General Code.
2. The unpaid balance on a school bus, though not yet due, constitutes an “indebtedness” as that term is used in Section 4831-13 of the General Code.
3. “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.

Columbus, Ohio, July 23, 1949

Hon. Benson L. Owens, Prosecuting Attorney
Jackson County, Jackson, Ohio

Dear Sir:

This will acknowledge receipt of your letter of recent date, which reads as follows:

“The Superintendent of Jackson County Schools has requested me to obtain the opinion of your office on certain questions arising in connection with the application of Section 4831-13 of the General Code of Ohio.

“In brief, the facts giving rise to the questions are as follows: A certain portion of the territory of the Milton Local School District of the Jackson County district was transferred to the Wellston School District. A division of the funds and indebtedness between the districts involved has been made by the county board of education of Jackson County, Ohio. In arriving

at the amount of the funds to be divided the County Board considered as indebtedness the unpaid balance on a school bus, previously purchased by said Milton Local Board of Education, although the payments called for in the purchase agreement covering the school bus are not yet due. The school bus was to be retained and used by the Milton Local Board of Education.

"The opinion of your office is respectfully requested upon the following questions, to wit:

"Question No. 1: Is the value of school buses and other movable equipment, where retained by the district losing territory, to be considered as funds within the meaning of that term as used in Section 4831-13 of the General Code of Ohio?

"Question No. 2: Does the unpaid balance not yet due on a school bus constitute an 'indebtedness' as that term is used in said section number 4831-13 of the General Code of Ohio?

"Question No. 3: What obligations should be considered as 'indebtedness' as said term is used in said section?

"The portion of section number 4831-13 of the General Code of Ohio referring to the division of funds reads as follows: 'an equitable division of the funds and indebtedness between the districts involved has been made by the county board of education making the transfer.'"

As introductory matter to the questions presented by your communication, Section 4831-13 of the General Code reads as follows:

"If a county board of education deems it advisable to transfer territory from a local school district within the county school district to an adjoining county school district or to an adjoining city or exempted village school district, such transfer may be made by the county board of education by the adoption of a resolution providing for such transfer. A county board of education may accept a transfer of territory from another county school district or from a city or exempted village school district and annex such territory to a contiguous local school district of the county school district.

"If there is filed with a county board of education prior to the first day of February in any even numbered year a petition requesting the transfer of territory from a local school district of the county school district to an adjoining county school district or to an adjoining city or exempted village school district, and such petition is signed by 75% of the qualified electors residing in the territory which the petition seeks to have transferred voting at the last general election, such county board of education shall, prior to the first day of April next following the filing of such petition with the county board of edu-

cation, either adopt a resolution transferring the territory as requested by such petition or adopt a resolution objecting to the requested transfer. If the resolution adopted by the county board of education is a resolution objecting to the requested transfer, then the county board of education shall, within ten days after the adoption of such resolution, file a copy of the resolution, together with a copy of the petition and a map showing the boundaries of the territory which the petitioners seek to have transferred, with the superintendent of public instruction. The superintendent of public instruction, if he is not in agreement with the county board of education's action in objecting to the requested transfer of territory, shall, prior to the first day of August next following such action, hold a hearing in the county where the proposal to transfer territory was filed. The superintendent of public instruction or his representative shall preside at any hearing. For a period of ten days after such hearing the petitioners who signed the original petition which was filed with the county board of education pursuant to the provisions of this section shall have the right to request that their names be removed from such petition. Not later than the first day of September after the filing with the superintendent of public instruction, pursuant to the provisions of this section, of a proposal to transfer territory, the superintendent of public instruction shall either approve or disapprove such proposed transfer of territory and shall submit, in writing, to the county board of education filing such proposal, notice of his decision. If the decision of the superintendent of public instruction is an approval of the proposed transfer of territory, then the county board of education shall, within thirty days after receiving the superintendent's decision, adopt a resolution transferring the territory.

“Upon the adoption by a county board of education, as authorized by this section, of a resolution transferring territory to another county school district or to a city or exempted village school district such county board of education shall, forthwith, submit a copy of such resolution to the clerk of the board of education of the county, city or exempted village school district to which the territory is transferred. Such transfer of territory shall not be complete, however, until (1) a resolution accepting the transfer has been passed by a majority vote of the full membership of the board of education of the county, city or exempted village school district to which the territory is transferred, (2) an equitable division of the funds and indebtedness between the districts involved has been made by the county board of education making the transfer, and (3) a map showing the boundaries of the territory transferred has been filed, by the board of education accepting the transfer, with the county auditor of each county affected by the transfer. 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."

