

## OPINION NO. 65-167

## Syllabus:

(1) A joint vocational school district is an entity in itself, separate and apart from any other school district. (Opinion No. 3333, Opinions of the Attorney General for 1962, approved.)

(2) The limitations of Section 133.04, Revised Code, apply to all school districts, including joint vocational school districts.

(3) When any school district proposes that bonds be submitted to popular vote in an amount which, after the issuance of such bonds, will make the net indebtedness of such school district no more than four per cent of the total value of all property in such school district, as listed and assessed for taxation, the consent of the Department of Taxation is not required. The question of whether the four-per-cent limit will be exceeded is to be determined by relation of the net indebtedness of the school district proposing the issuance of bonds to the total value, as listed and assessed for taxation, of all property in the school district proposing the issuance of bonds.

(4) When any school district proposes that bonds be submitted to popular vote in an amount which, after the issuance of such bonds, will make the net indebtedness of such school district exceed four per cent of the total value of all property in such school districts, as listed and assessed for taxation, the consent of the Department of Taxation is required. In such instances said consent should not be withheld solely because the proposing school district is participating in a joint vocational school district, or is a joint vocational school district with participating school districts, the aggregate net indebtedness of which exceed the limits applicable to each separately. However, in determining whether to grant or refuse such consent the effect of the aggregate net indebtedness should be given consideration in deciding whether the people of the proposing district will be unreasonably burdened.

---

To: Robert E. Zellar, Chairman, Board of Tax Appeals, Columbus, Ohio  
By: William B. Saxbe, Attorney General, September 16, 1965

Your recent request for my opinion reads:

"As you know, the Board of Tax Appeals is required by section 133.04, R.C., to pass on the application of any school district seeking permission to submit a bond

issue to the electors when such issue would cause the net indebtedness of the school district to exceed 4% of the valuation as listed and assessed for taxation. The failure of section 133.04, R.C. to provide a specific reference to the maximum limitation for joint vocational school districts has given rise to some questions.

"The language employed in the pertinent part of section 3311.18, R.C., 'A school district shall not lose its separate identity or legal existence by reason of becoming part of a joint vocational school district' seems to conflict with the second branch of the syllabus of the Attorney General Opinion 3333 for 1962 - 'A joint vocational school district is an entity in itself separate and apart from any other school district, and a bond issue submitted to the electors of a joint vocational school district under section 3311.20, R.C. does not create an indebtedness in any other school district.

"A reading of section 3311.20, R.C. seems only to say that the election shall be held and the bonds issued in accordance with the provisions of the Uniform Bond Law, Sec. 133.01 to 133.65, inclusive, of the Revised Code.

"Since section 133.04, R.C. states in part 'The net indebtedness created or incurred by any school district shall never exceed nine percent of the total value of all property in any such school district as listed and assessed for taxation' and section 3311.20, R. C., rather than excepting seems to further impose restrictions on the issuance of joint vocational school district bonds, we respectfully request a review of the 1962 Opinion of the Attorney General, number 3333.

"The recent enactment of H. B. 599 clarifies the situation with respect to the treatment of indebtedness apportioned to the constituent districts in the event of dissolution of the joint vocational school district but does nothing to clear the doubt surrounding the original issuance of bonds.

"In view of the hypothetical situation proposed in the attached memorandum, would you give us your opinion regarding this?"

The memorandum which accompanied your request sets forth a situation in which six school districts, which have individual net indebtednesses ranging from six to nine per cent of the assessed valuation of property in their respective districts, propose to form a joint vocational school district. Your memorandum sets forth several possibilities as to how the limitations

of Section 133.04, Revised Code, might be applicable. It further points out that in the event a joint vocational school district is formed and does create or incur indebtedness after which it is dissolved pursuant to Section 3311.217, Revised Code, that indebtedness would be divided among the participating school districts and result in some districts having outstanding indebtedness in excess of the nine-per-cent limit of Section 133.04, Revised Code, possibly even double said limit.

Section 133.04, Revised Code, as amended effective July 14, 1965, reads:

"The net indebtedness created or incurred by any school district without a vote of the people shall never exceed one tenth of one per cent of the total value of all property in such school district as listed and assessed for taxation.

