

Specifically answering your inquiries, it is my opinion that:

1. The board of trustees of a township may, by virtue of the provisions of Section 4295, General Code, accept securities of the type therein defined, including securities issued by such township in substitution of other securities theretofore deposited with them as security for a township depository, if the bank or its conservator offers them, when in the opinion of the board of township trustees the interests of the township are not prejudiced thereby.

2. The board of township trustees, with which, as security for a township depository, bonds of such township have been deposited, may not enter into an agreement to accept such securities not yet due, in payment of the funds on deposit with such depository, except to the extent that the moneys in such depository are funds of a township sinking fund, since such transaction would be tantamount to a purchase of such securities, and is beyond the power granted to the board.

Respectfully,

JOHN W. BRICKER,

Attorney General.

983.

SCHOOL DISTRICT—TRANSFER OF TERRITORY BY COUNTY COMMISSIONERS—EQUITABLE DIVISION OF FUNDS INVOLVED—INDEBTEDNESS ASSUMED UPON TRANSFER BECOMES LIABILITY OF ENTIRE DISTRICT TO WHICH TRANSFER MADE—UNIFORMITY OF TAX LEVIES REQUIRED.

SYLLABUS:

1. *It is the duty of county boards of education upon transferring territory from one school district to another, by authority of either section 4692 or section 4696, General Code, to make an equitable division of the funds and of the indebtedness of the districts involved in the transfer.*

2. *That part of the indebtedness of a school district from which territory is transferred, which the county board of education in the exercise of its discretion determines shall be assumed by the school district to which the territory is annexed, will become an indebtedness of the entire district to which the territory is transferred, and not merely an indebtedness of the transferred territory.*

3. *Tax levies must be uniform throughout an entire taxing subdivision.*

COLUMBUS, OHIO, June 21, 1933.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt from you of the following communication:

“A rural board of education has written me regarding the following situation and I am in turn referring it to you for an opinion:

‘In both District A and B, new school buildings have been built within the past five years. A part of District A had petitioned to be set over into District B prior to the erection of the building in District A. The petition was practically unanimous, but through an error in the wording of the petition, said petition was thrown out and before a cor-

rected one could be circulated, a vote was taken in District A for a bond issue and for the erection of a building, and passed.

The people in District A who had petitioned to be set over into District B are still anxious that this transfer be made but the question has arisen, should said transfer be made, would these people be forced to help pay for both buildings or could they be relieved of the tax assessment for buildings in District B and continue to pay their assessments on the building in District A?'

Would the section under which the transfer would be made, namely Section 4696, from another county; or 4692 within the same county, affect the answer to the above question?"

Transfers of school district territory by a county board of education from one school district of a county school district to another school district of the same county school district, are authorized by Section 4692, General Code. Transfers to a city school district, exempted village school district or county school district may be made by a county board of education by authority of Section 4696, General Code. When transfers are made by authority of either one of these statutes, the law requires that an equitable distribution be made of both the funds and indebtedness of the school districts involved in the transfer. The provision of Section 4696, General Code, with reference to this matter reads as follows:

"* * In any case before such a transfer shall be complete * * an equitable division of the funds and indebtedness between the districts involved shall be made by the county board of education, * *"

The pertinent provision of Section 4692, General Code, providing for the transfer by a county board of education of school district territory from one district to another within the county district is as follows:

"* * The county board of education is authorized to make an equitable division of the school funds of the transferred territory either in the treasury or in the course of collection. And also an equitable division of the indebtedness of the transferred territory."

Just what constitutes an equitable division is not fixed by statute. It depends to a great extent on the circumstances, and the discretion of the county board of education in making this distribution will not be interfered with unless it is abused. See Annual Report of the Attorney General for 1914, page 1333; Opinions of the Attorney General for 1915, page 1970; for 1927, pages 318 and 1806 and for 1928, page 733.

When, in making a transfer, the district losing territory has indebtedness, bonded or otherwise, the district receiving the territory should be required to assume a portion of that indebtedness commensurate with the taxable value of the property received, other conditions being equal, and of course, would thereafter be required to levy taxes to meet the indebtedness thus assumed. The levy so made, however, would attach to all the taxable property of the district making the levy and not to the territory received, only.

After a transfer is made the territory transferred out of a district would not be taxed for the remaining indebtedness of the district from which it was

transferred, but would be taxed at the same rate as other property in the district to which it was transferred, for all the indebtedness of that district including any original indebtedness the district may have had as well as that part of the indebtedness of the district from which it received territory, which by reason thereof it was required to assume. In the case of *Ross et al. vs. Adams Mills Rural School District*, 113 O. S., 466, it is held:

“1. It is the duty of county boards of education upon transfer of property from one district to another pursuant to the provisions of Section 4692, General Code, to make an equitable division of the funds and of the indebtedness of the transferred territory.

2. Where, subsequent to the issuance of bonds for the erection of a school building and the levy of a tax to pay same by a rural school district, the county board of education, under authority of Section 4692, General Code, transfers a portion of such district to an adjoining district and makes an equitable division of the funds and of such bonded indebtedness between the district from which and the district to which the territory was transferred, all the property of each district is subject to the levy of a tax to meet its share of the indebtedness as so apportioned.

3. Section 4692, General Code, is not violative of any provision of either the state or federal Constitution.”

It appeared in the above case that Jefferson Rural School district in Ross County, had a bonded indebtedness of \$96,000 consisting of bonds which had been issued for the construction of a school building. A portion of the territory of this district was transferred to Adams Mills Rural School District, by authority of Section 4692, General Code, and a portion of the bonded indebtedness of the Jefferson District had been apportioned to the Adams Mills District. Suit was instituted to enjoin the levy of taxes in the Adams Mills District to meet the payment of that portion of the original bonded indebtedness of the Jefferson District which had been apportioned to the Adams Mills District. In the course of the opinion of the court it was said on page 476:

“It seems to be the clear purpose and intent of the provisions of Section 4692, General Code, to require that any of the indebtedness of the district from which territory is transferred shall be apportioned between the districts from which and to which such territory is transferred. Indeed, it is impossible to make that provision of the statute effective if not so interpreted and applied.

