

**School District. Bond Indebtedness Of. Liability of New District For Debts of Old.**

In case of division of a school district, each district shall thereafter own and hold all permanent property, such as sites, school houses and furniture, situated within its boundaries.

Upon division of a school district, the new district is liable, and should pay its part of outstanding building obligations, after the subtraction of the sinking fund, where the debt was incurred for the erection of buildings or improvements located in the confines of the new district.

September 17, 1912.

Hon. Victor R. Griggs,  
County Attorney,  
Havre, Montana.

I am in receipt of your letter of September 5th, requesting that this office submit a copy of an opinion heretofore rendered relative to renewal of liquor licenses in country districts. A copy of this opinion was mailed you on the 13th inst.

You also submit the question:

"Is a new school district required to assume any of the bonded indebtedness of the old district, the bonds having been issued partly to erect school houses which are located in the new district?"

This question, like some others that depend upon statutory construction for an answer, is not entirely free from doubt.

Sec. 3, Art. XVI of our State Constitution makes specific provision for the division of property in case of the establishment of a new county, but its provisions do not appear to extend to school districts within a county; such matters being referred to the legislature, and it must be conceded that the legislature has plenary power, within the general meaning and intent of the constitution as to fair dealing, to establish rules for the division of property when a new school district is formed from one or more old districts.

Sec. 843 of the Revised Codes contains some rules relative to such division. That section provides, in part:

"When a new district is formed from one or more old ones the school funds remaining to the credit of the district after providing for all outstanding debts, excepting debts incurred for building and furnishing school houses, shall be divided as follows \* \* \*

"In case of division each district shall own and hold all permanent property such as sites, school houses and furniture situated within its boundaries."

A strict literal construction of these statutory provisions would seem to indicate that (1) In the Division of district property no account should be made of buildings and improvements except that all such improvements belong to the district in which they are situated, and

(2) no account whatsoever should be taken of outstanding bonds issued in payment of such improvements. As to the first of these propositions the statute is emphatic, for it provides:

"In case of division each district shall own and hold all permanent property, such as sites, school houses and furniture situated within its boundaries."

The second proposition is more difficult of analysis. From the provision "excepting debts incurred for building and furnishing school houses" it seems to be settled that debts incurred for such purposes cannot be considered in the division of the school funds to the credit of the district at the time of the division. But the statute is silent as to liability for the debts evidenced by outstanding bonds and incurred for the erection of buildings situated within the new district. It is fundamental that the bonds when issued constituted a general lien on all the property of the district as the same was constituted at the time of the issuance of the bonds, but that the new district is not liable in the first instance to the bond holders, (Opinions of Attorney General, 1905-06, p. 200) but this does not necessarily affect the mutual liability of the two districts, nor IN TOTO relieve the new district from the payment of any part of the outstanding bonds. If there were no outstanding debts incurred by reason of the erection and furnishing of buildings or improvements, then it is probable that each district would take a full estate in the buildings or other property situated within its boundaries. But suppose there is a specific lien against a new building and in the division such building is within the new district, would the old district still be bound to pay such claim against property that is not within its boundaries, or would the new district only take the estate which the old district had in the building at the time of the creation of the new district, which estate would be the building, subject to the claim or lien? If, in such a case, the duty rests with the new district to pay the claim in order to secure a release of the specific lien, is it relieved of this duty because the lien is a general lien, as in the case of outstanding bonds? A case might arise where the new district would take all of the buildings. It would then seem inequitable to compel the old district to pay the outstanding debts incurred in the erection of such buildings.

Sometime ago a case was presented to this department wherein a new school house had been erected at a cost of \$15,000 and bonds issued. Soon after the district was divided and the school house was situated within the new district. In that case the new district, under a strict literal construction of the statute, would take all of the property and the old district retain all of the debts; that is, the old district would not only have to build its own school house, but would be compelled, in effect, to erect a \$15,000 school house in a foreign district. On that state of facts this department held that the new district should in some manner save the old district harmless from the bonds issued for the erection of the school house.

Opinions Attorney General, 1908-10, p. 45.

The exception made in the statute of outstanding debts incurred for building purposes may have been for the purpose of enabling the

new district to get a part of the money on hand for immediate use, and a court might hold that it had reference only to property situated in the old district after division. It is worthy of note that the exception contained in the first part of the section only includes "building and furnishing school houses," while the statement in the other part of the section includes "all permanent property such as sites, school houses and furniture." This latter clause of the section is much broader than that contained in the former provision and would give color to the construction that the legislature did not intend that the exception named in the section should relieve the new district from liability arising from outstanding bonds which had been issued for the erection of buildings within its boundaries.

I am not inclined to recede from the position taken in the opinion above referred to, holding that the new district should pay its part of the outstanding building debt which remains after the subtraction of the sinking fund, and which debt was incurred for the particular buildings or improvements situated within the new district. For example, if two thousand dollars of building bonds are outstanding and only five hundred dollars of the money so raised had been expended for buildings in the new district, then such district is only liable for the five hundred dollars, or twenty-five per cent, and if a sinking fund has been accumulated for the payment of the bonds it should be deducted and the new district should provide for the payment of its part of what remains of the outstanding debts.

Yours very truly,

ALBERT J. GALEN,

Attorney General.