

these respective states might properly embody an agreement giving to each of the states concurrent jurisdiction of the waters of the reservoir. Such an agreement or any other agreement between the states providing only for the use, control and maintenance of the reservoir would not, in my opinion, be a compact or agreement which would require the consent of Congress under the provision of section 10 of article I of the Federal Constitution that "no state shall, without the consent of Congress enter into an agreement or compact with another state or with a foreign power." As to this, it seems that the prohibition embodied in this constitutional provision is directed only to the formation of any compact or combination between states tending to increase the political powers of such states and thereby encroach upon or interfere with the supremacy of the United States. *State of Virginia vs. State of Tennessee*, 148 U. S. 503, 519. What form this legislation is to take depends of course upon what is agreed upon with respect to the matters to be governed by such legislation and the proposed provisions carrying the same into effect. In this connection it is suggested after the State of Ohio has acquired title to the lands here in question for the purposes before stated, and after your committee representing the State of Ohio and the like committee representing the Commonwealth of Pennsylvania have agreed upon the terms of the proposed legislation, that this matter be then brought to the attention of this office for such aid or assistance as you may desire with respect to the preparation of a bill to be enacted by the General Assembly.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4843.

CREATION OF NEW TOWNSHIP FROM PART OF OLD TOWNSHIP—
NEW TOWNSHIP ENTITLED TO PROPORTIONATE SHARE OF
MONEY IN THE TREASURY, DELINQUENT TAXES WHEN COL-
LECTED AND EMBEZZLED FUNDS LATER RECOVERED—DISTRIBU-
TION OF OTHER FUNDS DISCUSSED.

SYLLABUS:

1. *In case of the division of a township and the establishment of a new township from a portion of the territory of the original township, the new township, under Section, 3246, General Code, is entitled not only to its proper portion of the money in the treasury of the original township, at the time the new township is established, but also to its proper portion of money thereafter coming into the said treasury as a result of tax levies for said township made prior to the time, to the extent the same was collected from the territory established into the new township.*

2. *When such a division is made, and there exist taxes due said original township which are delinquent, the new township is entitled to its proportionate share of the proceeds of said delinquent taxes as they are collected.*

3. *Where it appears, upon the establishment of a new township from a portion of the territory of an existing township, by force of Section 3249, General Code, that previous to that time township funds had been embezzled and the same were recovered after the creation of the new township, the said new township is*

entitled to its portion of embezzled funds which are recovered, to the extent they had originally been collected from the territory established into the new township.

4. No authority exists for the apportionment of funds to a new township established from a portion of an existing township by authority of Section 3249, General Code, or, to a township or townships to which a portion of a township may be attached by authority of Section 3245, General Code, except of funds only that have been collected from the territory established into the new township or from the territory attached to another township.

5. Any funds in the treasury of a township which have not been collected from the territory detached from said township, upon a division or partition thereof, remain the property of the original township after said division or partition.

COLUMBUS, OHIO, December 29, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication, wherein you submit for my consideration several questions relating to the division of funds between Clay Township and the newly created New Boston Township in Scioto County. These questions were submitted to you by the City Solicitor of the City of New Boston. His letter to you is as follows:

“In June 1932, New Boston was, and is now, a municipal corporation. On the 22nd day of June 1932, the county commissioners of Scioto County, on petition of the council of the city of New Boston erected a new township out of the portion of Clay Township lying within the limits of the city and called New Boston Township which is identical in whole and in part with the city limits.

A levy was made for taxes in 1931 for township purposes. The first half was collected in January and February and turned over to the Trustees of Clay Township. The taxes for the last half of the year were collected in July and August.

(1.) What proportion, if any, is the city of New Boston entitled to of this collection for the last half?

A considerable amount of taxes are delinquent from former years.

(2.) What is the proportion of each in this distribution?

In the years 1928, 1929, 1930, and 1931, Thomas O'Neil, Clerk of Clay Township, embezzled the sum of approximately \$20,000.00, and of this sum the Clay Township Trustees have recovered \$12,550.00 from his sureties on a basis of 60% settlement.

(3.) Is the city of New Boston entitled to any of this fund or does it all belong to Clay Township?

(4.) If so, what is the city's proportion?”

