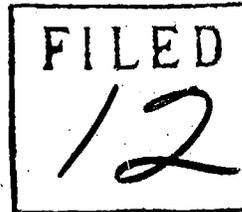


SCHOOLS: Property of school districts annexed to a
TAXATION: consolidated district subject to taxation
to discharge pre-existing bonded indebted-
ness of consolidated district.

April 27, 1950

Honorable William F. Brown
Prosecuting Attorney
Pettis County
Sedalia, Missouri



Dear Sir:

Your letter at hand requesting an opinion of this department, which reads as follows:

"Several years ago the Green Ridge Consolidated School District No. 4 passed a bond issue.

"Since that time, under the new provision for consolidation, several adjoining districts were added by consolidation. Residents and taxpayers of these added districts are somewhat concerned over the possibility of additional taxes being levied to pay off the bonded indebtedness of the original consolidated school district.

"Will your office please give this office an opinion as to whether or not the residents and taxpayers of the added districts become liable for the bond indebtedness of the original consolidated school district."

A similar situation exists in connection with consolidated school districts in the matter of holding a consolidated school district liable for the indebtedness previously incurred by component school districts which are included in and become a part of a consolidated district. The courts of this state have held that a consolidated district is liable for the previously

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incurred debts, including bonded indebtedness of its component districts. In State ex rel. School District v. Smith, 343 Mo. 288, 121 S.W. (2d) 160, the court was considering the question of liability of a consolidated school district for the previously incurred bonded indebtedness of its component districts. In ruling on the question the court said at S.W. 1.c. 163:

" * * * Upon consolidation the identities of the component districts fade and disappear completely and in their stead emerges a new entity in the form of the consolidated district. This new entity spontaneously becomes the owner of the properties and liable for the old debts. The fact that some persons and some property embraced in the limits of the consolidated district are required to pay more taxes than they would have had to pay had the districts not been consolidated cannot be considered a constitutional factor in preventing the consolidation of the districts in view of the power of the legislature to do so. It is no constitutional objection, says Dillon, 'that the property brought within the corporate limits (by annexation) will be subject to taxation to discharge a pre-existing municipal indebtedness since this is a matter which, in the absence of such constitutional restriction, belongs wholly to the legislature to determine.' 1 Dillon on Municipal Corporations, 5th Ed. Sec. 355."

Other Missouri cases in accord with the above case are: Boswell v. Consolidated School Dist., 10 S.W. (2d) 665; Thompson v. Abbott, 61 Mo. 176; Abler v. School Dist., 141 Mo. App. 189, 124 S.W. 564.

We might further point out that Section 10498, R.S. Mo. 1939, provides that all bonds outstanding against the component school districts shall become debts against the consolidated districts. However, there are no statutes pertaining to the property brought within a school district by annexation or consolidation being subject to taxation to discharge pre-existing indebtedness of the subsisting district. We must, therefore, look to the common-law rule.

Regarding municipal corporations, the rule is stated as follows in Volume 43 C.J., Section 122, page 143:

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"Debts of a municipality contracted before an annexation of territory become a burden upon the added territory as well as upon the original territory, in the absence of statutory provision to the contrary. * * *"

And, regarding school districts, the following appears in Volume 56 C. J., Section 856, page 732:

"Property in territory annexed is liable to assessment for the payment of bonds and liabilities of the annexing district existing previous to the annexation, and no express statutory provision is necessary to impose such liability."

The question you have presented was directly ruled on in *Adriaansen v. Board of Education*, 222 App. Div. 320, 226 N.Y.S. 145. In deciding the question the court said at N.Y.S. l.c. 149, 150:

"The law applicable to such a situation, as stated in many authorities, is that property in the territory annexed is liable to assessment for the payment of bonds and liabilities of the municipal corporation or district to which the territory is annexed. The authority of the Legislature over the boundaries of subdivisions of the state is absolute. It may consolidate, add to, or take from the territory of a municipality or district, without the consent of the municipality or district affected. By such action the rights of individuals in the territory affected are not violated. The fact that persons and property in the territory annexed may be subject to taxation to pay bonds and obligations theretofore voted, without their having had any voice or vote in creating the liability, does not render the act of annexation void. There is no contract between citizens of a particular municipality and the corporation that the property within the particular territory shall not be taxed for the benefit

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of another municipal corporation or district to which it may be annexed, even though the tax is assessed to raise money to pay bonds or obligations voted and incurred by the municipality or district before the annexation. * * *"

We might further point out that in the above case there was a statute similar to Section 10498, supra, imposing liability on the subsisting or enlarged district for the bonded indebtedness of the component districts, but there was no statute relating to the liability of annexed districts for pre-existing bonded indebtedness of the subsisting district. The court, in making its decision, said that the common-law rule prevailed.

It would further seem that the component districts of a consolidated district or school districts annexed to a consolidated school district which derived benefit by virtue of becoming a part of said consolidated district, and which may derive benefit from facilities for which said bond indebtedness was incurred, should be liable in discharging said indebtedness.

CONCLUSION.

In view of the foregoing, it is the opinion of this department that property within the school districts added or annexed to a consolidated district would be liable to assessment and subject to taxation for the payment of bonded indebtedness previously incurred by the consolidated district.

Respectfully submitted,

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APPROVED:

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RFT:ml