"The net indebtedness created or incurred by any school district shall never exceed nine per cent of the total value of all property in any such school district as listed and assessed for taxation, provided that bonds shall not be submitted to popular vote in an amount which will make the net indebtedness after the issuance of such bonds exceed four per cent of the total value of all property in such school district as listed and assessed for taxation, unless the department of taxation consents thereto, and provided further that bonds shall not be submitted to popular vote in an amount which will make the net indebtedness after the issuance of such bonds exceed six per cent of the total value of all property in such school district as listed and assessed for taxation unless the state board of education also consents thereto.

"In ascertaining the limits of this section, notes issued by a board of education in accordance with section 3327.08 of the Revised Code, the bonds specified in section 133.02 of the Revised Code, and the following bonds shall not be considered:

"(A) Bonds issued prior to April 29, 1902, or to refund, extend the time of payment of, or in exchange for bonds issued prior to April 29, 1902;

"(B) Bonds issued prior to August 11, 1927, to meet deficiencies in the revenue which at the time of issuance were not required by law to fall within any debt limitation;

"(C) Bonds issued under former section 7630-1 of the Ohio General Code or issued after August 11, 1927, for the purpose of rebuilding or repairing a schoolhouse wholly or partly destroyed by fire or other casualty, or for the purpose of building a new schoolhouse in lieu of repairing

or rebuilding such schoolhouse destroyed by fire or other casualty; provided any insurance moneys received as a result of any such destruction are first applied to reduce the amounts of bonds issued for such repair, rebuilding, or new construction, but bonds excepted from the limitation of this section under this division of this section shall never exceed three per cent of the total value of all property in any such school district as listed and assessed for taxation;

"(D) Bonds issued for replacements of or additions or improvements to buildings within a school district, following the declaration of an emergency by the local board of education pursuant to section 133.17 of the Revised Code;

"(E) Bonds issued for the erection or improvement of school buildings when authorized by a submission to the electors pursuant to former section 2293-15b of the Ohio General Code;

"(F) Indebtedness resulting from the dissolution of a joint vocational school district dissolved in accordance with section 3311.217 of the Revised Code."

In reference to Opinion No. 3333, Opinions of the Attorney General for 1962, particularly the second paragraph of the syllabus thereof, I find no conflict between said opinion and Section 3311.18, Revised Code. The portion of the statute which you quote provides only that a participating school district shall not lose its separate identity or legal existence upon becoming a part of a joint vocational school district. Opinion No. 3333, *supra*, to which you refer, states that a joint vocational school district is an entity separate and apart from the school districts participating therein.

It must be noted that a joint vocational school district has its own board of education (Section 3311.19, Revised Code); that said board is the joint vocational school district's taxing authority (Section 3311.20, Revised Code); and that a joint vocational school district board of education has authority to initiate submission to the electors the question of issuing bonds (Section 3311.20, Revised Code) and levying taxes (Section 3311.21, Revised Code).

Section 3311.18, Revised Code, states, in part:

"\* \* \* A school district shall not lose its separate identity or legal existence by reason of becoming a part of a joint vocational school district."

In view of this language it is apparent that the only alternative to the conclusion reached in Opinion No. 3333, *supra*, would be that the participating districts have a separate identity and legal existence but that the joint vocational school district in which they participate does not. Such a conclusion would be inherently inconsistent and could nullify the authorization given

to joint vocational school district boards of education by Sections 3311.20 and 3311.21, Revised Code. It therefore follows that the conclusion reached in the second paragraph of the syllabus of Opinion No. 3333, *supra*, is correct and I find no conflict between it and Section 3311.18, Revised Code.

The fact that Section 133.04, Revised Code, fails to provide "a specific reference to the maximum limitation for joint vocational school districts" does not, in my view, give rise to any question which does not exist in relation to any school district. It must be observed that said section is written in general terms. It sets forth limitations applicable to "any" school district and I conclude therefrom that any school district which is authorized to create or incur indebtedness is subject to the limitations set forth therein. This obviously includes joint vocational school districts.

The primary concern of your inquiry seems to be that property which is in both a participating school district and a joint vocational school district may be subjected to taxation at rates in excess of the limitations provided by Section 133.04, Revised Code, a possibility which results from the overlying of joint vocational school districts upon the same geographic territory comprising the participating school districts. However, the limitations of Section 133.04, Revised Code, run to the indebtedness which may be created or incurred by a school district as distinguished from running to the property within the district. The protection of the property, as such, is left to the voters, to whom the question of creating or incurring a net indebtedness in excess of one-tenth of one per cent of the total value of all property within such district as listed and assessed for taxation, must be submitted.

