

OPINION NO. 66-098**Syllabus:**

1) When a new local school district is created pursuant to Section 3311.26, Revised Code, by combining two local school districts, each of which was a participating member of separate joint vocational school districts, the newly created local school district does not automatically become a participating district of either joint vocational school district.

2) When a new local school district is created pursuant to Section 3311.26, Revised Code, there may be spread over the entire district so created the larger of any levies voted and authorized in the districts out of which said new local district was created, to the extent necessary to meet the obligations of the new district for which said levies were authorized.

3) When a new local school district is created pursuant to Section 3311.26, Revised Code, the bonded indebtedness of the abolished districts, including their share of any indebtedness devolving upon them by reason of their past participation in a joint vocational school district, becomes an obligation of the new school district.

**To: E. E. Holt, Superintendent of Public Instruction, Department of Education,
Columbus, Ohio**

By: William B. Saxbe, Attorney General, May 25, 1966

Your recent request for my opinion reads as follows:

"The growth of joint vocational school districts in Ohio has presented numerous problems. Almost identical situations have now arisen in two areas of the State giving rise to questions which require alternative answers. The situation is this: local school district A is a participating member of joint vocational school district X; local school district B is a participating member of joint vocational school

district Y; local school district A and local school district B are united forming local school district C; both joint vocational school district X and joint vocational school district Y have bonded indebtedness under Section 3311.20, Revised Code and tax levies under Section 3311.21, Revised Code.

"Based on these facts, I would like your opinion on the following questions.

- "1. Of what joint vocational school district is local school district C a member?
- "2. What, if any, joint vocational school district tax levy is an obligation on the tax duplicate of local school district C?
- "3. What, if any, joint vocational school district bonded indebtedness is an obligation of the tax duplicate of local school district C?"

I must presume that the uniting of local school districts A and B to create local school district C was accomplished under authority of Section 3311.26, Revised Code. Certain conclusions therefrom are inescapable. First, upon the coming into legal existence of local school district C, both local school districts A and B ceased to exist. In Opinion No. 1070, Opinions of the Attorney General for 1949, page 668, the first paragraph of the syllabus reads:

"1. 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."

In the body of that opinion, it is said that the old school district has been abolished. The logical conclusion is that if local school districts A and B cease to exist they must cease for all purposes; hence, they must also cease to participate in any joint vocational school district in which they were participating districts. Second, when the new local school district, local school district C in your inquiry, is created, it comes into existence as an independent subdivision of the state, *cf.* Opinion No. 6354, Opinions of the Attorney General for 1956, page 185, and Opinion No. 1058, Opinions of the Attorney General for 1949, page 682.

I find no statutory provision dealing specifically with the situation you present. The legislature seems to have contemplated neither the abolition of a local school district which was participating in a joint vocational school district, nor the withdrawal of a local school district from a joint vocational school district. However, I believe that an examination of Section 3311.217, Revised Code, which deals with dissolution of a joint vocational school district, and Section 3311.213, Revised Code, which deals with enlargement of an existing joint vocational school district, will lead to a proper solution of your problem. Both of these sections reveal a legislative concern that such matters be handled in accordance with the principles of equity. I think a pertinent analogy may be drawn by reference to Section 3311.217, Revised Code, especially in view of the possibility that a joint vocational school district may consist of only two participating districts. Said section provides:

"Upon approval by a majority of the full membership

of the board of education of a joint vocational school district, or upon the receipt of resolutions formally adopted by a majority of the boards of education of the school districts participating in the joint vocational school district, the board of education of the joint vocational school district shall adopt and send to the state board of education a resolution requesting the dissolution of a joint vocational school district. Such resolution shall state the reasons for the proposed dissolution of the joint vocational school district, shall set forth a plan for the equitable adjustment, division, and disposition of the assets, property, debts, and obligations of the joint vocational school district, and shall provide that the tax duplicate of each participating school district shall be bound for and assume its share of the outstanding indebtedness of the joint vocational school district. Upon approval of the resolution by the state board of education, the joint vocational school district shall be dissolved in accordance with the provisions of the resolution."

(Emphasis added.)

It is apparent from the foregoing quote that the equitable adjustment of assets, property, debts and obligations referred to was intended to result in the local school districts assuming their individual shares of the assets, property, debts and obligations of the joint vocational school district in which they participated upon its dissolution.

Referring next to Section 3311.26, Revised Code, it is apparent that a newly created local school district must assume the indebtedness of the abolished districts. Said section provides in part:

"Upon the creation of such district, the indebtedness of each former district becoming in its entirety a part of the new district shall be assumed in full by the new district."

For purposes of this opinion, I do not deem it necessary to conclude that the facts which you have recited automatically work a dissolution of the joint vocational school districts involved. It is sufficient to observe that the indebtedness which the new school district is required to assume cannot be determined without the equitable adjustment and allocation referred to. I should also mention that I do not deem it material that the distribution of assets, property, debts and obligations may not previously have been considered in connection with the creation of new local school district C. These are fundamentally administrative matters in connection with which it must be expected that the sound discretion of the boards of education of the various districts involved will be exercised. As stated in State ex rel. Maxwell v. Schneider, 103 Ohio St., 492, at 499, regarding the duty to apportion funds and indebtedness:

"* * * A mere delay in taking such action cannot invalidate the proceeding creating the new district. * * *"

The question of what tax levy is an obligation of local school district C is answered by the 11th and 12th paragraphs of the syllabus of Opinion No. 6703, Opinions of the Attorney General for 1944, page 75, which has been cited with approval as recently as Opinion No. 65-111,

Opinions of the Attorney General for 1965, page 2-234. The paragraphs referred to read:

"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."

See also the fourth paragraph of the syllabus of Opinion No. 6354, Opinions of the Attorney General for 1956, page 185, which provides:

"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."

In specific response to your inquiries, it is my opinion that:

1) When a new local school district is created pursuant to Section 3311.26, Revised Code, by combining two local school districts, each of which was a participating member of separate joint vocational school districts, the newly created local school district does not automatically become a participating district of either joint vocational school district. The new district may, of course, become a participating member of a joint vocational school district, either through the procedures of Sections 3311.16, 3311.17, and 3311.18, Revised Code, or Section 3311.213, Revised Code.

2) When a new local school district is created pursuant to Section 3311.26, Revised Code, there may be spread over the entire district so created the larger of any levies voted and authorized in the districts out of which said new local district was created, to the extent necessary to meet the obligations of the new district for which said levies were authorized.

3) When a new local school district is created pursuant to Section 3311.26, Revised Code, the bonded indebtedness of the abolished districts, including their share of any indebtedness devolving upon them by reason of their past participation in a joint vocational school district, becomes an obligation of the new school district.