

Opinion No. 22-3477

June 9, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Ralph G. Roberson, Clerk County Board of Education, Estancia, New Mexico.

Levy of Tax Upon Consolidated School District for Payment Bonds of Original District.

OPINION

{*159} In reply to your letter of the 6th instant, asking if area added to a bonded school district is subject to tax assessment for the payment of interest and to create a sinking fund to cover the payment of such bonded indebtedness in the original district, I wish to advise:

The general rule is that where boundaries of school districts are changed in the absence of a statutory provision for the division of the property and the apportionment of debts, the property is {*160} left where it is found and the debt remains upon the original debtor. 24 R.C.L. page 566, Sec. 10.

In 35 Cyc. page 1036, the rule is thus stated:

"Where the taxation is for a bonded school indebtedness the right to tax extends to real estate which was taxable as such at the time the indebtedness was contracted, although it is subsequently transferred to another district by division, and does not extend to real estate that was not taxable at that time."

In the absence of some statutory provision therefor, transferring bonded indebtedness to the territory added to the original district, the general rule as above stated would prevail.

Section 7, Chapter 105, Laws 1917, provides, among other things that:

"After paying all indebtedness of the old district that is chargeable to the common school fund, if any balance remains, the County Board of Education shall credit the said balance between the old and the new district in proportion to the number of children of school age in each. All other resources such as school houses, proceeds from sale of bonds, and all other similar indebtedness shall be divided between the old and the new districts in proportion to the taxable property according to the assessed value in each."

It is possible that there was an intent of the legislature as expressed in the latter clause above quoted, to transfer to the additional territory joined to the old district a part of the

indebtedness, but the language is so uncertain that it is almost impossible to determine definitely that such was the intent of the legislature.

Even though such had been the purpose of the legislature, there is a grave doubt raised as to whether the additional territory can be impressed with the bonded indebtedness of the original district so as to require the levy of a tax to assist in the payment of such indebtedness.

The Constitution, Section 11, Article IX, provides that no school district shall create an indebtedness except for certain purposes, and in such cases only, when the proposition to create the debt shall have been submitted to the qualified electors of the district and approved by a majority of those voting thereon.

Persons residing in the territory added to the new district have never had an opportunity to vote upon the creation of this indebtedness, and since a change in the boundaries is made without their consent, it is probable that this section of the Constitution would prevent the levy of a tax to pay any part of the bonded indebtedness of the original district.

For the foregoing reasons, I am inclined to believe that the newly acquired territory should not be taxed for the bonded indebtedness of the original district.