The Prosecuting Attorney of Scioto County has submitted practically the same question, as follows:

“On June 27, 1932, New Boston Township was created out of Clay Township in this County. The 1931 levy on New Boston Corporation for Clay Township is .96 mills, out of which .48 mills goes to the general fund and .48 mills goes to the road and bridge fund.

The Treasurer of Clay Township shows the following funds on hand June 27, 1932:

General Fund	\$ 356.38
Road and Bridge Fund.....	180.63
County Donation Fund.....	400.00
Gasoline Tax Fund	421.25
	<hr/>
Total	\$1,358.26

I should like an opinion from you as to how these funds should be apportioned and if the Trustees should make apportionment to New Boston Township.

For your information the boundary lines of the former Village of New Boston now comprise the boundary lines of New Boston Township."

When a new township is created by authority of Section 3249, General Code, questions relating to the division of funds belonging to the original township between the newly created township and the portion of the original township remaining as a separate township, are controlled by Section 3246, General Code, the pertinent part of which reads as follows:

" * * * In case of division or partition of a township, the funds in the treasury thereof shall be apportioned to the township or townships to which portions thereof may be attached, or to the new township or townships established, to the extent they are collected from such territory."

From the plain wording of the foregoing statute, no difficulty exists with reference to the division of that portion of the moneys which were in the treasury of Clay Township at the time New Boston Township was created, which were the proceeds of taxes collected and stood on the books of the treasurer to the credit of the "general fund" and the "road and bridge fund." From the clear provisions of the statute these moneys should be divided between New Boston Township and the remaining territory of Clay Township, which continues as Clay Township in the proportion that the taxable property in New Boston Township bears to the taxable property in what is now Clay Township.

The statute is not so clear, however, as to the question of whether or not funds arising from the collection of taxes which had been levied prior to the creation of New Boston Township but which were not collected and in the treasury of Clay Township until after the creation of New Boston Township, should be divided between the townships on the same basis as the funds that were actually in the treasury at that time and which were the proceeds of taxation. Fortunately, there exists substantial authority for the determination of this question.

In September, 1903, there existed the Village of Bay in Dover Township, Cuyahoga County. The said village, by ordinance of its council, petitioned the county commissioners of Cuyahoga County to change the limits of Dover Township so as to establish a new township out of a portion of it by the name of the Township of Bay, with its boundaries coterminous with those of the village. The Township of Bay was so established by the commissioners on November 4, 1903.

In May, 1903, the trustees of Dover Township had made a levy of taxes on all of the taxable property in the then limits of Dover township.

In March, 1904, the county treasurer paid over to the treasurer of Dover Township the money received on collection of the first half of said levy. Thereafter, the authorities of the Village of Bay demanded of the trustees and the treasurer of Dover Township that they apportion the money so received, to Dover

Township and the Village of Bay in the proportion it had been collected from the taxable property in their respective limits and, upon refusal, a petition in mandamus was filed in the Court of Common Pleas of Cuyahoga County to compel such apportionment and payment by the treasurer of the township of Dover. In this case, *State of Ohio ex rel., Village of Bay vs. Cooley, et al.*, 2 O. N. P. (N. S.) 589, it was held as stated in the syllabus:

“The provision of Section 1377, Revised Statutes (now Section 3246, General Code) as to the apportionment which shall be made of the public fund when a township is divided, requires that a division be made not only of funds actually in the treasury, but also of those in process of collection.”

This case was affirmed by the Circuit Court without opinion, and, later, by the Supreme Court on error. See *Cooley et al., vs. State ex rel. Village of Bay*, 74 O. S. 252. Careful consideration was given by these courts to the terms of the statute in question and a very thorough discussion of the reasons for construing the statute as it was construed will be found in the carefully considered opinions of the courts in the cases mentioned.

In substance, the court held that the word “funds” as used in Section 1377, Revised Statutes which was later codified as Section 3246, General Code, did not mean simply the actual money in the treasury at the time of the creation of the new township but included as well those funds which later were collected and came into the treasury of the township as the result of levies of taxes made previous to that time. The holding of the Supreme Court in the *Cooley* case, as stated in the syllabus thereof, is as follows:

“In case of the division of a township and the establishment of a new township, the new township, under section 1377, Revised Statutes, is entitled not only to its portion of the money in the treasury of the original township, at the time the new township is established, but also to money thereafter in the treasury, to the extent the same was collected from the territory established into the new township.”

