

6354

NEW LOCAL SCHOOL DISTRICT:

1. CREATED BY COUNTY BOARD OF EDUCATION—NEWLY CREATED DISTRICT BECOMES EFFECTIVE ON THIRTY-FIRST DAY AFTER ACTION OF COUNTY BOARD—PROVISO, NO REMONSTRANCE FILED—SECTION 3311.26 RC.
2. BECOMES TAXING DISTRICT AT SAME TIME ITS CREATION BECOMES EFFECTIVE.
3. AFTER CREATION HAS BECOME EFFECTIVE, DUTY OF BOARD OF EDUCATION OF DISTRICT TO MAKE ANNUAL TAX BUDGET—NO AUTHORITY TO MAKE SEPARATE BUDGET FOR EACH DISTRICT FROM WHICH FORMED—SECTION 5705.28 RC.
4. CREATION OF NEW DISTRICT BY CONSOLIDATION OF TWO DISTRICTS—EACH HAD UNEXPIRED VOTED TAX LEVY—BOARD OF EDUCATION OF NEW DISTRICT AUTHORIZED TO LEVY TAX UPON PROPERTY OF ENTIRE NEW DISTRICT—AMOUNT NOT IN EXCESS OF HIGHER OF VOTED LEVIES.
5. AUTHORITY, BOARD OF EDUCATION TO SUBMIT TO ELECTORS OF DISTRICT ISSUANCE OF BONDS FOR ANY PURPOSE AUTHORIZED BY LAW—FORTHCOMING NOVEMBER ELECTION.
6. DISTRICT CREATED OUT OF TWO OR MORE DISTRICTS OR PARTS THEREOF—BOARD OF EDUCATION APPOINTED—BOARDS OF CONSTITUENT DISTRICTS ABOLISHED—POWERS TERMINATED—POWERS OF NEWLY APPOINTED BOARD.

SYLLABUS:

1. Where, pursuant to the provisions of Section 3311.26, Revised Code, a new local school district is created by the county board of education, the newly created district becomes effective on the thirty-first day after the action of the county board, provided no remonstrance as provided in said section has been filed.
2. A new school district, organized pursuant to Section 3311.26, Revised Code, becomes a taxing district at the same time that its creation becomes effective.

3. After the creation of a new district formed under Section 3311.26, Revised Code, has become effective, it is the duty of the board of education of such district, under Section 5705.28, Revised Code, to make an annual tax budget for such district, and there is no authority for making separate budgets for each of the districts from which it was formed.

4. Upon the creation of a new school district pursuant to the provisions of Section 3311.26, Revised Code, by the consolidation of two districts each of which had an unexpired voted tax levy, in unequal amounts, for operating expenses, the board of education of the newly created district is authorized to levy a tax upon the property of the entire new district in an amount not in excess of the higher of such voted levies. Opinion No. 6703, Opinions of the Attorney General for 1944, page 75, approved and followed.

5. After the creation of a new school district pursuant to Section 3311.26, Revised Code, the board of education has authority to submit to the electors of such district the proposition of issuing bonds for any purpose authorized by law and may submit such proposition at the forthcoming November election.

6. Where a new local school district has been created, pursuant to Section 3311.26, Revised Code, out of two or more districts or parts thereof, and a board of education has been appointed as therein provided, the boards of the constituent districts are abolished and their powers are terminated. Such newly appointed board has all the powers conferred by law on boards of education of local school districts.

Columbus, Ohio, March 9, 1956

Hon. Gibson L. Fenton, Prosecuting Attorney
Williams County, Bryan, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The Superintendent of Schools has raised a number of questions and we would appreciate your giving us an opinion concerning the following :

“1. If the Williams County Board of Education creates a new school district by merging two local school districts within the next sixty days and should there be no remonstrance filed within the thirty day period required by law, when does the new school district become effective?

“2. The Williams County Auditor has held heretofore that the Williams County Board of Education has the power under Section 3311.26 to create a new school district from other local school districts but that the Williams County Board of Education does not have the authority to create a new taxing district. The new district named AB is created from District A and District B. When does the new district AB become a new taxing district?

"3. When the board of education of the newly created AB District adopts a budget July 1956, should two separate budgets be adopted, one for each of the original districts, or should one budget be adopted?

"4. Question 4 arises from operating levies now in effect in District A and in District B. District A has five mills for school operation inside the ten mill limitation and five mills levied outside the ten mill limitation. District B has four mills for school operation inside the ten mill limitation and seven mills levied outside the ten mill limitation. What tax rate would be put into effect for the new school district AB?

"5. Would the board of education of the newly created district AB have the right to submit a bond issue at the November election in 1956?

"6. The newly created school district AB is effective. Would the appointed board of education for the new district AB have all the authority to administer affairs of the new district AB or would the boards of education of the old districts A and B have some authority after the thirty day period has passed?"