It thus appears that a school district which becomes a part of a joint vocational school district may, in its separate identity and legal existence, create or incur net indebtedness, with the consent of the Department of Taxation, the State Board of Education, and the vote of the people, up to the limits specified by Section 133.04, Revised Code, while at the same time a joint vocational school district to which such participating school district belongs may create and incur net indebtedness, subject to the same conditions, up to the same limit.

The memorandum which accompanied your request points out that in the event of dissolution of a joint vocational school district the net indebtedness of a previously participating district could conceivably equal 18 per cent of the total value of all property in such district as listed and assessed for taxation. This is true, and is obviously specifically permitted under the provisions of Section 133.04, Revised Code, as amended effective July 14, 1965.

It will be noted that said section excludes consideration of that indebtedness of a participating school district resulting from the dissolution of a joint vocational school district when ascertaining the limitations of said section. Further, the reference is to "the limits" of said section generally, rather than to any specific limitation therein. Such a provision would hardly have been necessary if it had been the legislative intention that joint vocational school districts should not be permitted to create or incur indebtedness when one or more of its

participating districts had, in separate identity or legal existence, reached their limit. Clearly, the legislature envisioned the situation in which the indebtedness of a participating school district and a joint vocational school district would not exceed the limits of Section 133.04, Revised Code, when considered separately but would do so when considered in the aggregate. Obviously this could not occur if each is to be limited by the total indebtedness of both.

Section 133.04, Revised Code, does not, however, preclude consideration of the aggregate indebtedness of a joint vocational school district and its constituent or participating school districts when considering an application by one or the other seeking the consent of the Department of Taxation to the submission to popular vote of a question which, if passed, will result in the net indebtedness of either exceeding four per cent of the total value of all property in such district.

In Opinion No. 1104, page 1950, Opinions of the Attorney General for 1927, the then Attorney General concluded that, when considering a request to consent to the submission to popular vote of a question of a bond issue in an amount which would make the net indebtedness of a school district after issuance of such bonds exceed the limits then provided by law, it was appropriate to consider, among other things:

"(a) The necessity for said proposed bond issue, in the light of the financial condition of the school district.

"(b) The legality of said proposed bond issue.

"(c) The complete financial data and details as to the proposed issue of bonds, and

"(d) Whether the interest and retirement charges of the proposed issue of bonds will be unreasonably burdensome on the people of said district."

Since 1927 the maximum limit has been increased and the additional provision requiring the consent of the State Board of Education has been added. However, the factors to be considered in granting or withholding the consent remain substantially the same.

In the case of a joint vocational school district it might also be noted that the proposal to create or incur indebtedness should be for the mutual advantage and benefit of the separate school districts participating therein. In Opinion No. 662, Opinions of the Attorney General for 1963, I concluded in part:

"Sections 3311.16 to 3311.217, inclusive, Revised Code, reflect a legislative intention that joint vocational school districts be a joint effort by, and for the mutual advantage and benefit of, the separate school districts participating therein, \* \* \*"

In summary, it is my opinion that:

- (1) A joint vocational school district is an entity in itself, separate and apart from any other school district. (Opinion No. 3333, Opinions of the Attorney General for 1962, approved.)
- (2) The limitations of Section 133.04, Revised Code, apply to all school districts, including joint vocational school districts.
- (3) When any school district proposes that bonds be submitted to popular vote in an amount which, after the issuance of such bonds, will make the net indebtedness of such school district no more than four per cent of the total value of all property in such school district, as listed and assessed for taxation, the consent of the Department of Taxation is not required. The question of whether the four-per-cent limit will be exceeded is to be determined by relation of the net indebtedness of the school district proposing the issuance of bonds to the total value, as listed and assessed for taxation, of all property in the school district proposing the issuance of bonds.
- (4) When any school district proposes that bonds be submitted to popular vote in an amount which, after the issuance of such bonds, will make the net indebtedness of such school district exceed four per cent of the total value of all property in such school districts, as listed and assessed for taxation, the consent of the Department of Taxation is required. In such instances said consent should not be withheld solely because the proposing school district is participating in a joint vocational school district, or is a joint vocational school district with participating school districts, the aggregate net indebtedness of which exceeds the limits applicable to each separately. However, in determining whether to grant or refuse such consent the effect of the aggregate net indebtedness should be given consideration in deciding whether the people of the proposing district will be unreasonably burdened.