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TRANSFER — ENTIRE SCHOOL DISTRICT FROM ONE SCHOOL DISTRICT TO ANOTHER—WHERE TRANSFER COMPLETED SUBSEQUENT TO SECOND MONDAY OF APRIL OF ANY YEAR, PRIOR TO LEVY OF TAXES FOR CURRENT YEAR—ALL TAX LEVIES SHOULD BE EXTENDED FOR COLLECTION IN CURRENT TAX YEAR ON ALL TAXABLE PROPERTY IN COMBINED DISTRICT, INCLUDING TERRITORY IN DISTRICT TRANSFERRED—SECTIONS 4692, 5625-25 G. C.

SYLLABUS:

When an entire school district is transferred from one school district to another by authority of Section 4692, General Code, and such transfer is completed subsequent to the second Monday of April of any year but prior to the levy of taxes for the current year as provided by Section 5625-25, General Code, all levies of taxes should be extended for collection in the current tax year on all the taxable property in the combined district, including that of the territory in the district transferred.

Columbus, Ohio, July 14, 1943.

Hon. F. R. Parker, Prosecuting Attorney,  
Bryan, Ohio.

Dear Sir:

I am in receipt of your request for my opinion with respect to the following matter:

"A transfer of territory is contemplated in Williams County by which the entire Brady Township Rural School District would be transferred to the West Unity Village School District. The Brady District has no indebtedness and no special levy. The West Unity District has a bonded indebtedness which will be retired with the 1943 tax levy. The West Unity District also has a special operating levy which will expire with the 1943 tax levy.

If this transfer were made now and being subsequent to the April tax lien date but prior to the October levy date, would the tax rate for the tax year 1943 be calculated on the new district created out of the transfer or on the two separate districts as they existed prior to the transfer, that is, for taxation purposes, would this transfer be effective as of the April tax lien date, then, of course, it would not be effective until April, 1944.

It has been the opinion of the writer that tax boundaries for the current tax year became fixed as of the April tax lien date."

Such contemplated transfers of school territory as you mention are authorized by Section 4692, General Code. Assuming that such a transfer is consummated in the near future and prior to the adoption and completion of tax budgets for the year 1943 and the making of tax levies for that year in pursuance of such budgets, your inquiry involves questions relating to the manner and extent of making the levies which you mention, that is, a levy for the remainder of the bonded indebtedness existing at this time against the West Unity Village School District and the balance of an operating levy now existing in said West Unity District. It appears from your statement of the situation that each of the levies would, in the regular course of events, be finally completed and satisfied with one more annual levy. As you state the matter, the bonded indebtedness of the West Unity District will be retired with the 1943 levy and the special levy mentioned will expire with the 1943 levy.

It would not serve the purposes of this opinion to review in detail the procedure involved in the making of local tax levies. It is sufficient to say that the procedure for the preparation and adoption of tax budgets

annually and the making of tax levies based on such budgets in each taxing subdivision or taxing unit, which of course includes school districts, is provided for in Section 5625-19 et seq., of the General Code of Ohio.

In short, provision is made thereby for the preparation and adoption in each subdivision or taxing unit annually, on or before the 15th day of July, of a tentative tax budget showing the estimated requirements of each such subdivision or taxing unit to be paid from the general property tax during the next fiscal year, and for the appointment in each county of a county budget commission whose duty it is, speaking generally, to supervise the preparation and adoption of the said tax budgets. Section 5625-24, General Code, provides in part:

“The budget commission shall so adjust the estimated amounts required from the general property tax for each fund, as shown by such budgets, as to bring the tax levies required therefor within the limitations specified in this act for such levies, but no levy shall be reduced below a minimum fixed by law. It shall have authority to revise and adjust the estimate of balances and receipts from all sources for each fund and shall determine the total appropriations that may be made therefrom.  
\* \* \*”

Section 5625-25, General Code, reads:

“When the budget commission has completed its work it shall forthwith certify its action to the taxing authority of each subdivision and other taxing unit within the county, together with an estimate by the county auditor of the rate of each tax necessary to be levied by each taxing authority within its subdivision or taxing unit, and what part thereof is without, and what part within the ten mill tax limitation. Each taxing authority by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in such year, or at such later date as may be approved by the tax commission of Ohio. If the proposition of levying a tax to be placed on the duplicate of the current year is approved by the electors of the subdivision under the provisions of this act, or refunding bonds to refund all or parts of the principal of bonds payable from a tax levy for the ensuing fiscal year are issued or are sold and are in the process of delivery, the budget commission shall reconsider and revise its action on the budget of the subdivision for whose benefit the tax is to be levied after the returns of such election are fully canvassed, or after the issuance or sale of such refunding bonds have been certified to it.”