By applying the doctrine of the *Cooley* case, *supra*, it follows that the township of New Boston is entitled not only to its proportionate share of the proceeds of tax levies which were in the treasury of Clay Township at the moment of the creation of New Boston Township, which would include moneys in the general fund and in the road and bridge fund, but also to its proportionate share of all other moneys which were the proceeds of tax levies made for Clay Township prior to that time and which came into the treasury of Clay Township as a result of those levies, regardless of when the collections were made. By the same reasoning, New Boston Township would be entitled to its proportionate share of the collection of taxes which were delinquent at the time New Boston Township was created and which were later collected. In my opinion, the same would be true of recoveries of funds embezzled by the clerk of Clay Township, which embezzlement had taken place prior to the creation of the new township, even though recovery was not had until some time subsequent thereto, at least to the extent that the embezzled funds had been collected from the territory incorporated in the new township.

A more difficult question is presented with reference to the apportionment of what is described by the Prosecuting Attorney as the “county donation fund” and

the "gasoline tax fund," and also with respect to the moneys recovered on account of embezzled funds that were not the proceeds of taxes collected from the territory embodied in the new township, if any.

I am informed that the so-called "county donation fund" consisted of funds distributed by the commissioners of Scioto County to the township of Clay from the proceeds of notes or bonds issued by Scioto County for the relief of the poor, by authority of Senate Bill 4, of the first special session of the 89th General Assembly and possibly, in part, of funds transferred to the township of Clay for poor relief purposes by authority of Senate Bill 3, of the first special session of the 89th General Assembly. The bonds or notes issued by authority of Senate Bill 4, referred to above, were issued in anticipation of Scioto County's proportionate share of the proceeds of a special excise tax levied on public utility companies by authority of said act, primarily for poor relief purposes, and are to be paid from the proceeds of that tax. Funds transferred to Clay Township by authority of Senate Bill 3, referred to above, if any, are the proceeds of the motor vehicle license and fuel taxes transferred to the township for poor relief purposes by authority of the said act.

The "gasoline tax fund" spoken of, consists of funds arising from the proceeds of motor vehicle fuel taxes collected by virtue of Section 5541, General Code, and distributed to the township of Clay by authority of Section 5541-8, General Code, to be used for the sole purpose of constructing, maintaining, widening and reconstructing the public roads and highways within the said township.

No part of either of the funds mentioned is the proceeds of property taxes, and cannot be said, in my opinion, to have been collected from the territory established into the new township, as the word "collected" is used in Section 3246, General Code, and in the syllabus of the Cooley case, *supra*.

Although I have no information on the subject it is possible that a portion of the funds embezzled by the clerk of Clay Township had not been collected within Clay Township. If that be true it is my opinion that the corresponding proportionate amount recovered on account of the said embezzlement is in the same class so far as its not having been collected from the territory established into the new township, is concerned, as are the "county donation fund" and the "gasoline tax fund" referred to above.

It seems to have been a well settled principle of common law that when a transfer of territory took place between two public corporations or a new public corporation comprising a portion of the territory of another, was created by authority of statute and the statute was silent on the subject of what should be done with the funds or debts then existing, the old corporation was liable for the debts and retained all the funds. In the light of this rule, the statute here under consideration, Section 3246, General Code, must be regarded as being in derogation of the common law and should therefore, in accordance with well settled principles of law, be strictly construed.

When a township is divided, as was Clay Township, provision for taking care of existing obligations and indebtedness is provided for by Sections 3254 to 3258. Section 3246, *supra*, purports to provide for distributing to the new corporation a proportionate share of the funds of the old corporation, but to the extent only of funds that were collected from the territory established into the new township. No statutory provision exists entitling the new corporation to a part of the funds of the township except funds that had been collected from the territory of the new township and therefore, so far as any other class of funds is concerned no authority exists for dividing them and their disposition, in my opinion, must be governed by common law principles.

