

1127.

ANNEXATION OF TERRITORY TO CITY SCHOOL DISTRICT—DIVISION OF FUNDS—TAX LEVIES—OBLIGATIONS OF CONTRACTS FOR HIRING TEACHERS—TRANSFER OF ENTIRE SCHOOL DISTRICT—WHEN COMPLETE.

SYLLABUS:

1. *When territory is annexed to a city or village and such territory thus automatically becomes a part of the city or village school district, in so far as the maintenance of schools is concerned, the duties and obligations with respect thereto, pass to the city or village board of education of the district of which the annexed territory becomes a part at the time of the effective date of such annexation.*

2. *The law makes no provision for the division of funds between two school districts a portion of one of which automatically becomes a part of a city or village school district by reason of the annexation of a portion of its territory to the city or village.*

3. *The proceeds of tax levies for school purposes made by a school district, a portion of whose territory has later been annexed to an adjoining city or village, should be paid to and retained by the district which made the levy.*

4. *Obligations arising upon contracts for the hiring of teachers, made by boards of education of school districts a portion of whose territory thereafter automatically becomes a part of an adjoining city or village school district by reason of annexation to the city or village, remain the obligations of the board of education by which the contracts were made.*

5. *The city or village board of education of the district of which the annexed territory becomes a part does not succeed to the obligations growing out of contracts for the hiring of teachers made by the board of education of the district from which the annexed territory was taken, even though such annexed territory has within its boundaries the only school building in the district as before constituted.*

6. *Where an entire school district is transferred to an exempted village, city or county school district the territory of which is contiguous thereto, by virtue of Section 4696, General Code, the transfer becomes complete after (1) a resolution is passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be. (2) An equitable division of the funds and indebtedness between the districts involved is made by the county board of education, which in the case of territory transferred to a county school district to which such territory is transferred, and (3) a map is filed with the county auditor of each county affected by the transfer.*

Thereupon, the district to which the transfer is made becomes vested with the legal title to the property of the district transferred, and becomes charged with all the obligations of the transferred district, including contracts for the hiring of teachers. An equitable division of the funds and indebtedness between the two districts in such a case would be a transfer to the district receiving the territory of all the funds and indebtedness of the district transferred.

COLUMBUS, OHIO, October 10, 1927.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

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

“It seems necessary to ask your opinion on the following questions which arise from the annexation of outlying territory to a city.

The territory in question added to the city includes parts of each of three rural and village school districts. In the cases of two of those districts, the territory added to the city includes the school house (in one of them the only school house; in the other, one of the two school houses of the district). In the third piece of territory added to the city there is no school house, but the school house of the district is in the portion of the district which is not annexed to the city.

The questions to be answered are these:

1. Does the City Board of Education automatically assume control of the school board's powers and duties in the annexed territory when the annexation of that territory to the city is completed?

2. Are the school taxes already levied in the annexed territory to be paid to the City Board of Education, or what division of the funds will be made and by whom?

3. Are the teachers employed by the boards of education now in authority in the territory being annexed still after the annexation employees of the districts of which part has been taken away and joined to the City, or do these teachers become automatically employees of the City Board of Education, or what are the obligations of the City board, if any, relative to these teachers? If there is no obligation for the City board to carry out the contracts with these teachers, are the boards of the districts which employed them obliged still to carry out the contracts?

4. If the unannexed part of one of these districts petitions to come into the city district, what will be the financial status of that district if the petition is sufficient and is granted by the city board; that is, will the funds of the annexed district, which thus is made to join the city district as a whole, be turned in to the city district? If so, when will this be done? And, in that case, who assumes the contracts with the teachers which were made by the board of education in that district before annexation?"

