

Opinion No. 483.**School Districts—Transferred Territory—Delinquent Taxes, Collection of.**

HELD: Where territory is transferred from one school district to another, the delinquent school taxes due in the territory so transferred, at the time of transfer, must be paid to the school district from which such territory was detached.

March 1, 1934.

We acknowledge receipt of yours of the 2nd of January requesting an opinion from this office on the following matter:

"Inclosed find a letter from the County Superintendent of Schools of Golden Valley County, Montana, which speaks for itself.

"She made an order transferring Sections 19 and 20 to another district, and did not mention anything about delinquent taxes, or other financial interests, and I maintain that the delinquent taxes to be collected, should therefore belong to the old district.

"Please send me your conclusions concerning this matter to satisfy this official and oblige."

In *County of Hill v. County of Liberty*, 62 Mont. 15, it was held that delinquent taxes due in the old county on property in the new belong to the new county. Following the rule laid down in that case it might be said that the same rule would apply in the matter that you submit, but we do not think it does for the reason that that decision is based upon a special act, the New Counties Act, and a special provision is contained in that Act governing delinquent taxes. (Section 4398, R. C. M., 1921.) Furthermore, a commission is provided for in the New Counties Act to adjust the property rights and indebtedness between an old county and a new county created out of territory taken from the old.

Court decisions in other States quite generally hold that such taxes belong to the old district. In *Marsh v. Early*, 169 N. C. 465, 86 S. E. 303, it was held that: "Excluding from a certain school district that portion of its territory lying in another county taking effect from its ratification, does not exempt the territory excluded from liability for school taxes already accrued

and due, and which constituted a lien upon the property." In that case the old district claimed the taxes due and the court upheld its contention. (See also, *Waldron v. Lee*, 5 Pick. (Mass.) 323; and *Ovitt v. Chase*, 37 Vt. 196, 202.) 56 C. J. Sec. 853, page 731, lays down the general rule as follows: "Taxes which have been levied and become due prior to the time of the detachment may be collected, the detachment not affecting the validity of a levy already made, and the duty of a tax collector to collect and turn over school taxes levied by the proper authorities is not affected by the subsequent detachment."

A different rule seems to be implied by Section 1028, R. C. M., 1921, relating to the creation of new districts. That section provides that the division of funds shall be made by the county superintendent in the manner therein provided. A similar method might be followed in your case without doing any great injustice to anyone, but if such method is adopted it must be kept in mind that, if there is any bonded indebtedness outstanding in the old district, territory may not be detached from such district without consideration for the bondholders. To permit taxpayers to transfer from one district to another to escape tax obligations is not to be encouraged.

To sum up the situation, our statutes are not specific in the matter but in dealing with similar questions seem to imply that the detached territory shall carry with it the right to its own revenues, not, however, without taking into account the indebtedness left behind. For the reasons stated we do not think the case of *Hill County v. Liberty County*, supra, furnishes a precedent controlling here. On the other hand, the citations from other states are specific and we think they should be followed and the old district be given the delinquent taxes.

In your opinion to the county superintendent, you advised her that she should issue an order directing the county treasurer to make the transfer. We think the procedure outlined by Section 1028 may be followed in this matter. The procedure therein authorized is that the superintendent shall certify to the treasurer the transfers or apportionment to be made, and such certificate will be the treasurer's authority to make the apportionment.