School District, Division of. Indebtedness, Distribution of. Distribution of Indebtedness, Between Old and New School District. Evidence of Indebtedness, Rights of Persons Owing.

The money received by the old school district from the new school district should be distributed and accredited to the funds chargeable with the payment of such indebtedness, if in the form of outstanding bonds, to the sinking fund created for payment of such bonded indebtedness; if outstanding warrants, into the fund of the old district out of which such warrants are paid.

October 29th, 1913.

Hon. D. W. Doyle,
County Attorney,
Choteau, Montana.

Dear Sir:

I am in receipt of your letter of the 20th instant, submitting the question:

> "Into what fund should money be paid that has been received by an old school district from a new school district, under the provisions of Sec. 405 of Chap. 76 of the Laws of 1913?"

The provisions of the chapter referred to in the inquiry relates to the distribution of indebtedness" existing at the time of the division between the old and the new district, but the statute is without direction as to what fund shall be the recipient of the moneys and warrants received from the new district as its "distributive" portion of such indebtedness. This proposition involves to some extent not only the rights of the respective districts, but the rights of the property holders within the new district and also the rights of the persons who own the evidences of indebtedness.

It is a fundamental that where a school district is indebted and the district is divided, the old district can have no claim against the new district for a portion of such indebtedness, unless that right is given by statute. The general rule in such cases is that the old district must pay all the debts without any claim for contribution and the new district has no claim to any portion of the public property which remains within the boundaries of the old district.

Laramie v. Albany Co., 92 U. S. 307.
Mt. Pleasant v. Beckwith, 100 U. S. 514.
Tulare Co. v. Kings Co., 117 Cal. 195; 49 Pac. 8.
Opinions of Attorney General, 1905-06, 200.

However, the provisions of the statute contained in Subdivs. 3 and 4 of Sec. 405 of said Chap. 76 are to the effect that the indebtedness existing at the time of the division shall be "distributed" and the new district shall pay to the old district its "proportion" thereof. This liability of the new district being strictly statutory, it necesarily follows that when the new district has paid to the old

district its proportion of the outstanding indebtedness, the old district can have no further claim and the question as between the districts as such, is finally settled, without regard to what the old district does with the money when it receives it.

But where bonds have been issued and sold by the old district, the rights of the bond holders must also be considered, and under the provisions of the law, as announced in Sec. 2018 of said district

> "The faith of each school district is solemnly pledged for the payment of the interest, and the redemption of the principal of the bonds."

The reference to the district in this section is to the district as it existed at the time of the issuance of the bonds hence the bonds in effect become a lien upon the real property of the district, included within the boundaries of the district, as it existed at the time of the issuance and sale of the bonds, and this lien continues until the bonds are paid, notwithstanding the fact that the district may be divided. To hold otherwise would be to deprive the holders of the bonds of any security whatsoever, because a district after bonding itself might be so reduced in area that the property remaining within it would not be sufficient to meet the bonded indebtedness. This question was quite fully discussed by the Supreme Court of the United States in Mount Pleasant v. Beckwith, 100 U. S. 514, wherein the court held that where property of an indebted municipality has been detached and incorporated in some other municipality, that it is still liable for the payment of its just proportion of the debt, chargeable to it while it was a part of the old municipality, and in discussing the powers of the legislature to make and unmake municipal corporations, the court said:

> "Extensive powers in that regard are doubtless possessed by the legislature; but the constitution provides that no state shall pass any 'law impairing the obligation of contracts,' from which it follows that the legislature, in the exercise of any such power, cannot pass any valid law impairing the right of existing creditors of the old municipality."
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> Citing: 1 Dillon, Municipal Corp. (2d Ed.) Sec. 41; Van Hoffman v. City of Quincy, 4 Wall, 535, 554; Lee County v. Rogers, 7 Id. 181, 184; Butz v. City of Muscatine, 8 Id. 575, 583; Furman v. Nichol, Id. 44, 62.

But one conclusion can be drawn from these federal decisions, and that conclusion is that the real property that was taken from the old district is still burdened with the lien of the bonds in existence against the old district at the time of the segregation, and will continue so burdened until the bonds are paid. It would, therefore, seem that although this statute contains no specific direction relating thereto, that the money paid by the new district on account of existing indebtedness of the old district properly should be placed in the fund chargeable with the payment of such indebtedness. If this indebtedness is in the form of outstanding bonds it would naturally

go into the sinking fund of the old county created for the purpose of paying such bonded indebtedness, and if this indebtedness is evidenced by the outstanding warrants, it should go into the fund of the old district, out of which such warrants are paid.

I am aware of the general provision of law, that where money is received by a municipality, without direction as to what fund it shall be accredited to, that it is placed in the general fund, but the rights of the holders of the security evidencing this indebtedness, as well as the rights of the propery owners whose property is charged with the lien, forces me to the conclusion that if this question was presented to a court, the holding would be that the money received by the old district from the new district should be distributed and accredited to the funds as above indicated. This, however, is more in the nature of a general discussion as to what the statutory law of this state ought to be, and as to what the court would probably hold on a question of this kind, than specific direction. If this money passes to the general fund of the district, authority for its use as a building fund may be found in Sec. 2004 of said Chap. 76. In view of the fact that our statute does not contain any provision relating to this subject, I can only recommend, rather than direct, and with this discussion submit the matter to you. I am not informed as to the specific conditions existing, and those conditions may be of some guide in determining in what fund this money so received should, as a matter of right, be placed.

Yours very truly,

D. M. KELLY,
Attorney General.