If and when the Brady Township District is transferred to the West Unity District, as suggested, the Brady Township District will thereupon be dissolved and will cease to exist and the present existing territory

comprising the two districts will be included in one district—the West Unity Village District. It would then become necessary to spread tax levies to meet the needs of the entire territory over the then existing one district. Until such time, however, as the contemplated transfer is consummated, procedure looking to the levy of taxes for each of the two districts should be followed and if the contemplated transfer is completed prior to the actual levy of taxes in each of the two districts in accordance with Section 5625-25, General Code, the procedure followed to that time and then existent should be consolidated and adjusted by the proper authorities and made applicable to the one district, the West Unity District, which will then be the only one of the two districts in question having authority to make tax levies as prescribed by said Section 5625-25, supra, to cover the territory which formerly had been included in the Brady and West Unity Districts.

If the proposed transfer of territory is completed prior to October 1, 1943, or such later date as may be approved by the Department of Taxation of the State of Ohio for the making of tax levies within the then existing West Unity District as mentioned in Section 5625-25, supra, and proper adjustment made in tax budgets if necessary, it is then the duty of the taxing authority of the West Unity Village School District to authorize the tax levies for the entire district for the ensuing fiscal year, including the requirements necessary to meet the 1943 levies mentioned. The fact that under the terms of Section 5671, General Code, the lien for taxes for all purposes in each year shall attach to all real property subject to such taxes on the day preceding the second Monday of April annually does not preclude the making of the levies mentioned.

In the case of *State, ex rel. v. Roose*, 90 O. S., 345, it was held that while Section 5671, General Code, fixes the date in each year at which the lien for taxes attaches, it does not prevent levies being made later in the year, and put on the duplicate of the year.

A similar question to that involved in your inquiry was the subject of an opinion by the then Attorney General in 1928 where he held:

“Where proceedings for the annexation of territory to a municipal corporation are completed by the adoption of a resolution or ordinance accepting the application for such annexation, and its legal publication, tax levies thereafter authorized by the council of the municipal corporation to meet its annual budget under the provisions of 5625-25, General Code, and certified to the county auditor before the first day of October, should be extended for collection on all the taxable property in said municipal corporation including that in the territory annexed.”

After reaching this conclusion the Attorney General said:

“It may be proper to add that this conclusion is in no wise affected by the fact that the lien of the state taxes for all purposes attaches to all real property subject to taxes on the day preceding the second Monday of April.”

See Opinions of the Attorney General for 1928, page 1745.

The *Roose* case, *supra*, was an action in mandamus wherein it was sought to require the Auditor of Putnam County to place on the tax list and duplicate of the said county, the tax levied for state purposes by Section 1, of the Act of April 8, 1913 as amended April 16, 1913. Among other questions involved in the case was that of whether or not such a tax could be lawfully levied for the year 1913 after the second Monday of April, 1913. Upon allowance of a peremptory writ of mandamus as prayed for, Judge Donohue said with reference to the above question:

“It is further insisted on behalf of respondent that by reason of the provisions of Section 5671, General Code, this tax cannot be legally levied for the year 1913, because that section provides that ‘The lien of the state for taxes levied for all purposes, in each year, shall attach to all real property subject to such taxes on the day preceding the second Monday of April, annually.’ This same objection would apply with equal force to all tax levies for state and local purposes made after the date preceding the second Monday of April of each year. The fact is that practically all levies, especially those for local purposes, are made after this date. \* \* \* While Section 5671, General Code, fixes the date in each year that the lien of the state for taxes shall attach, yet it by no means follows that this requires that the tax levy shall be made on or before that date. In fact all the legislation upon that subject is in direct conflict with such construction. On the contrary, it is clear that the amount of taxes is to be determined subsequently, and the assessment then relates back to the date at which the taxes became a lien. This question is fully discussed and the correct conclusion reached in the case of *Loomis, Trustee, v. Von Phul et al.*, 2 N. P., N. S., 423.”

With respect to the question submitted, I am of the opinion that if the proposed transfer of territory is completed prior to October 1, 1943, or such later date as may be approved by the Department of Taxation of the State of Ohio for the making of tax levies in pursuance of Section 5625-25, General Code, it will thereupon be the duty of the Williams County Budget Commission and the Auditor of said county to adjust, if necessary, budgetary requirements so as to show the amount required from the general property tax in the tax year of 1943 in the West Unity School District as it will then exist, including amounts necessary to meet

the requirements of the outstanding bonds and special levies, and the duty of taxing officials to make necessary levies therefor and certify them to the county auditor, as provided by Section 5625-25, General Code, regardless of the fact that the time fixed by law when liens for real property taxes should attach was the second Monday of April, 1943.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.