

School Districts, Division Of, Liability of New District For Indebtedness.

Where a school district is bonded for the building and furnishing of a school house, and such district is afterwards divided and a new district created out of a portion thereof, the new district thus created is not liable for the payment of any part of the bonds issued by the old district.

Helena, Montana, Sept. 30, 1905.

Hon. Roy E. Ayers, County Attorney, Lewistown, Montana.

Dear Sir:—I beg leave to acknowledge receipt of your letter of the 24th instant, in which you submit the following question:

“If a school district is bonded for a sum of money, said sum being for the building and furnishing of a school house, and said district is afterward divided and a new district created out of a portion thereof, does the part that has become the new district have to help pay said bond?”

Without knowing the particular facts of the case to which you make reference, I will assume that in the division of the district the old district retained the school house, as this is the usual course pursued in the division of school districts. On this state of facts the answer to the question must be in the negative. The bonds were issued against the old district. The territory out of which the new district was created

ceases to be a part of the old district and cannot be taxed to pay for a school house not situated within the boundaries of the new district nor subject to use by it.

This question was fully considered and discussed at length in *Laramie County v. Albany County*, 92 U. S. 307.

See also,

Mount Pleasant v. Beckwith, 100 U. S. 514;

Town of Depere v. Town of Bellevue, 31 Wis. 120;

Hughes v. Ewing, 93 Cal. 414;

Tulare Co. v. Kings Co. 117 Cal. 195.

It seems to be well established by the cases above cited, and the authorities therein referred to, that where the law does not provide that the new district shall assume a portion of the indebtedness that the new district cannot be held for any part thereof. Section 1754, Political Code, provides the method of dividing property in case of the division of a school district but does not provide that the new district shall be liable for any portion of the old indebtedness.

In the *Laramie County* case, above, the court uses this language:

"Regulation upon the subject may be prescribed by the legislature; but, if they omit to make any provision in that regard, the presumption must be that they did not consider that any legislation in the particular case was necessary. Where the legislature does not prescribe any such regulations, the rule is that the old corporation owns all the public property within her new limits, and is responsible for all debts contracted by her before the act of separation was passed. Old debts she must pay, without any claim for contribution; and the new subdivision has no claim to any portion of the public property except what falls within her boundaries, and to all that the old corporation has no claim. *North Hemstead v. Hemstead*, 2 Wend. 134; *Dil. on Mun. Corp. Sect. 128*; *Wade v. Richmond*, 18 Gratt. 583; *Higginbotham v. Com.*, 25 Id. 633."

Yours very truly,

ALBERT J. GALEN,

Attorney General.