Organization of New District—Apportionment of Indebtedness Amount Due Under Teacher's Contract.

The amount already due a teacher for services rendered under contract of employment at time of creation of new district should be considered in apportioning funds between old and new school districts, and amount to become due for services to be rendered would not be considered an indebtedness within the meaning of Section 405 (3) of the School Law.

July 29, 1918.

Miss May Trumper,
Superintendent of Public Instruction,
Helena, Montana.

Dear Miss Trumper:

It appears that after a school district had entered into a contract with a teacher to teach school for a period of six months in such district, a new district was organized out of a part of the old district. The County Superintendent in apportioning the funds between the old and the new school districts, did not take into consideration the amount which the old school district had obligated itself to pay under its contract of employment of such teacher. The question which you have presented is whether or not the amount which the old school district would be bound to pay to such teacher should be considered as "indebtedness," and as such taken into account in apportioning the funds.

In Hornbeck v. State, 33 Ind. App. 609, 71 N. E. 916 at 917, the Court said:

> "Judicial definitions of the terms 'debt' and 'indebtedness' are numerous. They must be read in connection with the facts out of which their necessity arose. These vary greatly. In a broad and general sense a debt is whatever one owes. In a purely technical sense it is that for which an action of debt will lie; a sum of money due by certain and express agreement. A debt is not a contract, but it may be the result of a contract."

The following quotation is from the opinion of the Court in the case of Vaughn v. Montreal, 124 Wis. 302, at 304, 102 N. W. 561:

> "The only question presented upon this appeal is whether the annual hydrant rentals falling due after the division constitute 'indebtedness then legally incurred,' i. e., at the time of the division. It seems to us entirely clear that this question must be answered in the negative. This court has held, after careful consideration and review of the authorities, that such payments falling due upon the rendition of services in the future, though fixed by the terms of an existing contract, do not constitute 'existing indebtedness,' within the meaning of Sec. 3, Art. XI, of the state constitution, which prohibits any municipal corporation from becoming indebted to an amount, 'including existing indebtedness,' exceeding five per centum of its taxable property. Stedman v. Berlin, 97 Wis. 505, 73 N. W. 57; Herman v. Oconto, 110 Wis. 660, 86 N. W. 681. Possibly by some refined reasoning a distinction might be drawn between the terms 'indebtedness existing' and 'indebtedness incurred,' but for all practical purposes they seem to be synonymous. A debt which exists must have been incurred, and, on the other hand, if it has been incurred, and has not been in some way discharged, it exists. While the contract to pay hydrant rental in the future as water is furnished is a contract obligation, no indebtedness accrues until the water has been furnished, and the statute speaks not of contract obligations in general, but of contract obligations which have become indebtedness."

I am therefore of the opinion that the amount already due the teacher for services rendered under her contract of employment at the time of the creation of the new school district should have been taken into consideration in apportioning the funds between the old and the new school district, but that the amount to become due the teacher for services to be rendered thereafter would not be considered an indebtedness within the meaning of Section 405 (3) of the School Law.

Respectfully,

S. C. FORD,

Attorney General.