When such division was made the indebtedness became the indebtedness of the Adams Mills district and of the Jefferson district, as apportioned. Under the provisions of Section 4692, General Code, the ‘legal title of the property of the board of education shall become vested in the board of education of the school district to which such property is transferred,’ and, when an equitable division of the indebtedness was made, all the property in each district became liable for its respective proportion thereof. There is no statutory provision which would authorize a tax levied upon only a portion of a district or subdivision, and no method has been prescribed, and none has been suggested, whereby that could be done. It would be contrary to the provisions of all tax levying and tax limitation statutes. In accordance with the familiar principles of statutory construction, Section 4692, General Code, will be so con-

strued as to make it a valid enactment for all purposes, and proceedings thereunder will, if possible, be so construed as to accomplish a valid result. Just as legislation enacted subsequent to the issuance of bonds that would remove a portion of the security thereof, and thereby impair the obligation of contract, would be invalid as against the holders of said bonds so also would a proceeding under this statute which undertook to transfer a portion of the district be a nullity against holders of the bonds, if it did not provide for the apportionment of the indebtedness and payment of the bonds as contemplated in the original proceeding for the issuance thereof, as required by the constitutional and statutory provisions heretofore referred to."

As pointed out by the court in the above quotation, tax levies must be uniform over an entire taxing district. Territory transferred to a school district is therefore taxed at the same rate as other property in the district. Tax levies for any indebtedness which a school district has, after receiving territory, including original indebtedness and that apportioned to it by reason of having received more territory, will be spread out over the entire territory of the district. In that sense, the territory transferred will be taxed not only for a portion of the indebtedness of the district from which it was transferred but also for the indebtedness of the district to which it was transferred, but because of the wider spread of the indebtedness of a district after it has received new territory, the tax rate for debt purposes may not be as high in the transferred territory as it was before it was transferred. Again, it may be higher—it all depends on circumstances.

In the case mentioned in your inquiry it appears that both districts A and B have bonded indebtedness at this time. If the proposed transfer is now made, the law requires that a part of the indebtedness of district A be apportioned to district B, and that district B be required to assume a part of this indebtedness. Levies will then necessarily have to be made on all the property in district B to meet its indebtedness consisting of its original indebtedness before the transfer was made, together with that part of the original indebtedness of district A which had been apportioned to it. In a sense the transferred territory will in that way be contributing by way of taxation to the indebtedness for both school buildings as also will all the rest of the territory of district B, but because of the larger territory over which this indebtedness is spread the probabilities are that the rate of taxation of this transferred territory will be no greater than if it had remained in district A. The only way to find this out is to compute it by taking into consideration the amount of the bonded indebtedness of district A which is apportioned to district B and the increased tax duplicate. I do not have these facts before me. The probabilities are that the rate will be no higher than it was in district A, it may be less. The remaining indebtedness of district A will be met by tax levies on the taxable property of district A as it exists after that of the transferred territory is deducted. The property of the transferred territory will not be taxed twice. That is to say, it will be subjected to but one levy of taxes for debt purposes, that would be the prevailing rate in district B.

These questions have been the subject of several opinions of former Attorneys General, one of which will be found in Opinions of the Attorney General for 1915, page 1970. The law has not been materially changed since that time. In that opinion it is held:

"In transferring territory from one school district to another within the county school district under authority of Section 4692, General Code

* * it is the duty of the county board of education at the time of making said transfer to make an equitable division of the indebtedness of the school district from which said territory is transferred, and that part of said indebtedness which said board, in the exercise of its discretion, determines shall be assumed by the school district to which said territory is transferred will become an indebtedness of the entire district as reformed and not merely an indebtedness of the territory transferred thereto."

A very similar situation was passed upon in an earlier opinion. See Annual Report of the Attorney General for 1914, page 1333. It was there said:

"The situation presented, then, is that the rural district as originally constituted has no bonded indebtedness, whereas the district from which the territory is transferred is burdened with an indebtedness.

In such a situation the statute (§ 4692 G. C.) requires that a proportional part of the indebtedness of the old district, from which the territory was transferred, shall be assumed by the new district. * *

The indebtedness so transferred becomes an indebtedness of the whole district thus formed and is not to be met by levies upon the transferred territory only."

See also Opinions of the Attorney General for 1927, page 318.

It is my opinion that if the proposed transfer as stated in your letter, is made, the taxable property in that part of district A which is transferred to district B will be required to bear its proportionate share of the burden of the indebtedness of district B, after the transfer is made. In a sense, this territory must contribute by way of taxation to help pay for both school buildings but in the adjustment of indebtedness and tax levies to meet that indebtedness, it is very probable that the burden of taxation for debt purposes, on this property, will be no greater after the transfer than it was before.

Respectfully,

JOHN W. BRICKER,

Attorney General.

984.

REMONSTRANCE—SIGNERS WITHDRAWING NAMES THEREFROM
MAY IN WRITING RESTORE THEIR NAMES PRIOR TO THIRTY-
DAY LIMIT FOR FILING.

SYLLABUS:

Under Section 4692, General Code, or Section 4736, General Code, signers to a remonstrance who have later withdrawn their names from such remonstrance, may restore their names to the remonstrance, providing it is done in writing and before the expiration of the thirty-day period allowed for the filing of the remonstrance.