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TRANSFER OF SCHOOL TERRITORY—PROPERTY WITHIN SUCH TERRITORY LIABLE FOR PAYMENT OF TAXES ON PRE-EXISTING INDEBTEDNESS OF DISTRICT TO WHICH TRANSFERRED—NO AUTHORITY FOR EQUITABLE DIVISION OF INDEBTEDNESS IN SPECIFIC INSTANCE.

*SYLLABUS:*

*When property is transferred to a school district under the provisions of Section 4692, General Code, such property is liable for the payment of taxes for pre-existing indebtedness of the district to which such property is transferred, and the authority vested in the county board of education to make an equitable division of the indebtedness of such transferred territory may not be invoked to relieve such transferred territory from liability for such taxation.*

COLUMBUS, OHIO, February 25, 1931.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Mr. J. E. S., the Superintendent of Schools of Seneca County, has asked for an opinion upon the questions involved in the following proposition:

The Clinton Township School District, over a period of time, has created a fund of approximately \$40,000.00, expecting eventually to use this in the construction of a school building. Part of the Clinton Township School District was recently transferred to the Scipio-Republic School District. This latter School District last year constructed a new school building, and issued bonds for the cost of the building, the bonds to be paid from taxes to be paid over a period of years.

Under the provisions of Section 4692 of the General Code, the County Board of Education made an equitable division of the \$40,000.00 fund belonging to the Clinton Township Board, determining in one instance that the sum of \$225.00 was an equitable share to be pro rated from the Clinton Township District to the Scipio-Republic District, and authorized that amount to be paid forthwith by the one Board of Education to the other, out of the building fund. The question is now raised as to whether or not this sum of \$225.00 should be credited upon the taxes to be assessed against the transferred territory, and should be paid in the future by it as a part of the Scipio-Republic School District, or whether the transferred territory is subject to pay taxes at once in the new district, not receiving any credit by reason of the transfer of the \$225.00. Under the latter part of Section 4692, the County Board may make an equitable division of the indebtedness of the transferred territory, and it was the opinion of the writer that the County Board would have the right to specify that the \$225.00 shall be credited upon the taxes to be assessed for the payment of the Scipio-Republic School to the transferred territory. It would seem inequitable that the residents of the transferred territory who had paid over a period of years and acquired an interest in the equity in the \$40,000.00 fund should now be compelled to start paying upon the indebtedness of the Scipio-Republic

School District, and not receive any credit for the fund, which it is admitted is the equity share of the transferred territory."

In your letter you refer to the Clinton Township School District and to the Scipio-Republic School District. It should be noted at the outset that there are no provisions under the General Code for such school districts. Section 4679, General Code, provides that "the school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts, rural school districts and county school districts." For the purposes of this opinion, however, I shall refer to the districts as the Clinton district and the Scipio district.

Section 4692, General Code, under which the transfer in question was made, provides in part as follows:

"\* \* \* 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."

It is, of course, contemplated that before an equitable division of the indebtedness of the transferred territory be made, the district from which territory is transferred must be indebted. You do not, however, state that the Clinton district has any indebtedness and I assume therefore that there is no indebtedness which may be equitably divided. Such being the case, this fact should undoubtedly have been taken under consideration by the county board of education in apportioning \$225.00 of the \$40,000.00 fund of the Clinton district to the Scipio district. This office has rendered numerous opinions upon the matter of the equitable distribution of funds and indebtedness of territory so transferred. A number of these rulings on this point were summarized in an opinion appearing in Opinions of the Attorney General for 1928, Vol. IV, p. 2959. The third branch of the syllabus of this opinion is as follows:

"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."

Your question accordingly resolves itself into a determination of whether or not the territory annexed to the Scipio district may be relieved from the obligation to pay taxes which obligation prevails against the other territory of the Scipio district. It should first be observed that there are no provisions in the General Code whereby a board of education is authorized to levy taxes upon a portion of the property within its jurisdiction.

Similar equities to those in the instant case were under consideration by the Supreme Court in the case of *State, ex rel, v. Cincinnati*, 52 O. S. 419. This case involved the liability of lands annexed to a municipal corporation for the payment of pre-existing indebtedness of such corporation. The court said at pp. 453, 454:

"That the enlargement of the territorial boundaries of municipal corporations by annexation, and the consequent extension of their corpor-

ate jurisdiction, including that of levying taxes, are legitimate subjects of legislation, must be admitted; and hence, the extent to which such legislation shall be enacted, both with respect to the conditions and circumstances under which the annexation may be had, and the manner in which it may be made, rests wholly in the discretion of the general assembly, except in so far as limitations upon its power are contained in the constitution. Accordingly, legislation has been sustained which authorized the annexation of territory, without the consent of its inhabitants, to a municipal corporation having a large unprovided for indebtedness, for the payment of which the property included within the territory annexed became subject to taxation. *Powers v. Commissioners*, 8 Ohio St., 285; *Blanchard v. Bissell*, 11 Ohio St., 96. In both of these cases it was held, that the annexation might be made without the consent, and even against the remonstrance of a majority of the persons residing on the annexed territory; that the lands thus annexed were liable to local taxation for the payment of the pre-existing indebtedness of the municipality; and, that the statute authorizing such annexation was constitutional; the court saying in the first of the cases, that there is no constitutional provision on the subject, and that 'it would require a very artificial and unsound mode of reasoning to hold that territory could not be annexed to a town which owed debts, until the owner of such territory were paid a compensation in money for a proportional part of such debt, on the ground that the property annexed was condemned for public use;' and further, that it is not 'to be presumed that a municipal corporation has contracted a debt without being correspondingly benefited.'"

It is my view that the foregoing is dispositive of your inquiry. Perhaps the \$225.00 which the Scipio district has received may be credited to the bond retirement fund, this money coming from the building fund of the Clinton district, but even then the only effect would be to slightly reduce the amount of the levy for the next year necessary for the purposes of the bond retirement fund. There is clearly no authority to discriminate between various sections of the Scipio district as it is now constituted.

Specifically answering your question, therefore, it is my opinion that when property is transferred to a school district under the provisions of Section 4692, General Code, such property is liable for the payment of taxes for pre-existing indebtedness of the district to which such property is transferred, and the authority vested in the county board of education to make an equitable division of the indebtedness of such transferred territory may not be invoked to relieve such transferred territory from liability for such taxation.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*