

**School Districts—Formation of New From Part of an Old—Apportionment of Indebtedness Represented by Warrants.**

Upon the division of a school district the indebtedness represented by outstanding warrants should be divided on the basis of the assessed valuation between the two portions of the old district.

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My dear Mr. Maris:

You have submitted to this office the question of how the indebtedness represented by outstanding warrants should be divided on division of a school district.

You refer to Subdivision 4 of Section 405 of Chapter 196, Laws of 1919, which provides:

"If, at the time such new district is created, there is any indebtedness against such old school district, then the county superintendent of the county in which such districts are located shall apportion such indebtedness between said districts, by first deducting from said indebtedness the amount of all moneys in the treasury belonging to the sinking fund of said old district, and then apportioning the remainder of the indebtedness between the respective districts in proportion to the value of the school property (remaining in the old district to the value of the school property) in the new district."

This section was intended to refer to bonded indebtedness created for building purposes and to provide that that portion of the district retaining the buildings and property should assume the indebtedness, or to provide that where either portion of the district retains buildings or property, it should assume the indebtedness in proportion to the value of the property retained by it. This is a fair and just distribution for the reason that the district retaining the property has the use and enjoyment of that which the indebtedness created. However, where a district has issued warrants in anticipation of taxes levied for current expenses, such indebtedness has no relation whatever to school property.

It has been expended for teachers' salaries and necessary upkeep and expenses of conducting school. That portion of the district cut off has received its proportion of the benefit of school the same as the other.

Warrants issued prior to the enactment of Chapter 97 of the Laws of 1921 were only authorized to be issued in excess of funds when a levy had been made, and only in such cases for current expenses of

schools, and in no case in excess of taxes levied. As no district can be created between the 1st day of June and the 1st day of September (See Sec. 403, Chap. 76, Laws of 1913), warrants issued before June 1st would be issued prior to levy, and would be, except for the provisions of Chapter 97 of the Laws of 1921, issued without authority of law. In dividing a district, after taxes have been levied, the new district must get its proportion of the levy from the old district. Subdivision 3 of Section 405 of Chap. 196 of the Laws of 1919 provides for the division of funds in the following manner: When a new district is formed from one or more old ones, the school funds remaining to the credit of the old district shall be divided, *after providing for all outstanding debts, except debts incurred for building and furnishing schoolhouses, on the basis of the school population.*

Manifestly it was the intention of the Legislature by this provision to compel a new district to discharge its portion of indebtedness represented by outstanding warrants, for legally warrants cannot be drawn beyond the amount levied, except as provided in Chapter 97, *supra*, and must be paid out of the fund collected from taxes before the new district can receive part of such taxes.

I am, therefore, of the opinion that the Legislature did not intend that warrants should be included as a portion of the indebtedness authorized to be divided on a basis of the valuation of school property under the provisions of Subdivision 4 of Section 405, but it was the intention of the Legislature that such warrants should be paid from taxes levied on the whole district, and where warrants have been issued in excess of taxes levied and available revenues, this form of indebtedness should be divided on the basis of the assessed valuation between the two portions of the old district, as it is the basis on which it would have been paid if within the provisions of the Act in force at the time provision was made for division of the indebtedness and distribution of the funds.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.