

OPINION NO. 66-040**Syllabus:**

A school district to which another school district is to be transferred pursuant to Section 3311.231, Revised Code, may, subsequent to the election in the district to be transferred, approve said transfer, and prior to the effective date of said transfer, levy a tax outside the 10 mill limitation imposed by Section 2, Article XII, Ohio Constitution, and subsequent to the effective date of the transfer, levy said tax against the whole of the new taxing district.

To: Donald D. Simmons, Wood County Pros. Atty., Bowling Green, Ohio
By: William B. Saxbe, Attorney General, February 21, 1966

Your request for my opinion is as follows:

"The voters of School District 'A' approved the transfer of all of that district into School District 'B', pursuant to the provisions of Ohio Revised Code Section 311.231, sic (3311.231), in the general election held in November, 1965. The transfer will become effective July 1, 1966.

"Subsequent to the election, and, of course, prior to the effective date of the transfer, School District 'B' proposes to levy two taxes outside the 10 mill limita-

tion, one 3 mill permanent improvement levy for a five year period, and one 3 mill general operating levy for current expenses for a five year period, pursuant to Section 5705.21 Ohio Revised Code. These two additional levies will be placed before the voters of School District 'B' in May of 1966, prior to the date of transfer and, if passed, will take effect January 1, 1967.

"In the event one or both of these levies pass, may the increase be levied against the territory to be added in July (e.g. School District 'A') when said increase was not in existence at the time the voters of that school district voted to become a part of School District 'B'?"

Section 3311.231, Revised Code, provides in pertinent part:

"A county board of education may propose, by resolution adopted by majority vote of its full membership, or qualified electors of the area affected equal in number to not less than fifty-five per cent of the qualified electors voting at the last general election residing within that portion of a school district proposed to be transferred may propose, by petition, the transfer of a part or all of one or more local school districts within the county to an adjoining county school district or to an adjoining city or exempted village school district.

"A county board of education adopting a resolution proposing a transfer of school territory under this Section shall file a copy of such resolution together with an accurate map of the territory described in the resolution, with the board of education of each school district whose boundaries would be altered by such proposal. Where a transfer of territory is proposed by a county board of education under the provisions of this section the county board shall, at its next regular meeting that occurs not earlier than the thirtieth day after the adoption by the county board of the resolution proposing such transfer, adopt a resolution making the transfer as originally proposed unless, prior to the expiration of such thirty-day period, qualified electors residing in the area proposed to be transferred, equal in number to a majority of the qualified electors voting at the last

general election, file a petition of referendum against such transfer."

This office has been asked to render numerous opinions concerning the consolidation of school districts by county boards of education under Section 3311.26, Revised Code. Furthermore, the courts of Ohio have, on many occasions, rendered decisions construing Section 3311.26, supra. While Section 3311.231, supra, to which your request is directed concerns the transfer of a local school district territory to a city exempted village or adjoining county district rather than a consolidation of two or more districts, I am convinced that an examination of the opinions and cases relating to Section 3311.26, supra, will reveal logical conclusions that are of aid in answering your inquiry.

Section 3311.26, supra, was commented on in the case, Kellenberger v. Board of Education, 173 Ohio St., 201, which held that Section 2, Article XII, Ohio Constitution, was not violated where a levy was passed outside the tax limitation in one school district and was subsequently applied as to the whole of the consolidated district where one district was not included in the former district at the time of the vote, did not vote on said levy and was not part of the taxing district at the time of such vote. The Court cited with approval the case of Gigandet v. Brewer, County Treasurer, 134 Ohio St., 86, in which an analogous question was raised and it was stated at page 92 of the Gigandet case:

"The buildings and equipment of the two old districts, from which the new district was created, became the property of the new district, and the indebtedness of the old districts became that of the new. If constitutionally possible, since the residents of the new district were to obtain the benefits, equitably they should discharge the obligations which were incurred to create such benefits."

Under the provisions of Section 5705.01, Revised Code, part of the Uniform Tax Levy Law, every school district, except a county district, is declared to be a "subdivision" for the purpose of tax laws and that same section defines "taxing unit" as meaning "any subdivision or other governmental district having authority to levy taxes", and it is further provided that the board of education is the taxing authority for its district.

In Opinion No. 6354, page 185, Opinions of the Attorney General for 1956, my predecessor concluded that the taxing district created by consolidation of two former districts does not come into existence until the consolidation becomes effective. I concur in that conclusion and find it equally applicable to the situation before me. Therefore, school district A, as designated in your inquiry, is not any new part of the taxing district until the transfer becomes effective. Moreover, as I stated in Opinion No. 96, Opinions of the Attorney General for 1963, territory which is the subject of a transfer under Section 3311.231, supra, does not pass to or vest in the acquiring school district

for any purpose until the effective date of transfer. I am persuaded that since no taxing district will come into existence for any purpose until the effective date of the transfer, the district to which the transferred district will be attached is not prohibited from passing tax levies before the transfer becomes effective.

The cases Kellenberger v. Board of Education, supra, and Gigandet v. Brewer, supra, make it clear that such levies may be applied to the whole of the new taxing district. The benefits conferred by the levies outside the tax limitation will accrue to school district A, referred to in your request letter, subsequent to the effective date of the transfer. It would seem to be inequitable to require only the taxpayers of school district B to bear the tax burden, the benefits of which will accrue to those of the transferred district as well.

The electors of school district A have voiced their approval of the transfer by voting for it and, thereby, have agreed to accept not only the benefits but also the burdens of providing those benefits both as to those assumed in the past and those to be assumed after the vote.

It is, therefore, my opinion and you are hereby advised that a school district to which another school district is to be transferred pursuant to Section 3311.231, Revised Code, may, subsequent to the election in the district to be transferred, approve said transfer, and prior to the effective date of said transfer, levy a tax outside the 10 mill limitation imposed by Section 2, Article XII, Ohio Constitution, and subsequent to the effective date of the transfer, levy said tax against the whole of the new taxing district.