

**Opinion No. 42**

**Schools—School Districts, Annexation of—School Districts—  
Consolidation of,—Bonded Indebtedness, Assumption of**

**Held: (1) The territory of a Third Class School District which is annexed to a First or Second Class District does not assume any of**

**the bonded indebtedness of the First or Second Class District; but the bonded indebtedness of the Third Class District is assumed by the First or Second Class District to which the Third Class District is annexed.**

**(2) If a Third Class School District, or any other Class District, is consolidated with one or more School Districts and a new District formed, the bonded indebtedness of each of the component Districts is assumed by the new District and all of the territory of the new District is liable for the payment of such bonds.**

July 30th, 1949.

Miss Mary M. Condon  
State Superintendent of Public Instruction  
Helena, Montana

Dear Miss Condon:

You have submitted for my opinion the following question:

"Does a Third Class District which has been annexed to a Second or Third Class District assume a share of the latter's bonded indebtedness?"

In answering your question it is important to consider Section 1034, Revised Codes of Montana, 1935 as amended by Chapter 201, Laws of 1943, which defines the procedure for the consolidation of School Districts and the annexation of one or more districts to an existing district. It is to be observed that under the provisions of this Section, consolidation of two or more districts is effected by the merger of the districts, after appropriate action of the trustees of the districts concerned, with the resulting formation of a new district. Annexation of a Third Class District occurs when the district is merged with a First or Second Class District. There is no provision in the Section for annexation of a Third Class District to a Third Class District as your question suggests. This interpretation of Section 1034, as amended, was recognized in Opinion No. 147, Volume 21, Report and Official Opinions of the Attorney General wherein it was said:

"The provision for annexation has application only when a Third Class District becomes merged with a First or Second Class District. Consolidation occurs in all other situations when two or more districts are combined."

The portion of Section 1034, as amended which applies to the bonded indebtedness reads as follows:

"Bonded indebtedness of any districts merged by consolidation or annexation shall be assumed by the consolidated district or the district to which another is annexed."

The above quoted statute contemplates two situations. The assumption of the bonded indebtedness of the component parts of the

new district resulting by consolidation of two or more districts and the assumption by a First or Second Class District of the bonded indebtedness of a Third Class District which is annexed. In the case of consolidation, a Third Class District which is included within the new district would assume its proportionate share of the bonded indebtedness of the new district, but in the event of annexation of a Third Class District to a First or Second Class District no provision is made for such assumption.

Section 1029.1, Revised Codes of Montana, 1935, which was amended by implication by Chapter 201, Laws of 1943, provided that the bonded indebtedness of a school district which is consolidated or whose boundaries are changed shall remain the indebtedness of the original territory against which the bonds were issued. Chapter 201 did not alter this rule in regard to Third Class Districts annexed to First or Second Class Districts and as a consequence such Third Class Districts so annexed would not assume the indebtedness of the districts to which the Third Class Districts are annexed.

The foregoing does not apply to school districts which have been declared abandoned under the provisions of Section 970, Revised Codes of Montana, 1935, as amended by Chapter 168, Laws of 1943, as such abandoned districts may be attached to one or more contiguous districts on the order of the County Superintendent and do not constitute annexation as is contemplated by your question. The territory of the abandoned district which is attached will continue, under Chapter 168, to be liable for its bonded indebtedness and there is no assumption of indebtedness by the district to which it is attached.

It is, therefore, my opinion that the territory of a Third Class District which is annexed to a First or Second Class District does not assume any of the bonded indebtedness of the First or Second Class Districts, but the bonded indebtedness of the Third Class District is assumed by the First or Second Class District to which the Third Class District is annexed.

It is also my opinion that if a Third Class District, or any class district, is consolidated with one or more school districts and a new district formed the bonded indebtedness of each of the component districts is assumed by the new district and all of the territory of the new district, including that of the Third Class District, is liable for the payment of such bonds.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.