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IN SCHOOL DISTRICT TRANSFER OF TERRITORY WHERE A DIVISION OF INDEBTEDNESS HAS BEEN MADE, ONLY THE ASSIGNED DUE INDEBTEDNESS MUST BE PAID—FUNDS SHOULD BE DIVIDED IN THE SAME PROPORTION AS THE INDEBTEDNESS—§3311.24, R.C., OPINION 762, OAG, 1949, OPINION 1979, OAG, 1958, §4696, G.C.

SYLLABUS:

1. When school district territory is transferred to another district under the procedure of Section 3311.24, Revised Code, and a division of the indebtedness between the districts involved has been made, the receiving district is not required to make immediate payment of all of the indebtedness assigned, but is required to pay only that part of the assigned indebtedness which is due or becomes due.

2. Where an equitable division of funds is made under Section 3311.24, Revised Code, the funds involved should be divided in the same proportion that the indebtedness was divided.

Columbus, Ohio, November 1, 1962

Hon. William H. Conner, Prosecuting Attorney
Hardin County, Kenton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I am writing to request your opinion in reference to Section 3311.24, Paragraph B, of the Ohio Revised Code which reads as follows:

“(B) An equitable division of the funds and indebtedness between the districts involved has been made by the board of education making the transfer;”

The question has arisen here between Wyandot and Hardin County as a portion of Wyandot voted to join the Kenton City School District, and in fact, the children are actually attending the school here at this time.

“There has been an agreement in reference to the amount of the indebtedness to be assumed by the Kenton City School District but there is a disagreement in the mode of payment. Wyandot County feels that the indebtedness should be made in one lump sum, whereas, I feel that there should be an assumption of their share of the indebtedness which would be amortized

the way the original bond issue was sold. Also, the money to pay the entire amount of the indebtedness assumed is not available.

“I also believe that the funds should be prorated on the same basis that the indebtedness was prorated.”

Section 3311.24, Revised Code, authorizes the transfer of territory of a city school district or an exempted village school district to an adjoining city or exempted village school district or to a county school district.

The section provides, in part, as follows:

* * * * *
 “* * * Such transfer shall not be complete, however, until:
 * * * * *
 “(B) An equitable division of the funds and indebtedness between the districts involved has been made by the board of education making the transfer ;
 * * * * *

The provision for an equitable division of the funds and indebtedness is similar to that found in other statutes dealing with transfer of school property and is generally interpreted to mean a fair, reasonable division to the end that justice may be done to both school districts. Opinion No. 762, Opinions of the Attorney General for 1949, page 433, at 437.

As to your first question, it will be noted that an equitable *division* of indebtedness is required, not a payment by the receiving district to the transferring district. On this point, in discussing a similar provision of law, then appearing in Section 3311.23, Revised Code, my predecessor stated in Opinion No. 1979, Opinions of the Attorney General for 1958, page 252, at pages 255, 256:

“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 a district a sum of money equal to such indebtedness. The only authority given by law is made an ‘equitable division of the indebtedness.’”

I therefore conclude that the receiving district (Kenton) should assume the indebtedness assigned to it in the division, and should pay any portion of such indebtedness due, but that such district is not required to make a lump sum payment of the entire indebtedness so assigned.

Your second question concerns the division of the funds involved. In the case of *State ex rel. Board of Education of Swanton Village School*

District v. Board of Education of Sharples Village School District, 114 Ohio St., 602, in referring to a provision for an equitable distribution of funds, then found in Section 4696, General Code, the court stated, at page 605:

“‘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, * * *”

It is further stated in the *Swanton Village School District* case, in referring to said provision for an equitable distribution, also at page 605:

“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.”

The facts given do not disclose on what basis the division of indebtedness was made in the instant case; however, I assume that it was in accord with the above-noted conclusion in the *Swanton Village School District* case. In view of that conclusion, it appears that the funds involved should be divided in the same proportion that the indebtedness was divided, and I so hold.

Accordingly, it is my opinion and you are advised:

1. When school district territory is transferred to another district under the procedure of Section 3311.24, Revised Code, and a division of the indebtedness between the districts involved has been made, the receiving district is not required to make immediate payment of all of the indebtedness assigned, but is required to pay only that part of the assigned indebtedness which is due or becomes due.
2. Where an equitable division of funds is made under Section 3311.24, Revised Code, the funds involved should be divided in the same proportion that the indebtedness was divided.

Respectfully,
MARK MCELROY
Attorney General