

3409

TERRITORY — TRANSFER — ONE SCHOOL DISTRICT TO ANOTHER, SEPTEMBER 9, 1953—SUBSEQUENT TO THAT DATE, COUNTY AUDITOR ENTERED ON TAX LIST, AND DUPLICATE, PROPERTY LOCATED IN TERRITORY PERTINENT TO DISTRICT WHERE TERRITORY TRANSFERRED—PROCEEDS OF TAX LEVIES THEREAFTER COLLECTED SHOULD BE PAID TO DISTRICT WITHIN WHICH TERRITORY INCLUDED—PROCEEDS AS OF SUCH DATE DO NOT CONSTITUTE PART OF FUNDS OF EITHER DISTRICT—NOT SUBJECT TO DIVISION BETWEEN TWO DISTRICTS—CIRCUMSTANCES AS TO PAYMENT LEFT FOR DETERMINATION BY COUNTY BOARD OF EDUCATION—SECTIONS 4831-13 GC, 3311.23 RC.

SYLLABUS:

Where a transfer of territory from one school district to another has been accomplished as of September 9, 1953, under the provisions of Section 4831-13, General Code, and where, subsequent to such date, the county auditor has entered the property located in such territory on the tax list and duplicate pertinent to the district to which such territory has been transferred, the proceeds of tax levies on such property thereafter collected should be paid to the district within which such territory has been included; and such proceeds do not, as of such date, constitute a part of the "funds" of either district and are not, therefore, subject to division between the two districts concerned under the provisions of such section. The circumstance that such proceeds will thus be paid may be accorded such weight as the county board of education may deem proper in arriving at its determination of an equitable distribution of such funds and indebtedness of the two districts as are properly the subject of such division.

Columbus, Ohio, January 18, 1954

Hon. John D. Sears, Jr., Prosecuting Attorney
Crawford County, Bucyrus, Ohio

Dear Sir:

This will acknowledge your request for my opinion on the following question:

"When a territory is transferred from one school district to another school district at the beginning of the last quarter of 1953, should the school district that receives the territory that was trans-

ferred pay over to the school district from which the territory was transferred three-fourths of the tax money that it will receive in 1954 for the territory that was transferred for the reason that this tax money is for the tax year of 1953 and that the territory was not transferred until the last quarter of 1953?"

In the course of subsequent correspondence the following information has been developed :

"1. The proceedings were initiated entirely under authority of Section 4831-13 of the General Code.

"2. Clause 3 of the final paragraph in Section 4831-13 of the General Code has been complied with, the map having been filed on September 12, 1953.

"3. The county auditor on September 18, 1953, listed the real property in the transferred area in the new school district. The statute, Section 2583, of the General Code, provides that such listing is to be accomplished on or before the first Monday of August ; however, the auditor received an extension of time to the last part of October. Therefore, the tax money for the tax year of 1953 on this property that was transferred will be paid to the school district accepting the transfer, and that was my reason for my previous requested opinion."

In yet another communication you advise that :

"The transfer proceedings were completed as of September 9, 1953, except for the equitable division which is required by Section 4831-13 of the General Code, being Section 3311.23 of the Revised Code of Ohio."

In view of your statement that the transfer proceedings, except for the division of funds and indebtedness, were completed "as of September 9, 1953," it is assumed that this is the date of the resolution of the county board of education effecting the transfer. I indulge this assumption in the supposition that you are familiar with a prior ruling of the Attorney General that where such resolution does not otherwise provide its provisions will operate "on the funds and indebtedness of the district as of the date of the resolution." See Opinion No. 1887, Opinions of the Attorney General for 1928, page 733.

This opinion of my predecessor appears to be based in large part on the per curiam decision in *State ex rel Board of Education of Swanton Village v. Board of Education of Sharples Village*, 114 Ohio St., 602 (605) :

“‘Funds’ include all moneys rightfully in the possession of the board of the original district, and all moneys to which the board of the original district is entitled *at the date of the transfer, * * **” (Emphasis added.)

It is appropriate here to point out that the sole assets to be divided by the districts concerned are the *funds*. “Funds,” in the usually accepted sense, denotes a sum or sums of money, and it is quite clear that the court in the Sharples decision, *supra*, considered the word “funds,” as used in the statute there under scrutiny, to have been employed with this usual and ordinary meaning.

It is clear from the facts described in the instant case that the moneys which will hereafter be collected by way of tax levies on the tax list and duplicate made up by the county auditor on September 18, 1953, could not, as of September 9, 1953, be considered as the “funds” of either district. Any claim of either district as to such future collections could not, therefore, properly be the subject of division by the board as of September 9, 1953. From this it would follow that no action taken under the provisions of Section 4831-13, General Code, could affect the right of the district which gained the territory in question to receive the proceeds of taxes levied on such property therein as has been included on the tax list and duplicate pertinent to such district.

This is not to say, of course, that the board, in the determination of an equitable division of such funds and indebtedness as are properly subject to division, could not take into consideration the circumstance that the proceeds of future tax collections will become the funds of the district to which the territory in question has been transferred. Because such proceeds as are currently paid to a district are ordinarily used to defray the expense of current operations it would not appear to me that the circumstance mentioned above could be given much weight in the determination of what is an equitable division of funds and indebtedness, but I recognize that in special circumstances the board might be justified in according greater weight to this factor.

In this connection it is to be remembered that the board has considerable discretion in the matter. In considering the effect of a statute similar to that here involved, the attorney general, in Opinion No. 1033, Opinions of the Attorney General for 1927, page 1806, said:

“2. In making a division of the funds and indebtedness between two school districts involved in the transfer of territory

from one to the other, consideration should be given not solely to the comparative tax valuation of the property located within the territory transferred and that of the entire districts before transfer, but to the other factors bearing on the situation as well."

In Opinion No. 3081, Opinions of the Attorney General for 1928, p. 2959, the third paragraph of the syllabus reads :

"The making of an equitable distribution of funds and indebtedness between two school districts, when a part of the territory of one district is annexed to another, is purely within the discretion of the board of education charged by law with the duty of making this equitable distribution, and in the absence of fraud or abuse of discretion the distribution as made by such board of education will be final."

The conclusion stated above in the 1928 opinion was approved and followed in Opinion No. 3888, Opinions of the Attorney General for 1941, p. 461, and I perceive nothing in the subsequent changes in the pertinent statutory enactments which would justify a different conclusion in the instant case.

Accordingly, in specific answer to your inquiry, it is my opinion that where a transfer of territory from one school district to another has been accomplished as of September 9, 1953, under the provisions of Section 4831-13, General Code, and where, subsequent to such date, the county auditor has entered the property located in such territory on the tax list and duplicate pertinent to the district to which such territory has been transferred, the proceeds of tax levies on such property thereafter collected should be paid to the district within which such territory has been included; and such proceeds do not, as of such date, constitute a part of the "funds" of either district and are not, therefore, subject to division between the two districts concerned under the provisions of such section. The circumstance that such proceeds will thus be paid may be accorded such weight as the county board of education may deem proper in arriving at its determination of an equitable distribution of such funds and indebtedness of the two districts as are properly the subject of such division.

Respectfully,
C. WILLIAM O'NEILI
Attorney General