SCHOOLS: Three questions regarding extension of city or town school district by extension of city or town limits.

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Mr. Joseph N. Brown
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Dear Sir:

We have your letter of recent date, in which you submit the following for our opinion:

> "Can a rural school district form a consolidated district within itself, or is it necessary that a consolidated district be formed from more than one district? The district in question is Oak Grove district #90 which adjoins the Springfield City limits.
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> "The Oak Grove district has a valuation $961,000 and contains almost eight square miles of territory. Its present enrollment is 242 students. Another question is: If a consolidated district is organized, could the City of Springfield extend its boundary to take in any part of the district so formed? And if the City did extend its boundary so as to take in part of the consolidated district, would the City have to assume any part of the bonded indebtedness?"

Three questions are presented by your request. The first one is whether a common school district can be organized into a consolidated school district. The second question is whether or not, if a city extends its limits so as to include a part of a consolidated district adjoining said

city, the city school district is automatically extended to include such portion of the consolidated district. The third question is, if the city school district is extended in the manner last indicated, does the city school district become liable for any of the bonded indebtedness of the consolidated district.

At first blush, one would think that for a district to be a "consolidated district," it would have to be one which is made up or composed of other districts, or parts of districts, since the word "consolidated" is often used to mean "merged" or "united." However, the word "consolidated" also means "made solid or compact--solidified" (Webster's New International Dictionary). Furthermore, "consolidated school districts" are defined by Section 10323, R. S. Mo. 1939, as follows: "All districts outside of incorporated cities, towns and villages, which are governed by six directors."

There is nothing, therefore, in the meaning of the word "consolidated," as that word is used in ordinary language, or as it is used in the statutes relating to school districts, which would limit the term "consolidated district" to a district made up or composed of other districts, or parts of districts. Under the school laws, a consolidated district is simply a district outside of an incorporated city, town or village, which is governed by six directors.

We now turn to the Statutes to see how such a district can be formed. If Oak Grove common school district can be organized into a consolidated district, it is by virtue of Section 10493, R. S. Mo. 1939, since other statutes providing for consolidated districts manifestly do not apply to the situation you present by your inquiry. Said Section 10493 reads as follows:

> "The qualified voters of any community in Missouri may organize a consolidated school district for the purpose of maintaining both elementary schools and high school as hereafter provided. When such new district is formed it shall be known as consolidated district No. _____of

> _____ county, and all the laws applicable to the organization and government of town and city school districts as provided in article 5, chapter 72, R. S. 1939, shall be applicable to districts organized under the provisions of sections 10493 to 10500, inclusive."

It will be noted that by said section the qualified voters of "any community" may organize a consolidated district. In the case of State ex inf. v. Scott, 304 Mo. 664, 264 S. W. 369, the Supreme Court quoted with approval the following definition of the word "community," as used in the foregoing statute:

> "'The word community in this act is not employed in any technical or strictly legal sense, but is a sort of synonym of "neighborhood" or "vicinity" (Berkson v. Railroad, 144 Mo. loc. cit. 220, 221, 45 S. W. 1119), or may be said to mean the people who reside in a locality in more or less proximity (Keech v. Joplin, 157 Cal. loc. cit. 11, 106 Pac. 222. So defined, a community may include several districts and parts of districts. There is no requirement that the petitioners shall reside here or there in the community. That they are resident citizens of it is enough.'"

The people of a common school district clearly live in the same neighborhood, or vicinity, or locality in more or less proximity, and, therefore, constitute a community. In view of the language of Section 10493, supra, and of the definition of the word "community" by the Supreme Court, we think that a common school district can be organized into a consolidated district, provided it meets other requirements of the statutes.

Section 10494 requires the proposed consolidated district to contain an area of fifty square miles or have an enumeration of at least two hundred children of school age.

The Supreme Court has construed Section 10494 to mean that if the proposed district either has at least two hundred children of school age or has fifty square miles of territory, it meets the requirements of this section, and that such proposed district does not have to have both the required number of children and the required territory. (State ex inf. v. Lamar, 316 Mo. 720, 291 S. W. 457; State ex inf. v. Meeker, 317 Mo. 719, 296 S. W. 411.) Oak Grove district has more than two hundred children of school age and hence meets the requirements of Section 10494. We understand that it is proposed to incorporate the whole district into a consolidated district. If only a part of such district is incorporated, then Section 10497 would have to be taken into account.

Our conclusion is that a common school district which has an enumeration of at least two hundred children of school age, or has fifty square miles of territory, can be organized into a consolidated school district.

Turning to your second question, we find that Section 10466, R. S. Mo. 1939, provides, in part, as follows:

> " * * * and every extension that has heretofore been made, or that hereafter may be made, of the limits of any city, town or village that is now or may be hereafter organized under the laws of this state, shall have the effect to extend the limits of such town or city school district to the same extent, and such extension of the limits of any city or town school district shall take effect on the first day of July next following the extension of the limits of such city, town or village: * * * "

By the foregoing statute, the extension of the city limits automatically extends the limits of the city or town school district correspondingly. (Section 10486 implies such automatic extension.) No exception is made as to the type of district outside such city which might be affected, and, therefore, if the extension of the city limits reached into a consolidated district, such part of that district as was

included in the extension would automatically become a part of the city school district as of July 1st next following such extension.