The procedure referred to in your letter is provided by Section 3311.26, Revised Code, 4831-1 G. C., which reads as follows:

"The county board of education may create a new local school district from one or more local school districts or parts thereof, and in so doing shall make an equitable division of the funds and indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the board shall not take effect if a majority of the qualified electors residing in the territory included in such newly created district voting at the last general election shall, within thirty days from the time such action is taken, file with the board a written remonstrance against such action. When a new local school district is created within a county school district, a board of education for such newly created district shall be appointed by the county board of education. The members of such appointed board of education shall hold their office until their successors are elected and qualified. A board of education shall be elected for such newly created district at the next general election held in an odd numbered year occurring more than thirty days after the appointment of the board of education of such newly created district. At such election two members shall be elected for a term of two years and three members shall be elected for a term of four years, and, thereafter, their successors shall be elected in the same manner and for the same terms as members of the board of education of a local school district."

The factual situation is that it is proposed that the county board of education create a new local school district by merging two local districts. Out of this proposed procedure arose the several questions which you have presented.

1. *As to the time when the organization of the new district becomes effective.* The wording of the statute seems to make the answer to that question quite obvious. The county board acts by a resolution, and but for the provision as to a remonstrance which may be filed "within thirty days from the time such action is taken," it would take effect immediately on the passage of the resolution. The thirty-day period suspends its effectiveness for that period and no more. Accordingly on the thirty-first day the new district comes into full life and the constituent districts cease to exist.

In opinion No. 1058, Opinions of the Attorney General for 1949, page 682, it was held:

"A new local school district, created in accordance with Section 4831-1, General Code, does not become an independent political subdivision of the state until the thirty day remonstrance period provided for in said section has passed."

In opinion No. 1070, Opinions of the Attorney General for 1949, page 688, addressed to you, the then Attorney General held:

"When a county board of education creates a new local school district pursuant to Section 4831-1 of the General Code, the old school district ceases to exist."

2. *As to the time when the newly created district becomes a taxing district.* Under the provision of Section 5705.01, Revised Code, being a part of the Uniform Tax Law, every school district except a county district is declared to be a "subdivision" for the purpose of the tax laws. The same section defines "taxing unit" as meaning "any subdivision or other governmental district having authority to levy taxes," and it is further provided that the board of education is the "taxing authority" for its district. Since the existence of the constituent districts has been extinguished by the creation of the new district, it certainly follows that all powers relative to taxation which the constituent districts had, devolve upon the new district at the moment that it comes into existence, and it then becomes what you refer to as a "taxing district."

3. *As to the adoption of a budget for the new district.* Your question suggests the possibility that notwithstanding the merger something remains of the separate entity of the original district. I think what I have said must have dispelled such an illusion. The provision of Section 5705.28, Revised Code, relative to preparation of a budget, begins with this language:

“On or before the fifteenth day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year.”

What the board of this district does in this matter must be in relation to the entire area and property constituting its district, and there is certainly no suggestion in the law as to a separate treatment of portions thereof representing the former districts of which it was formed. Under an older law, containing provisions quite similar to the statute here under consideration, it was held in *Rapp v. Bethel-Tate School District*, 58 Ohio App., 126:

“1. Where two school districts are consolidated by a county board of education under section 4736, General Code, the consolidated district assumes the obligations of the old districts.

“2. In such a case, where one of the old districts, previous to the consolidation, had issued bonds for the payment for a school building therein, it is not necessary, after the consolidation, that there be a separate vote in the other district for the purpose of exceeding the ten-mill limitation in order to pay the indebtedness. A vote in the consolidated district, as such, is sufficient.”

At page 129 of the opinion it was said:

“It, therefore, follows that the buildings and equipment of the old districts, from which the new district is created, become the property of the new district and the indebtedness of both passes to the new district.

“In order to make the consolidated new district effective and complete, the indebtedness must be spread over the territory that goes to make up the new district. The fact that some of the indebtedness is made up of school building bonds does not alter the situation. To make it possible to carry out the power given under Section 4736, General Code, and to give to the new district the benefit of all of the property, the whole new district should discharge the indebtedness in whatever form it may be.”

Accordingly, I have no hesitancy in concluding that in the case here under consideration the board of education of the newly created district would have no authority to submit separate budgets for the two original districts.

4. *As to existing special operating levies voted by constituent districts.* This question presents a problem far more complex than those which we have considered. You state that one of the original districts had a voted levy of five mills and the other a voted levy of seven mills, both outside the ten mill limitation. The question arises as to the authority of the board of the merged district with respect to these levies and with respect to the indebtedness represented by them. We may start with the assurance that the newly created district, in acquiring all of the property of the original districts must assume and pay all of their obligations. May the board spread the voted levy over the entire new district if it is necessary to do so in order to meet the indebtedness and current operating expenses of the district?