The solution to your specific problem depends upon an interpretation of the following part of this statute:

"* * * Such transfer of territory shall not be complete, however, until * * * an equitable division of the funds and indebtedness between the districts involved has been made by the county board of education making the transfer * * *."

The statutory law of Ohio affords no definition of an "equitable division of funds and indebtedness," or any direction to the county board of education as to the manner and method of making such a division. Just what constitutes an "equitable division of funds and indebtedness" has occasioned considerable controversy and has been the subject of discussion by former Attorneys General in a number of opinions.

In an opinion reported in Opinions of the Attorney General for 1927, Vol. III, p. 1806, it is said:

"In making a division of the funds and indebtedness between two school districts involved in the transfer of territory from one to the other, consideration should be given not solely to the comparative tax valuation of the property located within the territory transferred and that of the entire districts before transfer, but to other factors bearing on the situation as well."

In the reported Opinions of the Attorney General for 1928, Vol. IV, p. 2959, it is held:

"The making of an equitable distribution of funds and indebtedness between two school districts, when a part of the territory of one district is annexed to another, is purely within the discretion of the board of education charged by law with the duty of making this equitable distribution, and in the absence of fraud or abuse of discretion the distribution as made by such board of education will be final."

In the reported Opinions of the Attorney General for 1929, at page 136, it was held:

"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."

An exhaustive and interesting discussion of this question may be found in Opinions of the Attorney General for 1937, at page 1812, which reads in part:

"* * * it should be understood that this department is not empowered to actually make a division of funds and indebtedness between two school districts, or to say what it should be in any particular case. That is a matter purely within the discretion of the board of education making the transfer and is dependent on many considerations as I have above indicated."

See also in this regard:

- Opinions of Attorney General, 1915, p. 1970.
- Opinions of Attorney General, 1918, p. 1247.
- Opinions of Attorney General, 1927, p. 318.
- Opinions of Attorney General, 1928, pp. 733, 1985.
- Opinions of Attorney General, 1930, pp. 1117, 1864.
- Opinions of Attorney General, 1931, p. 295.
- Opinions of Attorney General, 1933, p. 980.

A review of these authorities, in the absence of any statutory definition to the contrary, indicates that "an equitable division," as used in Section 4831-13 of the General Code, means a fair, reasonable division to the end that justice may be done to both school districts. What may be fair and reasonable is within the discretion of the board of education, and the board may take into consideration many varied factors in determining what is a fair and reasonable division.

The terms "funds" and "indebtedness," as used in the statute, are defined by the Supreme Court of Ohio in the case of *State ex rel. Board of Education of Swanton Village School District, v. Board of Education of Sharpless Village School District*, 114, O. S., 602, 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."

"'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 * * *."

“Funds” is defined in this case according to the ordinary use of the term and does not embrace the value of chattels. If school buses were considered as funds within the use of the term in Section 4831-13 of the General Code, then all chattels of the school district, including supplies, furniture, etc., could also be considered as funds, and the practical result of “an equitable division” of such a fund would be a prohibitive mire of confusion and uncertainty.

Therefore, in accordance with the definition given in the Swanton Village case, *supra*, I am of the opinion that “funds,” as used in Section 4831-13 of the General Code, refers to all moneys in possession and all moneys to which the district is entitled at the date of transfer.

In response to question number two of your communication, I am of the opinion that the unpaid balance not yet due on a school bus is an “indebtedness” as that term is used in Section 4831-13 of the General Code. The fact that payments may not be due at the time of the transfer does not alter the fact that the duty to pay for the bus is an outstanding obligation on a contract of sale and is in fact an “indebtedness” as the term is defined in the Swanton Village case, *supra*. It must also be remembered that if this indebtedness had been paid before the transfer of school districts, the funds of the district making the transfer would have been reduced accordingly, and the equities of the two districts in the division of “funds and indebtedness” would be substantially the same.

With reference to the third question of your communication, I am guided by no definite standards which might make it feasible to enumerate all obligations which should be considered “indebtedness,” but I may say generally that “indebtedness” includes all money owed or obligations existing at the time of transfer and may be subject to various interpretations according to the facts and circumstances of each particular case. The determination of such matters is within the discretion of the board of education.

It is accordingly my opinion :

1. That school buses are not “funds” within the meaning of that term as used in Section 4831-13 of the General Code.
2. That the unpaid balance on a school bus, though not yet due, constitutes an “indebtedness” as that term is used in Section 4831-13 of the General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General