Sections 4690 and 4696, General Code, read as follows:

Sec. 4690. "When territory is annexed to a city or village, such territory thereby becomes a part of the city or village school district, and the legal title to school property in such territory for school purposes shall be vested in the board of education of the city or village school district. Provided, however, if there be any indebtedness on the school property in the territory annexed, the board of education of the city or village school district shall assume such indebtedness and shall levy a tax annually sufficient to pay such indebtedness and shall pay to the board of education of the school district or districts from which such territory was detached, the amount of money collected from such levy as it becomes due."

Sec. 4696. "A county board of education may, upon a petition of a majority of the electors residing in the territory to be transferred, transfer a part or all of a school district of the county school district to an emptied village, city or county school district, the territory of which is contiguous thereto. Upon petition of seventy-five percent of the electors in the territory proposed to be transferred the county board of education shall make such transfer. 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) a resolution shall be passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be, (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, and (3) a map shall be filed with the county auditor of each county affected by the transfer.

When such transfer is complete the legal title of the school property shall become vested in the board of education of the school district to which such territory is transferred."

It will be observed upon consideration of the provisions of Section 4690, supra, that when territory is annexed to a city or village, the said territory thereby automatically becomes a part of the city or village school district to which the territory has become attached. The legal title to school property in such territory, if any, becomes vested at the same time in the board of education of the city or village school district, which, by virtue of the statute, becomes charged with any indebtedness there may be on such school property, with the attendant obligation to levy the necessary tax therefor and to pay the same to the district which had originally incurred the obligation and which is primarily charged therewith.

The transfer obviously becomes effective at the time the territory becomes attached to the city or village, and it then becomes the duty of the board of education of the city or village school district, of which the annexed territory has become a part, to assume control of the school property with which it thereby becomes vested and to extend its functions with reference to the maintenance of schools to the territory so attached to the district for which it is acting.

There are no provisions of law whereby a division may be made of the funds or indebtedness of the two districts affected, other than the indebtedness on school property which passes to the city or village district, when a portion of a district automatically becomes a part of another district in accordance with the terms of Section 4690, supra. When such a transfer becomes effective, by reason of the procedure outlined in Section 4696, supra, an equitable division of both the funds and indebtedness of the two districts affected shall be made by the county board of education, which in the case of territory transferred to a county school district means the board of education of the county to which the transfer is made.

In case an entire district is transferred, the district to which the transfer is made becomes the successor of the district transferred to it, and of course if such a situation should be brought about by virtue of Section 4690, supra, the city or village district thus receiving the territory annexed would succeed to all the obligations as well as all the assets of the district formerly included within the territory annexed; but if only a portion of a district is included within the territory annexed, the remaining portion of the territory continues as the original district. Its board of education still functions, so far as the territory still remaining is concerned. It retains all the funds in its treasury, and is charged with whatever obligations it may be burdened with except those covering indebtedness on whatever school property it has lost by reason of the annexation of a part of its territory to the city or village. Contracts it may have had for the hiring of teachers are its own obligations and the city or village district of which a portion of its territory had become a part has nothing whatever to do with such contracts any more than any other of its obligations, such as contracts for transportation of pupils, for school supplies, for dues to the state teachers'

retirement fund, or for indebtedness which may have been incurred previously for general running expenses.

If the transfer of an entire district is affected by virtue of Section 4696, General Code, the district to which the transfer is made likewise becomes the successor of the district transferred, and while the statute provides the procedure for an equitable division of the funds and indebtedness of the two districts affected, an equitable division in such a case could be nothing else than a transfer of all the funds, indebtedness and obligations of the transferred district to the district receiving the territory, including all obligations theretofore incurred in the hiring of teachers. Such a transfer, however, will not be complete until the county board of education formally makes the division of funds and indebtedness as directed by the statute. When the board of education of the district transferred passes the necessary resolution and the county board of education thereafter makes an equitable division of the funds and indebtedness of the two districts and a proper map is filed with the county auditor, the transfer becomes complete, and as of that date the district to which the transfer is made becomes vested with the legal title to the property of the district transferred, and is entitled to the funds accruing to it by reason of the division so made by the county board of education and from said date is charged with whatever obligations the transferred district may have had.