The case of *Gigandet v. Brewer*, 134 Ohio St., 86, appears to furnish the answer to this question. In that case the county board, acting under authority of Section 4736, General Code, which was quite similar to Section 3311.26, *supra*, and contained a like provision as to remonstrance, had created a new district by consolidating two districts, in one of which there was a voted levy for the payment of a bond issue for constructing and equipping a school building. The board of the newly created district, on the basis of that voted levy, provided a uniform tax on the entire district, which resulted in a tax in excess of ten mills on the plaintiff's property, located in the original district which had no voted levy. He sought to enjoin the collection of the excess. The holding of the court as shown by the syllabus was as follows:

“When a school district is created by a county board of education by the consolidation of two districts under the provisions of Section 4736, General Code, and after an equitable division of funds is made, a levy of a tax outside the one per cent limitation prescribed by Article XII, Section 2 of the Ohio Constitution as amended on November 7, 1933, on all the property in the new district, for the retirement of bonds issued for the erection of a school building by a vote of the people in only one of the districts in 1926, is not violative of the aforesaid constitutional provision.’

In its opinion at page 92 the court laid down this proposition:

“The buildings and equipment of the two old districts, from which the new district was created, became the property of the new district, and the indebtedness of the old districts became that of the new. If constitutionally possible, since the residents of the new district were to obtain the benefits, equitably they should discharge the obligations which were incurred to create such benefits.”

The court found in Article XIII, Section 2, of the Constitution. provisions which seem to conflict. The portion of that section in question reads as follows:

“No property, taxed according to value, shall be so taxed *in excess of one per cent* of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least *a majority of the electors of the taxing district* voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall *be taxed by uniform rule* according to value. * * *”

(Emphasis added.)

The court referred to Article VI, Section 3, which requires the General Assembly to provide for the organization, administration and control of the schools of the state, and said at page 93 of the opinion:

“The county board of education could, if it saw fit, create one county school district. It was given the power to effect mergers and consolidations. In such case, *the only referendum available to the elector was by way of remonstrance* provided for in the statute. *Neither the plaintiff nor any one else availed himself of this remedy. It must therefore be presumed that a majority of those affected by the consolidation favored it.*”

(Emphasis added.)

At another point in the opinion the court said:

“Construing the provisions and schedule of Article XII, Section 2 of the Ohio Constitution together with the express grants of authority contained in Article VI, Sections 1, 2 and 3, we are of the opinion that the provisions of Section 4736, General Code, are still valid, and that a remonstrance is the sole method of protest given the taxpayer. If a majority does not remonstrate against the consolidation, then levies in the several districts consolidated, which were inside the limitations, remain inside, and those levies which were outside the limitations remain outside.

“To hold otherwise might result in either impairing the obligation of the contract with the bondholders, or cause some of the taxpayers to carry an added burden so that others could escape part of the taxation levied to discharge obligations for benefit which all of them received.”

What the court says about the failure of the plaintiff and other electors to remonstrate, and the conclusive effect of such failure as amounting to a consent to the action of the county board in consolidating the two districts, is quite convincing on that point; and I confess to some difficulty in understanding how the court leaped from that argument to the conclusion announced in the syllabus that property owners who never had an opportunity to assume by vote a tax burden in excess of the one per cent allowed by the constitution, should find themselves bound to that burden merely by having failed to remonstrate *against the merger*. However, I feel justified, if not required, to adopt and apply the judgment of the court to the situation which you present.

That case has been relied on and applied in several opinions of this office. In Opinion No. 6703, Opinions of the Attorney General for 1944, page 75, there was present almost the identical problem involved in the Gigandet case, and it was held, as shown by paragraphs 11 and 12 of the syllabus:

“11. Where a county board of education, by authority of Section 4831, et seq., of the General Code, creates a new school district by combining into one district all the territory of two existing districts, one of which had an unexpired voted tax levy outside the ten mill limitation, the taxing authority of the newly created district may lawfully spread the said voted levy over all the territory of the consolidated district.

“12. When two school districts are consolidated in pursuance of plans for school district territorial reorganization, as provided by Section 4831, et seq., of the General Code, tax levies which had been made outside the ten mill limitation for the retirement of bonds in one of the districts may be spread over the entire combined district even though the debt had been contracted in one of the districts only.”

In reaching that conclusion, my predecessor relied largely on the Gigandet case, *supra*. It may be observed that in that case and in the opinion just referred to, only one of the original districts had a voted levy, whereas in your case both districts have such voted levies.

