

## Opinion No. 16-1818

June 8, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. A. B. Stroup, Albuquerque, New Mexico.

**Relative to liability of territory annexed to a city for school purposes for the indebtedness of the district from which it has been taken.**

### OPINION

{\*380} I have had on my desk for more than three weeks your letter addressed to Mr. White and myself, on the subject of the meaning of Section 4877 of the Codification, but the matters which you present involve questions not easy to answer, and this must account for my delay in responding to you. You ask whether, when territory is annexed to an incorporated city or town for school purposes, such annexation relieves the territory annexed of liability for the indebtedness of the school district from which it has been taken, and if so, whether such annexed territory loses its interest in the assets of the original school district. In this connection you ask further, if the annexed territory is not so relieved, what is the use of the provision in Section 4840 that the territory of a school district shall not be reduced so as to make its bonded indebtedness exceed four per cent of the assessed valuation, but it seems that you are not certain that Section 4840 has any application as you ask, in addition, whether it does apply to the annexation of territory to incorporated cities and towns. You also call attention to the recent decision of the Supreme Court of the State, in case No. 1849, which was the case of the Board of Education of the City of Albuquerque against School District Number Five of the County of Bernalillo.

As a general rule it may be said that where a school district, or a town, or other municipality, is divided, or a part of its territory taken away and annexed to some other jurisdiction, in the absence of any statutory or constitutional provision on the subject, the whole district or sub-division which is left, succeeds to all of the property, and is held for all of the liabilities of the district as they existed before the change was made. This is quite clearly set out in Dillon on Municipal Corporations, beginning with Section 356 in the fifth edition, but I am not clear that this general rule can be made applicable to the conditions which exist as to school district No. 5 in Bernalillo County, when considered in the light of the recent decision of the Supreme Court.

As I understand the facts, from the opinion of the Court and from what you told me, it seems that within the boundaries of school district No. 5, as it existed in 1901, there was a tract of land not held in private ownership the title to which, by the Act of Congress {\*381} of February 18, 1901, which is published as Chapter 380 in volume 31 of the Statutes at Large, was "vested in the city of Albuquerque in trust for the use and benefit of the public schools" in said district. It seems that district No. 5 has been

changed more than once as to its limits and boundaries since 1901, and under Section 4840 there ought to have been, at the time of each of those changes, an apportionment of the debts and resources between the old district and any new one which was created. Whether the provisions of that section could be extended to a division of the land above referred to, which has remained, as I understand, until 1911 within the limits of district No. 5, does not seem clear. In 1911 a portion of district No. 5, including the land above mentioned, was, under Section 4877, annexed to the city of Albuquerque for school purposes.

The Supreme Court has distinctly stated that under the language of the Act of Congress the trust created, with the city of Albuquerque as trustee as to any such lands, must be for the benefit of the public schools within the school district where the land is situated as it was organized at the time the congressional grant was made, and not for the schools in that district or any other district in which the land might be placed in consequence of changes of the district, but the Court does not decide the matters as to which you have written me. It will be seen from a reading of the last paragraph of the opinion that the Court carefully avoided any decision of those matters, and I quote that paragraph as follows:

"Appellee suggested, upon oral argument, that the original School District No. 5, as it existed in 1891, when the Congressional grant was made had been subdivided into three or four new districts, as well as portions of the district incorporated into other districts, in like manner as certain of its territory was added to the Albuquerque School District. That the schools within that portion of the original district, now numbered 5, are not equitably entitled to the land or its proceeds. On the other hand, appellant argues that where new districts were created out of portions of original district number 5, presumably an equitable division of the assets, debts and liabilities were made, and that the land in question was awarded to the district wherein it was located. These questions, however, are not involved in the present case, but are subject to determination by a court of equity, upon proper application. We are not required, in this case, to determine whether School District No. 5 or rather the public schools within such district, are the sole beneficiaries of the trust, or whether the Board of Education of the City of Albuquerque is entitled to an equitable interest in such land, or its proceeds. The only question here presented is whether such city school board is the sole beneficiary of the trust, and this question must be answered in the negative."

Notwithstanding the implication of serious doubt which the above quoted language of the Supreme Court carries with it, yet it is clear that the court is of opinion that the beneficiaries of the trust created by the Act of Congress are the public schools of the {382} school district No. 5 as it existed in 1901, and it says that otherwise "the equitable title to the land, or the fund derived therefrom, might be passed back and forth from school district to school district like a shuttlecock." Keeping this in mind, and taking as a basis the opinion of the Supreme Court, as a whole, my conclusion is that no changes in school district No. 5, after the passage of the Act of Congress in 1901, whether by way of division or annexation of parts of its territory to other districts or to the city for school purposes, can be allowed to have the effect of making any change in the

beneficiaries of the trust, and that those beneficiaries are the schools of District No. 5 as it existed in 1901, or, in other words, the schools of the territory then embraced in that district, and that each part of that district is entitled to its proportionate share of the benefit of the trust estate. That would naturally embrace that portion of the district annexed to the city for school purposes, and in order that that portion should have its fair share, the Board of Education, which furnishes schools for the annexed territory, would be entitled to some interest in the land, or in the income derived therefrom.

There may be some practical difficulties in the administration of the tract of land in question so that each part of the original district No. 5 shall have its fair share of the benefit to be derived from the land, but those are matters, as the Supreme Court has said, which will be "subject to determination by a court of equity, upon proper application."

I do not believe that the provisions of Section 4840 have any application whatever to the annexation of territory to incorporated cities and towns for school purposes, which is provided for in Section 4877. I can discover no connection between the two sections.

As to the question whether the annexation of territory to a city or town for school purposes, relieves the territory annexed from liability for the indebtedness of the school district from which it has been taken, the answer may be found in the general rule to which I have already referred as being set out in Dillon on Municipal Corporations, and in accordance with that rule, the district from which the territory has been taken will remain liable for all indebtedness and the annexed territory would go free therefrom. If this were not so, we would have the extraordinary result of the property in the annexed territory being taxed for the indebtedness of the school district, and also for the support of the city schools. The legislature has made no provision for any apportionment of debts and resources in the case of such annexation, as it has done in the case of the change of school districts, in Section 4840. It follows, by the application of the same rule, that the annexed territory must lose its interest in the resources of the original school district, except so far, in the present case, as it retains an interest in the trust estate created by the Act of Congress.