

No. 308

SCHOOL DISTRICTS—CONSOLIDATED SCHOOL DISTRICTS—ANNEXED SCHOOL DISTRICTS—CONTRACTS—TRANSPORTATION

Held: Where one school district is consolidated with or annexed to another school district, all school property of the annexed district becomes vested in the consolidated district. Likewise all the contractual obligations of the annexed school district under operation of law becomes the liability of the consolidated district and payable by the consolidated district.

December 6, 1941.

Mr. Nat Allen
County Attorney
Golden Valley County
Ryegate, Montana

Dear Mr. Allen:

You have submitted the following question:

"District 46M contracted with 'X' to pay transportation in lieu of school or bus in the amount of \$18.00 per month at the beginning of this school year.

"Last month, under Section 1034, they consolidated with district 41M by proper vote.

"The question is—Must 41M comply with the obligations of the contract entered into by 46M in regard to this transportation?"

The statutory authority for consolidation of school districts is provided in Section 1034, Revised Codes of Montana, 1935, the pertinent parts of which are as follows:

"Two or more school districts may be consolidated, either by the formation of a new district, or by the annexation of one or more districts to an existing district, as hereinafter provided." (Emphasis mine.)

The emphasized portion of the foregoing provision is the part applicable to your inquiry.

As I understand your problem, a proper and sufficient petition for consolidation was perfected by the resident freeholders of district 46M and also by district 41M, and filed with the county superintendent of Golden Valley County; and such county superintendent gave proper notice of election and as a result of such election, a majority vote was cast in

each district "for consolidation"—and the county superintendent has given proper notice of the result of such election and has made the proper orders to give effect to such vote.

Section 1034, Revised Codes of Montana, 1935, then provides:

"In case of annexation of any district or districts to any existing district, as herein provided, the proper officers of the annexed districts, within ten days from the receipt of a copy of such order; shall turn over to the proper officers of the district to which they are annexed, all records, funds, and effects of such annexed district." (Emphasis mine.)

Section 1034, Revised Codes of Montana, 1935, then further provides that, in the case of consolidation of districts by annexation, the title to school houses and sites of the separate districts shall vest in the consolidated district, and "bonded indebtedness of any districts merged by consolidation shall be assumed by the consolidated district."

It will be noted all records, funds and effects of the annexed district are turned over to the district to which such district is annexed, the title to all school houses and sites of the annexed district shall vest in the consolidated district, and the bonded indebtedness of the annexed district is assumed by the consolidated district.

It will be observed the statutes do not expressly provide for the disposition of outstanding contracts (other than bonded indebtedness) of the annexed district, but the general law on this subject, where the statute is silent, is stated as follows:

"Under statutes making no provision on the subject, where two or more municipal corporations are consolidated, or the entire territory of one municipal corporation is annexed to another, the contracts and indebtedness of the municipal corporations which are consolidated or annexed become the contracts and indebtedness of the consolidated or annexing municipal corporation." (43 C. J. 144.)

The Supreme Court of Kansas had under consideration this question, and that Court, after quoting *Corpus Juris*, applied the rule as follows:

"When, however, the Legislature creates corporate instrumentalities for the accomplishment of public purposes, permits them to operate, and in the course of operation to acquire property and incur debts, there must be a sort of winding up of the corporate business after dissolution. The property must go somewhere, and the debts must be paid by somebody. When, as in this instance, consolidation takes place and a new corporation comes into existence comprising the territory of the districts which were consolidated, the consolidated district takes the property and pays the debts. The Legislature may provide what shall become of the property and may provide how the debts shall be paid; but, in the absence of specific statutory provisions, the rule just stated prevails."

Fuller v. Consolidated High School Dist. No. 1, 28 Pac. (2nd) 750, 751.

The Supreme Court of the United States, dealing with the same rule, held as follows:

"Modifications of their boundaries may be made, or their names may be changed, or one may be merged in another, or it may be divided and the moieties of their territory may be annexed to others; but in all these cases, if the extinguished municipality owes outstanding debts, it will be presumed in every such case that the legislature intended that the liabilities as well as the rights of property of the corporation which thereby ceases to exist shall accompany the territory and property into the jurisdiction to which the territory is annexed."

Mount Pleasant v. Beckwith, 100 U. S. 514 at 529, 25 L. Ed. 699;

New Orleans v. Clark, 95 U. S. 644, 654;

Laramie County v. Albany County, 92 U. S. 307;

Broughton v. Pensacola, 93 U. S. 266, 269.

This rule applies to school districts as well as to other municipal or quasi municipal corporations.

Hoffield v. Board of Education, 33 Kan. 644, 7 Pac. 216;

Hughes v. Ewing, Cal. 28 Pac. 1067.

Section 1034, Revised Codes of Montana, 1935, provides for the consolidation of school districts and that the property of the district annexed shall become the property of the consolidated district, but says nothing about the contracted obligations of the former, except its bonded indebtedness. The outstanding contracts for transportation of the annexed district are no less binding contracts, and the holder thereof is in equity entitled to full compensation under the above rule and decisions upholding the same. Any legislative consolidation proceedings which would deprive such holder of such contract of full benefit thereof would violate its contracted obligation contrary to the constitutional provision. (Section 2, Article III.)

The Supreme Court of Missouri had before it this identical question, and it held:

“Now, where one corporation goes entirely out of existence by being annexed to or merged in another (school district) corporation, if no provisions of law are made respecting the property and liabilities of the corporation that ceases to exist, the subsisting corporation will be entitled to all the property, and be answerable for all the liabilities. After sub-district No. 3 had ceased to exist, there was then no power remaining as an independent organization, in its behalf to control its funds or pay off its indebtedness. Its property passed into the hands of the defendant, and when the benefits were taken, the burdens were assumed.”

Thompson v. Abbott, 61 Mo. 176, at 177 and 178.

It is therefore my opinion, under the statutes and the foregoing decisions, that the intent of the legislature was that, where one school district is consolidated with or annexed to another school district under the provisions of Section 1034, Revised Codes of Montana, 1935, all the records, funds and effects, school houses and sites of such annexed district become the property of the consolidated district—and it follows any of the contractual obligations of the annexed district in force and effect at the time of the annexation or consolidation become the liability of the consolidated district, and payable thereby.

This is not a case of abandonment of a school district by the county superintendent under the provisions of Section 970, Revised Codes of Montana, 1935, and therefore this opinion is not in conflict with a former opinion of the Attorney General (Opinion No. 74, page 69, of Volume 16) which dealt with that particular question.

Sincerely yours,

JOHN W. BONNER
Attorney General