Several informal opinions of this office have dealt with situations precisely like yours, where each of the constituent districts had voted levies in different amounts and running for different periods. In Informal Opinion No. 51, rendered April 19, 1946, there was presented a case wherein three districts were consolidated into one, one of such districts having a voted levy of two mills expiring in 1948, another of three mills expiring in 1948, and the third of three mills expiring in 1950. The conclusion, based largely on the Gigandet case and the 1944 opinion above mentioned, was that the board of the consolidated district would have the power to spread the *total of those three levies* over the entire area of the new district.

On January 10, 1952, in Informal Opinion No. 136, where four districts, each having voted levies in varying amounts, were united, I reviewed all of the foregoing authorities and held that the board of such consolidated district might spread over the entire district not the total of all such levies, which would have aggregated 28.20 mills, but only the amount of the largest, to-wit, 9.20 mills. I found justification for this conclusion in the Gigandet case, saying:

“In the Gigandet case the Supreme Court held that the consolidated district was not a brand new governmental entity in all respects, separate and distinct from the several formerly existing entities from which it was organized. At the same time, the Supreme Court appeared to have recognized that such holding would result in a conflict between two requirements of the Constitution, i.e., a conflict between the requirement for the vote in order to make a levy outside of the ten mill limitation, and the requirement that the tax be by uniform rule according to value.

“In the case at hand, I believe that the principles of the Gigandet case could only support a holding that the board of education could legally spread the highest voted levy, i.e., the levy of 9.70 mills, and not a levy of 28.20 mills. By so doing, it can be said that none of the voted and unexpired levy would fall by virtue of such consolidation, since each could be considered as being included within the levy of 9.70 mills. At the same time, the uniformity requirement would be met since the levy would be uniform over the entire district. * * *

“I believe that my conclusion is entirely consistent with the 1944 opinion and with the reasoning of the Gigandet case. While it is true that in such opinions, from one mental approach, the *total* of the outside levies was spread, it is also true that the *highest* levy was spread, since in each case only one district had any unexpired outside levy.”

I am still of the same opinion, and hence will hold that where two school districts are united to constitute a new district, pursuant to Section 3311.26, Revised Code, and such districts have each the unexpired portion of a voted levy of taxes in excess of the ten mill limitation, the board of education of such consolidated district is authorized to spread over the entire area of such consolidated district the larger of such voted levies.

I should point out, however, as was said in each of the opinions to which I have referred, that voted tax levies outside the ten mill limitation are merely authorized additional levies, and do not create any mandatory obligation on a board of education to levy up to the legal maximum in any year.

5. *As to submission of bond issue at November election of 1956.* All proposals for bond issues which are authorized by law may be submitted at a November election. See Section 133.12, Revised Code. If your question relates to the authority of a new board of education appointed for a new district created pursuant to Section 3311.26, *supra*, it should appear clear from what has been said herein, that it has, from the moment of its creation, all of the powers that are vested by law in local boards of education including the issue of bonds.

6. My reply to your previous questions appears to eliminate the necessity of any discussion of your sixth question. Plainly, on the effective date of the merger, and the appointment of the new board, the old boards are abolished. The newly appointed board, although temporary, has, until its successors are elected and qualified, all the powers that are conferred by law on local boards of education.

Accordingly, in specific answer to the questions submitted, it is my opinion:

1. Where, pursuant to the provisions of Section 3311.26, Revised Code, a new local school district is created by the county board of education, the newly created district becomes effective on the thirty-first day after the action of the county board, provided no remonstrance as provided in said section has been filed.

2. A new school district, organized pursuant to Section 3311.26, Revised Code, becomes a taxing district at the same time that its creation becomes effective.

3. After the creation of a new district formed under Section 3311.26, Revised Code, has become effective, it is the duty of the board of education

of such district, under Section 5705.28, Revised Code, to make an annual tax budget for such district, and there is no authority for making separate budgets for each of the districts from which it was formed.

4. Upon the creation of a new school district pursuant to the provisions of Section 3311.26, Revised Code, by the consolidation of two districts each of which had an unexpired voted tax levy, in unequal amounts, for operating expenses, the board of education of the newly created district is authorized to levy a tax upon the property of the entire new district in an amount not in excess of the higher of such voted levies. Opinion No. 6703, Opinions of the Attorney General for 1944, page 75, approved and followed.

5. After the creation of a new school district pursuant to Section 3311.26, Revised Code, the board of education has authority to submit to the electors of such district the proposition of issuing bonds for any purpose authorized by law and may submit such proposition at the forthcoming November election.

6. Where a new local school district has been created, pursuant to Section 3311.26, Revised Code, out of two or more districts or parts thereof, and a board of education has been appointed as therein provided, the boards of the constituent districts are abolished and their powers are terminated. Such newly appointed board has all the powers conferred by law on boards of education of local school districts.

Respectfully,

C. WILLIAM O'NEILL

Attorney General