Whenever a transfer of school territory from one district to another is effected, either by operation of law under Section 4690, General Code, or by action of the county board of education as authorized by Sections 4692 or 4696, General Code, and less than an entire district is transferred, the territory remaining and continuing as a separate district is entitled to the proceeds of all taxes which had theretofore been levied by it. This is controlled by Section 7600, General Code, wherein it is said:

"The school tax levied by boards of education and collected from the several districts or parts of districts in the county shall be paid to the districts from which it was collected."

The questions raised by your inquiry have been discussed in several former opinions of this department. Your attention is directed to an opinion rendered July 28, 1927, being Opinion No. 803, which was addressed to your department and which you no doubt have on file, wherein it was held:

"There is no provision of law whereby a division may be made of the funds or indebtedness of a rural school district, and a city or village school district, when a portion of the rural school district automatically becomes a part of the city or village school district, by reason of the annexation by the municipality comprising the city or village school district, of a portion of the territory comprising the rural school district, unless there is indebtedness on the school property located in the territory annexed, in which event the board of education of the city or village school district shall assume such indebtedness."

See also Opinion No. 756, rendered under date of July 21, 1927, addressed to the Prosecuting Attorney at Lancaster, Ohio, a copy of which I enclose herewith.

An opinion of this department reported in Opinions of the Attorney General for 1926, at page 424, which reviews the history of Sections 4690 and 4696, General Code, and considers their applicability to situations such as is covered by your inquiry states in its syllabus:

"Territory annexed by a municipality for municipal purposes becomes a part of a municipal school district by such annexation and the municipal

school district is not entitled to a distribution of the funds collected by the district from which territory is detached.

From the foregoing review of the statutes and former opinions of this department, and in specific answer to your questions in the order asked, you are advised:

1. When territory is annexed to a city or village and such territory thus automatically becomes a part of the city or village school district, in so far as the maintenance of schools is concerned, the duties and obligations with respect thereto pass to the city or village board of education of the district of which the annexed territory becomes a part at the time of the effective date of such annexation.

2. The law makes no provision for the division of funds between two school districts a portion of one of which automatically becomes a part of a city or village school district by reason of the annexation of a portion of its territory to the city or village.

3. The proceeds of tax levies for school purposes made by a school district, a portion of whose territory has later been annexed to an adjoining city or village, should be paid to and retained by the district which made the levy.

4. Obligations arising upon contracts for the hiring of teachers, made by boards of education of school districts a portion of whose territory thereafter automatically becomes a part of an adjoining city or village school district by reason of annexation to the city or village, remain the obligations of the board of education by which the contracts were made.

5. The city or village board of education of the district of which the annexed territory becomes a part does not succeed to the obligations growing out of contracts for the hiring of teachers made by the board of education of the district from which the annexed territory was taken, even though such annexed territory has within its boundaries the only school building in the district as before constituted.

6. Where an entire school district is transferred to an exempted village, city or county school district the territory of which is contiguous thereto, by virtue of Section 4696, General Code, the transfer becomes complete after (1) a resolution is passed by a majority vote of the full membership of the board of education of the city, exempted village or county school district making or accepting the transfer as the case may be, (2) an equitable division of the funds and indebtedness between the districts involved is made by the county board of education, which in the case of territory transferred to a county school district to which such territory is transferred, and (3) a map is filed with the county auditor of each county affected by the transfer. Thereupon, the district to which the transfer is made becomes vested with the legal title to the property of the district transferred, and becomes charged with all the obligations of the transferred district, including contracts for the hiring of teachers. An equitable division of the funds and indebtedness between the two districts in such a case would be a transfer to the district receiving the territory of all the funds and indebtedness of the district transferred.

Respectfully,
EDWARD C. TURNER,
Attorney General.