

1886.

APPROVAL, ABSTRACT OF TITLE TO LAND OF LAURA V. HOLLISTER,  
IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, March 21, 1928.

HON. CARL E. STEEB, *Secretary, Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted to me an abstract of title with respect to certain lands and premises situated in the City of Columbus, Franklin County, Ohio, and delineated and described as follows:

“Being lots numbers twenty-four (24) and twenty-five (25) of Critchfield and Warden’s Subdivision, as the same are numbered and delineated upon the recorded plat thereof, of record in Plat Book 4, page 234, Recorder’s Office, Franklin County, Ohio.”

From my examination of the abstract submitted, I find that Laura V. Hollister has a good and merchantable fee simple title to said lands and premises, subject only to the inchoate dower interest of her husband, Harmon V. Hollister, and to the taxes on said lots for the last half of the year 1927, amounting to \$4.68, and which is due and payable in June, 1928.

The warranty deed submitted to me has not yet been signed or otherwise executed. Said deed is in form sufficient to convey to the State of Ohio an indefeasible fee simple title to said premises when executed in the manner required by law, free and clear of the dower interest of said Harmon V. Hollister and free and clear of all encumbrances other than the taxes for the last half of the year 1927 above mentioned.

The encumbrance estimate submitted is in proper form and shows that there is an unencumbered balance in the appropriation account sufficient to pay the purchase price of said property.

No action of the Controlling Board was necessary with respect to the purchase of this property, and no certificate with respect to the proceedings of said board in this matter has been submitted.

I am herewith forwarding to you said abstract, unexecuted deed and encumbrance estimate. Said deed when executed should be submitted to this department for approval.

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

1887.

BOARD OF EDUCATION—RESOLUTION TO MAKE EQUITABLE DIVISION OF FUNDS AND INDEBTEDNESS BETWEEN TWO SCHOOL DISTRICTS INVOLVED IN TRANSFER OF TERRITORY—WHEN RESOLUTION IS EFFECTIVE—HOW DIVISION IS MADE.

SYLLABUS:

1. *A resolution of a county board of education which purports to make an equitable division of funds and indebtedness between two school districts involved in a*

*transfer of territory, operates on the funds and indebtedness of the districts as of the date of the resolution unless the resolution provides otherwise.*

2. *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.*

COLUMBUS, OHIO, March 22, 1928.

HON. HARRY K. FORSYTH, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

“July 9th, 1927, the county board of education of Logan County, acting under Section 4696, General Code, passed a resolution transferring territory from Stokes Township School District, Logan County, to Jackson Rural School District, Shelby County, which was duly accepted by the Shelby County board by resolution passed July 30th, 1927.

On the last named date the Shelby County board proceeded to make an equitable division of the funds and indebtedness between the districts involved, and found the ratio which the transferred territory bore to the original Stokes District to be .0496.

The balance of funds on hand as of September 1st of Stokes District was as follows:

General Fund.....	\$3,114 36
Teachers Retirement.....	4,475 08
Sinking Fund.....	6,133 02
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Total Balance.....	\$13,722 46

The August settlement for 1927 was as follows:

General Fund.....	\$7,216 46
Sinking Fund.....	3,525 73
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Total August Settlement.....	\$10,742 19

Grand total balance on hand and August settlement, \$24,464.65.

The indebtedness of said district as of September 1st was \$22,063.80.

The Shelby County Board maintains that it is entitled to .0496% of \$24,464.65, assuming on the basis of the same fraction the indebtedness of said district in the amount of \$22,063.80.

The clerk of the Stokes Township District tendered a check for the sum of \$512.40, or .0496% of the general fund balance as of September 1st, namely, \$3,114.36, plus the amount of the general fund realized from the August settlement, namely, \$7,216.46.

It is the contention of the Shelby County Board that the division of funds between the two districts should be on the basis of the total of \$24,464.65, which would figure out \$1,213.40.

There seems to be doubt as to the application of the rule announced by the Supreme Court in *State ex rel vs. Board of Education*, 114 O. S. page 602, where the court holds: 'That an equitable division of funds and indebtedness means a division in the proportion that the taxable value of the transferred district bears to the taxable value of the original district.'

This language seems to forbid the exercise of discretion upon the part of an accepting board requiring a division strictly on the basis of relative value.

I should appreciate your opinion as to the correctness of the position of the Shelby County Board in this matter."

