

Opinion No. 91**Schools — School Districts — Abandonment—Indebtedness—Bonds—Taxes.**

HELD: Where school districts are abandoned without action by legal voters or taxpayers of the abandoned district, and the territory abandoned is annexed to another district on the order of the Superintendent, or otherwise, taxes may not be levied against the property of the abandoned district to pay outstanding bonded indebtedness of the district to which the territory of the abandoned district is annexed.

February 27, 1933.

You have requested my opinion on the following question: "If School District 59 is abandoned and the territory comprised in such district is annexed to District 6, does the property of the abandoned District 59 become proportionately liable for outstanding bonded indebtedness of the district to which it is annexed?"

There is a distinction made in the decisions between voluntary and involuntary abandonment of school districts as to the liability of such districts for outstanding bonded indebtedness. Some of the decisions come from states that have specific statutes on the subject but the general rule as given below is followed in most of such states.

If school districts are consolidated or abandoned by act of the legislature or by petition of the legal residents of such districts, the rule generally applies that in consolidated districts, un-

less otherwise provided, the consolidated district takes all the property and assumes all the obligations of the districts comprising the consolidated district. In the various decisions there is an inclination to vary this rule if the security of bondholders of any district comprised in the consolidated district is adversely affected.

St. Louis & S. F. Ry. Co. v. County Excise Board, 286 Pac. 345 (Okla.); School District No. 60 v. Crabtree, 294 Pac. 171 (Okla.); Wilson v. School District, 207 N. W. 810 (Mich.); Boise City National Bank v. Ind. School No. 40, 189 Pac. 47 (Ida.); State ex rel. Tuhey, 128 N. E. 689 (Ind.); Walker v. Bennett, 118 S. E. 779 (S. C.); Town of Mt. Pleasant v. Beckwith, 100 U. S. 514; 25 L. Ed. 699, (S. C.); Abler v. School District, 124 S. W. 564 (Mo.); People v. Bartlett, 136 N. E. 654 (Ill.); Board v. Board, 105 Atl. 452 (N. J.); Ewing v. Schopf, 11 Ohio App. 370.

Where districts are abandoned without any action on the part of legal voters or taxpayers of the abandoned district and the territory abandoned is annexed to another district on the order of the Superintendent, or otherwise, it is the rule that taxes may not be levied against property of the abandoned district to pay outstanding bonded indebtedness of the district to which the territory of the abandoned district is annexed. School District v. School District, 204 N. W. 737 (Mich.); Mistler v. Eye, 231 Pac. 1045 (Okla.); Board v. Board, 248 Ill. App. 371.

This rule, we think, is based on sound policy and would govern in your case, and our conclusion is that taxes may not be levied against the property of School District No. 59 to discharge the outstanding bonded indebtedness of School District No. 6.