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TAX LEVY—SCHOOL DISTRICT LEVY, RENEWAL OF OPERATING LEVY—CONSOLIDATION OF SCHOOL DISTRICT PRIOR TO ELECTION ON SUCH LEVY—§§5705.19, 3311.26 RC—SUBMISSION TO ELECTORS OF SUCH CONSTITUENT DISTRICT NOT AUTHORIZED BY LAW.

SYLLABUS:

Where the taxing authority of a school district has initiated a proposal to levy a tax for current operating expenses as provided in Section 5705.19, Revised Code, and where the legal existence of such district is terminated by consolidation of such school district with another to form a new local school district as provided in Section 3311.26, Revised Code, prior to the date of the election at which such proposal is to be submitted to the electors, the submission of such proposal thereafter either to the electors of such constituent district, or of such consolidated district, is not authorized by law.

Columbus, Ohio, October 21, 1957

Hon. Everett Fahrenholz, Prosecuting Attorney  
Preble County, Eaton, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“I will appreciate your opinion respecting the following proposition:

“The Preble County Board of Education by resolution formed a new school district by combining West Alexandria Village and Lanier Township local school districts. The resolution creating the new district specifies that the present local boards of education shall function until the new district school board is appointed.

“The time within which remonstrances may be filed expires October 22, 1957.

“Assuming that the new district board of education is appointed after the November election this year:

“1. Would a renewal of a levy for current expense voted by one local school district at this year’s elections be effective, and could the new district spread such levy over the newly created district?

"2. Would a levy and bond issue for building purposes voted by one local district at this year's elections be effective, and could the new district spread such levy over the newly created district?"

Section 3311.26, Revised Code, provides for the creation of a new local school district from one or more local school districts:

"A 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."

With regard to the effective creation of such local school district I invite your attention to Opinion No. 6354, Opinions of the Attorney General for 1956, p. 185, the syllabus reading:

"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."

An analysis of this opinion and those opinions cited therein provides the solution to your question. As pointed out in the first paragraph of the syllabus quoted above, the newly created local school district becomes effective on the thirty-first day after the action of the county board, provided, however, that no petition of remonstrance has been filed. At this same time such newly created district becomes a taxing subdivision. Therefore, as of October 23, 1957, such new local school district will have the authority to levy taxes in the new district.

Existing levies in those component parts of the new district are subject to being spread over the entire new district; the new board of education may thus levy up to the highest levy of such existing levies over the new district. This proposition applies whether the levy is for retiring a bond issue or current operating expenses. Opinion No. 6703, Opinions of the Attorney General for 1944, page 75. Opinion No. 6354, *supra*.

The proposal of the levy for current operating expenses of the former district submitted to the electors of that former district at the November election would seem to be inoperative by reason of the following considera-

tions: (1) The levy of taxes outside the constitutional ten-mill limitation is authorized only when approved by a vote of at least a majority of the electors of such district voting on the proposal; (2) As of the day of the general election this year, November 5, 1957, the taxing subdivision which proposed the levy will not be in existence; (3) The persons voting on such proposal, if limited to those of the constituent district, would comprise only a fraction of the electors of the then existing district, assuming the levy is intended to apply throughout the new district.

The submission of a levy to the voters of a taxing subdivision creates no obligation; the adoption of such a levy by the requisite number of *electors of that taxing subdivision* is the act having the significance in law to authorize the imposition of a tax levy. On the date of the November election there will exist a taxing subdivision which has not proposed such levy, and whose electors cannot vote thereon.

Opinion No. 6354, *supra*, speaks only of *existing* levies and as to such levies it correctly states the law. An existing *proposal* can hardly be given the same treatment when the approval of the electorate has not been given prior to the termination of the legal existence of the district which initiated such proposal.

If such a result would seem to threaten the future operation of the schools in the newly created district, it should be noted that the other component territory may well have an existing levy which levy can be applied to the entire new district under Opinion No. 6354, *supra*. Furthermore, Section 5705.21, Revised Code, provides for the submission of a tax levy for current operating expenses of school districts, at a special or primary election. This provision would make it possible for the newly created district in the instant case to obtain current operating funds if none were available from other sources.

Such an answer to your first question makes it unnecessary to consider your second question.

Therefore, in specific answer to your inquiry, it is my opinion and you are accordingly advised that where the taxing authority of a school district has initiated a proposal to levy a tax for current operating expenses as provided in Section 5705.19, Revised Code, and where the legal existence of such district is terminated by consolidation of such school district with another to form a new local school district as provided in Section 3311.26,

Revised Code, prior to the date of the election at which such proposal is to be submitted to the electors, the submission of such proposal thereafter either to the electors of such constituent district, or of such consolidated district, is not authorized by law.

Respectfully,

WILLIAM SAXBE

Attorney General