Transfers of territory from a rural school district of one county to an adjoining county school district are governed by Section 4696, General Code, which reads in part as follows:

"A county board of education may, \* \* \* transfer a part or all of a school district of the county school district to an exempted village, city or county school district, the territory of which is contiguous thereto. \* \* \* A county board of education may accept a transfer of territory from any such school district and annex same to a contiguous school district of the county school district.

In any case before such a transfer shall be complete (1) \* \* \* . (2) an equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, which in the case of territory transferred to a county school district shall mean the board of education of the county school district to which such territory is transferred.  
\* \* \* "

It will be observed from a reading of the foregoing statute, that the equitable division of funds and indebtedness when territory is transferred from one county school district to another, shall be made by the county board of education of the district to which the territory is transferred. The board of education making the transfer has nothing to say about the equitable division of funds and indebtedness of the two districts, but the board accepting the transfer makes the division and in the absence of an abuse of discretion on its part, its decision in the matter is final.

There are no statutory provisions as to how an equitable division of funds and indebtedness between school districts shall be made. The question has been considered in several former opinions of this department, particularly those reported in the Annual Report of the Attorney General, 1914, Vol. II, page 1333; Opinions of the Attorney General, 1915, Vol. II, page 1970; Opinion No. 190, rendered March 15, 1927, and addressed to the prosecuting attorney at Hillsboro, Ohio, and Opinion No. 1033 rendered under date of September 21, 1927, and addressed to the prosecuting attorney of Darke County.

In the latter opinion, rendered under date of September 21, 1927, a copy of which I enclose herewith, the former opinions above referred to are reviewed, and the recent opinion of the Supreme Court in the case of *State ex rel vs. Board of Education*, 114 O. S. 602 is discussed as follows:

"In the case of *State ex rel., Board of Education of Swanton Village School District vs. Board of Education of Sharples Village School District*, 114 O. S. 602, at page 605, the court said:

'We therefore reach the conclusion that a division in the proportion that the taxable value of the transferred district bears to the taxable value of the original district is not only an *equitable* division, but the *only* basis upon which an equitable division can be made.' (Italics the writer's.)

I cannot believe that the Supreme Court has by this language meant to reduce the rule for making an equitable division of funds and indebtedness between two school districts to such mathematical precision as a cursory reading of the language would indicate. It would seem that the language here used must be read in the light of the facts before the court. In that case the question arose between two districts where territory with 51.15% of the taxable value of all the territory of a village school district had been transferred to an adjacent county district. The board of education of the latter district in making the division of funds and indebtedness assumed 51.15% of the former district's indebtedness and demanded 51.15% of the funds in the treasury of the former district. The court said that this division was fair and proper under the circumstances. The circumstances are stated by the Reporter on page 602 as follows:

'At the general election in November, 1924, the respondent district voted in favor of \$12,000 issue of bonds, under Section 7625, and kindred sections, General Code. Subsequent thereto 75 per cent of the resident electors in the territory described in the petition prayed the Lucas county board of education for a transfer of such territory to the Fulton county school district, pursuant to Section 4696, General Code, and on May 5, 1925, the Lucas county board of education granted the prayer of the petitioners for the transfer of the Fulton county school district. On May 16, 1925, the bonds, having theretofore been duly advertised and sold, were delivered to the purchaser. On May 19, 1925, the Lucas county board of education, on reconsideration of the petition for transfer, reaffirmed its order of May 5, 1925. On May 20, 1925, the Fulton county board of education accepted the transfer of the territory in question to the Fulton county school district and annexed the territory to the relator's district, which is a part of the Fulton county school district.

On May 23, 1925, the Fulton county board of education, under Section 4696, General Code, adopted a resolution making an equitable division of the funds and indebtedness between the respondent and relator, and provided that the district of the relator should assume (a) 51.15 per cent. of a bonded indebtedness of \$1,260, interest due on deficiency bonds, (b) bonded indebtedness of \$12,000 under Section 7625, General Code, and ordered the respondent to transmit to the relator (a) 51.15 per cent. of money in treasury, (b) 51.15 per cent. of the \$12,000 bond issue proceeds.

On May 28, 1925, the respondent commenced advertising for bids for the construction of a school building in its district, to be received until June 25, 1925.'

