

SCHOOLS: When two school districts are annexed, the subsisting school district is entitled to all moneys belonging to the annexed school districts.

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May 23, 1947

Honorable Walter S. Alexander  
Member, Missouri House of Representatives  
64th General Assembly  
Ashton, Missouri

Dear Sir:

This will acknowledge receipt of your request for an official opinion, which reads:

"I would like an opinion from your office on the proper way to transfer school funds where two school districts are annexed.

"I have two schools in my county that annexed last school election. The county Treasurer is not sure on the proper method of transferring this money, therefore would like your opinion on it."

Your request does not state the particular kind of schools or districts to be annexed. However, we think this not important.

Under Section 10450, R.S. Mo. 1939, it requires all funds belonging to the various school districts composing the enlarged district, upon becoming a part of said enlarged district, to immediately transfer all money in their custody to the treasurer of the enlarged district. Said section reads:

"The terms of office of all school officers of the various school districts comprising the territory incorporated in such enlarged school districts shall cease upon the adoption of the provisions hereof and the organization of the board of directors, and such officers shall deliver to the board of directors of the

enlarged school district all books and papers belonging to such component districts. All funds in the hands of the county or township treasurer to the credit of the various districts composing such enlarged district, shall be immediately transferred to the treasurer of such enlarged district. If any former six-director district shall be merged in any enlarged district, as provided herein, the treasurer of such former six-director district shall immediately turn over to the treasurer of such enlarged district, all funds belonging to such former six-director district, and shall make settlement therefor as provided by section 10480: Provided, that the directors of such enlarged district shall fully perform all existing contracts and legal obligations of the component districts."

Under Section 10498, R.S. Mo. 1939, it further provides that whenever any consolidated district is organized that on June 30th following said organization all money of said district shall be turned over to the board of directors of said consolidated district, and reads:

"Whenever any consolidated district is organized under the provisions of this article, the original districts shall continue until June 30th, following the organization of said consolidated district, and at that time all the property, money on hand, books and papers of the school districts whose schoolhouse sites are included within said consolidated district shall by the officers of aforesaid districts be turned over to the board of directors of the consolidated district, and also all bonds outstanding against the aforesaid districts shall become debts against the consolidated district. The division of property and

money on hand in case school districts are divided by the formation of any consolidated district shall be governed by sections 10413 and 10414."

Section 10484, R. S. Mo. 1939, further provides that whenever any entire school district or part of said district adjoining any city, town or village school district desires to be attached thereto, upon a majority voting for said annexation, if the entire district is annexed, then all of the money and property immediately passes into the possession of the board of said city or town school district, as the case may be, and reads:

"Whenever an entire school district, or a part of a district adjoining any city, town or village school district, desires to be attached thereto for school purposes, upon the reception of a petition setting forth such fact and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting for said purpose by giving notice as required by section 10418. Should a majority of the votes cast favor such annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said city, town or village school district; whereupon the board of such city, town or village district shall meet to consider the advisability of receiving such territory, and should a majority of all the members of said board favor such annexation, the boundary lines of such city or town school district shall from that date be changed so as to include said territory, and said board shall immediately notify the clerk of said district which has been annexed, in whole or in part, of its action. In case an entire district is thus annexed, all property and money on hand thereto belonging shall immediately pass into the possession of the board of said city or town school district; but should only a part of a district be annexed thereto, said part shall relinquish all claim and title to any part of the school property and money on hand belonging to said original district, and that portion of the district remaining must contain within its limits thirty

children and thirty thousand dollars assessed valuation, or thirty children and nine square miles of territory. The voting at said special school meeting shall be by ballot, as provided for in section 10467, and the ballots shall be 'for annexation' and 'against annexation,' when the whole district is to be annexed, but if only a part is to be annexed, the ballots shall read 'for release' and 'against release.'"

The Supreme Court en banc, in *State v. Smith*, 121 S.W. (2d) 160, held that when a school district is annexed or merged in another school district, the subsisting school district is entitled to all the property and is likewise answerable for all liabilities in said districts. In so holding, the court said at l.c. 162 and 163:

"It has also been held to be the general rule in this state that in the absence of constitutional or statutory provisions to the contrary where one corporation goes entirely out of existence by being annexed to or merged in another corporation, then the subsisting corporation will be entitled to all the property and will be answerable for all the liabilities. When the benefits are taken, then the burdens are assumed. This general rule was applied to school districts in the case of *Thompson v. Abbott*, 61 Mo. 176, which case was cited with approval in *Mt. Pleasant v. Beckwith*, 100 U.S. 514, 25 L.Ed. 699, where it is stated that as extinguished municipal corporations have no power to levy taxes to pay debts, the town to which the territory and property of the annulled municipality was annexed should become liable for its outstanding indebtedness. The rule has been repeatedly approved in *Hughes v. School District*, 72

Mo. 643; Wilson v. Drainage District, 257 Mo. 266, 165 S.W. 734; Id., 237 Mo. 39, 139 S.W. 136; Abler v. School District, 141 Mo. App. 189, 124 S.W. 564; Gray v. School District, 224 Mo. App. 905, 28 S.W. 2d 683; Boswell v. Consolidated School District, Mo. App., 10 S.W. 2d 665; 43 C.J., Municipal Corporations, p. 143, Sections 122 and 123; 19 R.C.L. 732.

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"The question is: Was the consolidated school district, by assuming the debts of the component districts, 'allowed to become indebted' within the purview of the constitution and thereby subject to its restrictions? As stated above, it is admitted that the various debts of the various districts (the entire bonded amount sought to be refunded) when first incurred were created by the vote of the people in strict accordance with the provisions of the constitution. Upon the consolidation of these districts, the total debt by the terms of the statute became a charge against the consolidated district. It is important to note that the consolidated district merely assumed the debt; it did not create it. Furthermore, it did not become indebted by virtue of any act of its agencies, but succeeded to an old debt by virtue alone of the statute and the voters who chose to consolidate the districts. It was in fact born in debt. 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. \*\*\*\*\*"

We have hereinabove referred to three forms of annexation of various kinds of school districts, one of which we feel sure must apply in this instance.

CONCLUSION

Therefore, in view of the foregoing decision and statutes, it is the opinion of this department that when two school districts under any of the foregoing statutes are annexed, the county treasurer, or whoever has custody of money belonging to said districts being annexed, shall transfer said money to the treasurer, board of directors, or board of said city or town school district, as the case may be, of the new district and obtain a receipt for same. As far as we know, there is no particular formality to follow in transferring said funds.

Respectfully submitted,

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APPROVED:

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J. E. TAYLOR  
Attorney General

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