

School District, Bonds of. New District. Limit of Bonds by. Bonds. Limit of New District. Indebtedness, Effect of Division of Between New and Old Districts.

Where bonds are outstanding against a school district, and the district is subsequently divided, the bonds are no longer a charge against the new district as such, and such new district may issue bonds not exceeding three per cent of its taxable property.

February 13th, 1914.

Hon. H. A. Davee,
Superintendent Public Instruction,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 9th instant, submitting the question:

"A certain district was bonded for two per cent of its assessed valuation. The district was then divided, and a new district formed. To what extent can the new district bond itself?"

The limit of indebtedness of any school district is three per cent of the taxable property in such district. (Sec. 2015, Chap. 76, Laws of 1913). Subdivs. 3 and 4, Sec. 405, said Chap. 76, provide that when a new district is formed it shall be liable to the old district for its proportion of the indebtedness then outstanding, and that when such district indebtedness is adjusted, the board of trustees of the new district shall issue and deliver to the trustees of the old district "warrants equal to the amount of such indebtedness apportioned to such new district." It appears, therefore, that when a new district is formed it immediately pays over to the old district the proportion of the outstanding indebtedness which properly belongs to the territory then constituting the new district. When this is done, the new district is then, under the provisions of the statute, free from such indebtedness, except that which it owes to the old district, and the new district may then issue bonds or contract indebtedness which, with the amount it owes to the old district, will not exceed three per cent of the taxable property within the new district.

It is true that the bonds when issued by the old district become a lien on all the property then situate within that district, and it is likewise true that if the old district failed to pay the bonds, and the property in such old district was not sufficient to pay the bonds, the bond holders, through a court of equity, would have recourse to the property of the new district, which had been taken from the old district.

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

But in such case the new district stands rather as a guarantor or surety than as an original debtor.

Yours very truly,

D. M. KELLY,
Attorney General.