The provisions of Section 3246, General Code, providing for the apportionment to the new township of "funds in the treasury * * * to the extent they are collected from such territory" are not capable of being construed especially in view of the fact that they must be strictly construed so as to extend them beyond what their plain language imports. It is true that the courts, in the Cooley case, construed the phrase "funds in the treasury" as used in the statute so as to include not only funds actually in the treasury but those thereafter in the treasury to the extent that they were collected from the territory established into the new township, and the common pleas court in its decision said:

"This court is of the opinion that the phrase 'funds in the treasury' should be liberally construed having in view the subject matter."

The Supreme Court did not base its decision on that rule.

In the opinion of the Supreme Court in the Cooley case, it was pointed out that the statute, prior to its last revision before the case arose being at that time Section 2 of an act passed February 20, 1865 (62 O. L. 18) read as follows:

"The funds in any township treasury at the time of said *division or partition* shall be apportioned to the township to which the same may be attached in proportion to the amount thereof collected from such attached portion." (Italics, the writer's).

It has been further pointed out that upon carrying this portion of the statute into the revision of 1880, the words "at the time of said division or partition" were omitted, and that this omission indicated an intentional change in the statute. This change in the statute led the courts to hold that under the terms of the statute led the court to hold that under the terms of the statute as so revised the term "funds in the treasury" meant not only the funds in the treasury at the time the new township was established but also the funds thereafter in the treasury to the extent the same were collected from the territory established into the new township.

The language of this statute has not been changed since the decision of the Cooley case.

In the light of the foregoing discussion, I am of the opinion in specific answer to the questions submitted that apportionment should be made between New Boston Township and what is now Clay Township, in the proportion of the taxable value of property within those townships, of the moneys in the "general fund" and the "road and bridge fund," as well as all moneys later coming into said treasury as the result of the collection of taxes levied for Clay Township prior to the creation of New Boston Township. The same apportionment should be made of moneys arising from collections of taxes on said property which were delinquent at said time, and also those moneys which have been or may hereafter be recovered on account of embezzlements of the clerk of Clay Township which had taken place prior to the creation of New Boston Township, to the extent that the embezzled funds had been collected from the territory embraced within the new township.

No authority exists for an apportionment to the township of New Boston of any portion of the "county donation fund" and the "gasoline tax fund" or of any portion of the funds recovered on account of embezzlements of funds which had

not been collected from the territory of New Boston Township, if, in fact, any such funds had been embezzled.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4844.

TRANSFER OF SCHOOL TERRITORY—SIGNERS OF REMONSTRANCE
MAY WITHDRAW NAMES BEFORE END OF THIRTY DAY PERIOD
FOR SUCH FILING—NAMES MAY NOT BE WITHDRAWN OR
ADDED AFTER SUCH PERIOD.

SYLLABUS:

1. *There is no authority for the filing of petitions for the transfer of school territory under and by virtue of Section 4692, General Code, except when a proposed transfer involves territory lying within a school district in which the schools have been centralized by authority of Section 4726, General Code. Transfers of territory between districts of a county school district, except when centralized district territory is involved in a proposed transfer, may be made as seems in the judgment of the county board of education to be for the best interests of the schools, subject to the filing of remonstrances by the electors residing in the territory affected.*
2. *Signers of a remonstrance against the transfer of school territory made by authority of Section 4692, General Code, may withdraw their names therefrom before and up to the end of the thirty day period allowed for the filing of the remonstrance.*
3. *Such a remonstrance is not considered as being filed until the thirty day period has elapsed.*
4. *After the expiration of the thirty day period allowed for the filing of a remonstrance under Section 4692, General Code, no names may be withdrawn from or added to a remonstrance which has been filed, so as to effect the efficacy of the remonstrance at the moment of the expiration of the thirty day period allowed for the filing of the same.*

COLUMBUS, OHIO, December 29, 1932.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

“Your opinion is respectfully requested upon the following set of facts involving, I believe, an interpretation of Section 4692 G. C. of Ohio, which is as follows:

A group of electors residing in Center Township filed a petition for transfer in the Carrollton Village School in regular form on September 3, 1932. On September 8, 1932, the map was filed with the County Auditor, covering this territory sought to be transferred.