Suppose, however, the transfer and division of funds and indebtedness had been made a few weeks later, and in the meantime contracts had been let in accordance with the bids received on June 25, 1925, and the funds in the treasury of the Sharples Village School District in Lucas County had been encumbered to the extent of the contracts let. Or, to go further, suppose the transfer had not been made until the school building had been erected and paid for, the Sharples Village School District would then have had a considerable bonded indebtedness and a small amount of funds in its treasury.

A division of funds in the proportion that the taxable value of the portion of Sharples Village School District transferred to the taxable value of the original district obviously would have been inequitable.

Just five months prior to the decision of the Swanton Village School District case above referred to, the Supreme Court decided the case of *Ross, et al., vs. Adams Mills Rural School District, et al.*, 113 O. S. 466, in which a division of funds between school districts was approved, where in making the division the ratio between the taxable value of the territory transferred and the taxable value of the entire district as it existed before the transfer was not the sole consideration.

In the Adams Mills case a portion of the Jefferson Rural School District in Muskingum County with a tax value of \$1,489,000 out of the tax valuation for the entire district of \$2,741,210 was transferred to the Adams Mills School District. The outstanding indebtedness of the Jefferson School District was \$111,000 and the county board of education determined that \$86,000 of this debt should be and remain an obligation on the Jefferson School District as constituted after the transfer, and \$25,000 thereof should be an obligation of the Adams Mills District to which the territory had been transferred. The court said on page 481:

'The facts disclosed would not warrant the conclusion that the county board had abused its discretion in the matter of the division of indebtedness.'

It is my opinion that in making an equitable division of funds and indebtedness between two school districts involved in the transfer of territory, the board of education making the division should take into consideration the facts existing in the particular case. No hard and fast rule can be laid down to cover cases generally but many factors must be considered, as has been indicated in previous opinions rendered by this department. In any event, however, where the transfer of territory is made from one county school district to another, the board of education of the county school district to which the transfer is made, and who accepts the transfer, has the exclusive right to make the equitable division of funds and indebtedness as provided by the statute, and when that division is once made, it is conclusive, unless the board has abused its discretion in making the division.

With respect to the specific case set out in your inquiry, you state that the Shelby County Board of Education made a division of the funds and indebtedness between the districts involved in the transfer on July 30, 1927, and that they found the ratio which the transferred territory bore to the original Stokes District to be .0496, and made a division of both the funds of the two districts and their indebtedness on that basis. I apprehend that the board in making this division took into consideration the various factors that would lead to a fair determination of what was an equitable division of the funds and indebtedness between these two districts, among others, the fact that the Stokes Township School District would benefit by future collections of taxes which had previously been assessed on the entire taxable property of the district as constituted before the transfer, and determined that by transferring .0496% of the funds of the Stokes Township School District then in the treasury to Jackson Rural School District, and the assumption by Jackson Rural School District of .0496% of the indebtedness of Stokes Township Rural School District as of that date, a fair and equitable division of funds and indebtedness between these two districts would be made.

I do not have before me the wording of the resolution of the Shelby County Board of Education passed July 30, 1927, by virtue of which it made a division of funds and indebtedness between these two districts. Unless, however, this resolution is

so worded that the proportionate share of the Stokes District funds to be paid to Jackson Rural School District, and the like proportionate share of its indebtedness to be assumed by Jackson Rural School District, in the proportion fixed by the board, should be computed as of September 1st or some other date than the date of the passage of the resolution, the date of the resolution should govern and the amount of the funds in the Stokes District treasury as of July 30th is the basis upon which the .0496% should be computed. The same is true of the indebtedness. You seem to have taken September 1st as the time when the resolution of July 30th operated. Unless the resolution so stated, this would not be correct, but the amounts should be computed as of the date of the resolution unless the resolution provided differently.

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

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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1888.

APPROVAL, BONDS OF HARRISON TOWNSHIP, MONTGOMERY COUNTY—\$20,000.00.

COLUMBUS, OHIO, March 23, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1889.

APPROVAL, BONDS OF PAINESVILLE TOWNSHIP, LAKE COUNTY, OHIO—\$5,400.00.

COLUMBUS, OHIO, March 23, 1928.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1890.

APPROVAL, BONDS JEROMEVILLE RURAL SCHOOL DISTRICT, ASHLAND COUNTY, OHIO—\$85,000.00.

COLUMBUS, OHIO, March 23, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*