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EDUCATION—DIVISION OF DISTRICTS UNDER CONTROL OF COUNTY BOARD—DISTRICT HAVING ONLY ELEMENTARY SCHOOLS—CONSOLIDATION OF DIVIDED PORTIONS WITH DISTRICTS HAVING HIGH SCHOOLS—§3311.261 R.C.—APPORTIONMENT OF NET INDEBTEDNESS, FUNDS.

SYLLABUS:

Where, pursuant to the provisions of Section 3311.261, Revised Code, a county board of education divides a school district having only elementary schools, and consolidates such divided portions with two school districts which have high schools, the net indebtedness of the divided district must be apportioned to the acquiring districts in the ratio which the assessed valuation of the territory transferred to each bears to the assessed valuation of the original transferred district as of the effective date of the transfer. The funds of the transferred district must be divided equitably by the county board, with the approval of the superintendent of public instruction, between the acquiring districts.

Columbus, Ohio, July 9, 1959

Hon. Robert A. Fries, Prosecuting Attorney
Wood County, Bowling Green, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“The Wood County Board of Education has requested that I obtain an opinion from your office. They have the following fact situation:

"The Lime City Local School District, that has no high school, is anticipating a transfer to neighboring districts. It is proposed that the north two-thirds of that district be transferred to Rossford Exempted Village School District and that the south one-third be transferred to the Eastwood School District. This proposed transfer would be accomplished under the provisions of Section 3311.261 of the Revised Code of Ohio.

"The Rossford Exempted School District is willing to accept all of the assets, including the buildings, of the Lime City Local School District. It is further willing to accept all of the indebtedness. The Eastwood Local School District is willing to accept the south one-third of the district without receiving any of the assets or liabilities.

"The three school districts are all agreeable to such a transfer.

"Our question is whether or not this would be considered an equitable distribution of funds and indebtedness under the section of the Revised Code that is involved."

Section 3311.261, Revised Code, reads in part as follows:

"Notwithstanding sections 3311.22, 3311.23 and 3311.26 of the Revised Code, until January 1, 1959, a county board of education may consolidate a school district having only an elementary school or schools with one or more adjoining local, exempted village, or city school district or districts having a high school, upon receipt of a petition requesting such consolidation signed by qualified electors of the district equal in number to at least fifty-five per cent of the qualified electors voting at the last general election residing within such elementary school district. If such petition is signed by qualified electors of the district equal in number to at least seventy-five per cent of the qualified electors voting at the last general election residing within such elementary school district the county board of education shall make such transfer. Such transfer shall be subject to the approval of the board or boards of education to which the district is being transferred."

Where a school district is, by action of the county board of education, consolidated with one or more adjoining districts pursuant to the provisions of the section from which I have quoted, that section, as will be noted, provides that such transfer shall be subject to the approval of the board or boards of education to which the transfer is made. The date of such approval would, in my opinion, be considered the "effective date of the transfer", referred to later on in the section. The same statute makes the following provision in regard to the distribution of the net indebtedness of the transferred district:

“As of the effective date of such transfer the net indebtedness of the transferred district shall be apportioned between the acquiring school districts, or if all the district is transferred the net indebtedness shall be assumed in full by the acquiring district. If the net indebtedness is apportioned it shall be so done in the ratio which the assessed valuation of the territory transferred to each acquiring school district bears to the assessed valuation of the original school district as of the effective date of the transfer. As used in this section ‘net indebtedness’ means the difference between the par value of the outstanding and unpaid bonds and notes of the school district and the amount held in the sinking fund and other indebtedness retirement funds for their redemption.”

This provision does not appear to leave to the county board of education or any other authority, power to distribute the net indebtedness according to its own judgment. Nor does it give the receiving districts any authority to agree on a different ratio.

As to the funds of the transferred district, the same statute provides:

“As to the effective date of such transfer, the funds of the transferred district shall be divided equitably by the county board, with the approval of the superintendent of public instruction, between the acquiring districts. If the district be transferred to only one district, the funds shall be transferred to said district.”

The statute further makes this provision as to the title of all property of the transferred district:

“As of the effective date of the transfer, legal title of all property of the transferred district shall become vested in the board of education of the school district or districts to which such territory is transferred.”

It follows that the only matter that is left to the discretion of the county board is the equitable division of the funds of the transferred district.

Applying the foregoing statutory provisions to the case which you present, where two-thirds of the area of the City Local School District is to be transferred to Rossford and one-third to Eastwood District, it would appear that the net indebtedness of the City Local District must be apportioned to the two receiving districts in the ratio set forth in the statute.

Coming to the equitable division of the funds of the transferred district, the discretion and determination as to what is an equitable division is clearly left to the county board, subject to the approval of the superintend-

ent of public instruction. Where discretion is conferred upon a public body, its action in exercising such discretion will not be controlled even by a court if exercised honestly and within the limitations of the law.

It would be much less within my province as Attorney General to venture an opinion as to an equitable division of funds in the case presented, even if I had information as to the amount of such funds. That is a matter which the county board must determine for itself and in the absence of palpable abuse of discretion, its action would be final, but subject, as already indicated, to the approval of the superintendent of public instruction.

In the light of the foregoing, it is my opinion and you are advised, that where, pursuant to the provisions of Section 3311.261, Revised Code, a county board of education divides a school district having only elementary schools, and consolidates such divided portions with two school districts which have high schools, the net indebtedness of the divided district must be apportioned to the acquiring districts in the ratio which the assessed valuation of the territory transferred to each bears to the assessed valuation of the original transferred district as of the effective date of the transfer. The funds of the transferred district must be divided equitably by the county board, with the approval of the superintendent of public instruction, between the acquiring districts.

Respectfully,
WILLIAM SAXBE
Attorney General