With the question of whether the city district would become liable for the bonded indebtedness, or any part thereof, of the consolidated district of which it had absorbed a part, we have had some difficulty. If the city limits were extended to include the whole consolidated district, the answer would be easy. In State ex rel. v. Smith, 121 S. W. (2d) 160, 162, the Supreme Court said:

> "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 annuled municipality was annexed should become liable for its outstanding indebtedness. * * * "

However, in the case you submit, it is clear that it is not contemplated that the whole Oak Grove consolidated district (when incorporated) will be included in the extension of the city limits of Springfield, but that only a part of such Oak Grove district will be absorbed by the city district. It may well be that the Oak Grove consolidated district will be left as a district, but with a part of its territory gone. Therefore, we do not think the rule announced in State ex rel. v. Smith, supra, would apply.

Likewise, the Act found at page 545, Laws of 1941, would not cover the situation you submit, because that Act authorizes the consolidation of a city district and a consolidated district, thereby resulting in a new consolidated district of the two. The case you submit is not the formation of a new consolidated district out of the Springfield city district and the Oak Grove district, and hence that statute does not help in the solution of your question.

So, also, Section 10498, R. S. Mo. 1939, provides that when a consolidated district is organized, the bonded indebtedness of the component districts shall become the obligation of the consolidated district. This section would not apply to the situation you present, since there would be no consolidated district created by the extension of the city limits of Springfield, but the district which would result thereby would still be the district of the city of Springfield.

It is a settled principle of law that the Legislature can control the disposition of and liability for indebtedness of municipal corporations upon their dissolution, merger, division, etc. (43 C. J., p. 143, Sec. 123; State ex rel. v. Smith, supra.) As pointed out above, the Legislature has made provision for many situations, but for the situation you present the Legislature has made no such provision that we are able to find.

The case of Hughes v. School District, 72 Mo. 643, presented the converse of the situation presented by your inquiry. In that case a district which had become liable for an indebtedness was broken up by operation of law into other school districts. The court held that the other school districts were each liable for the whole debt of the former district. In discussing that situation, the court said:

> " * * * So, also, where in consequence of the operation of law, a county is divided, and, as the result of such division, an ordinary township is bisected by the new county line, neither section of the township stands absolved from its debts, nor from the legal effect of a judgment previ-

> ously rendered against the whole township, each section remaining liable for the whole debt, but possessing the right of contribution in case of payment. And so it was ruled in Plunkett's Creek Township v. Crawford, 27 Pa. St. 107. The same principle which dominates in the class of cases just mentioned should dominate in this one, and as no provision was made by law for the liabilities already incurred by township 64, prior to its dissolution, it must needs follow that each fractional portion of the defunct township, represented by the various school districts into which that township has been divided, stands liable in solido for the whole debt, but when such fractional portion or school district settles the debt, recourse over against the other fractional portions will be allowed it for whatever amount it may have paid above its own proper amount of the debt."

As we interpret the above decision, the court held that where a municipal corporation is subdivided into other municipal corporations, each of the other corporations becomes liable for all of the indebtedness of the current corporation. This is not exactly the situation you present either, because, in your situation, only a portion of one municipal corporation is taken away from it and added to another corporation. The portion taken away from one district, in the situation you present, does not become a municipal corporation in and of itself, and hence the rule announced in the Hughes case, supra, would not apply.

In the case of School District v. School District, 340 Mo. 795, 102 S. W. (2d) 909, the Supreme Court was considering a case where there was a dispute as to the title to land which had been in one district and thereafter absorbed into a city district by reason of the extension of the city limits of the city of Joplin. The court held that the extension of the city limits of Joplin automatically extended the limits of the Joplin school district and that the territory of the adjoining district so absorbed became a part of the city

district. The court then pointed out that the law had provided that the rest of the adjoining district could become a part of the city district, under the statutes, and then added:

> "In such event, it appears that plaintiff's obligations would become defendant's obligations. * * * "

By inference, the court, in the foregoing language, was saying that the city district would not be liable for the debts of the adjoining district unless it absorbed all of the territory of the latter district.

We believe Section 10486, R. S. Mo. 1939, was designed to prevent a situation arising where, by the extension of the city limits of a city, an adjoining school district would be placed in a position where its bonded indebtedness would become a burden to it, or where it would be unfair to allow the city district to obtain a portion of the territory of the adjoining district without assuming the obligations of the adjoining district. By said statute, the portion of the district remaining, if it was affected as set out in the provisos of said statute, could force the city district to incorporate it into the city district also; and in such situation, under the rule announced in State ex rel. v. Smith, 121 S. W. (2d) 1060, supra, the city district would become liable for all of the indebtedness of the adjoining district.

CONCLUSION

It is, therefore, the opinion of this office that (1) a common school district may be organized into a consolidated school district, provided it has either fifty square miles of territory or has an enumeration of at least two hundred children of school age; (2) that if the limits of a city or town are extended so as to reach into the territory of an adjoining consolidated district, the limits of the city or town school district are automatically extended so as to

be the same as the city limits as extended; and (3) that in the event the limits of a city or town district are thus extended, the city or town district does not become liable for the obligations of the district of whose territory it has absorbed only a part.

Respectfully submitted

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APPROVED:

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