

Accordingly, it is my opinion that the above Attorney General Opinions are correct and assessment against the county for Portage Consolidated Drain No. 1 must be paid by the county at large and cannot be paid by county road commission funds.

FRANK J. KELLEY,
Attorney General.

631127.1

SCHOOLS: Consolidation of school district under tenure.

TEACHERS' TENURE: Effect upon consolidation of school district under tenure.

Where a school district subject to the tenure of teachers' act votes to consolidate with another school district not under tenure, the consolidated school district is not subject to the provisions of Act 4, P.A. 1937, Extra Session, until its school electors vote to adopt the provisions of the act.

No. 4253

November 27, 1963.

Honorable William D. Ford
State Senator
22212 Goddard Road
Taylor, Michigan

You have requested my opinion on the following question:

Where school district A and school district B, by approval of their school electors, vote to become consolidated as one school district, and the school electors of school district B had prior to such consolidation voted to come under the provisions of the tenure of teachers' act, does the tenure of teachers' act apply to such consolidated school district without approval of its school electors?

Act 4, P.A. 1937 (Extra Session), as last amended by Act 242, P.A. 1963, being C.L. 1948 § 38.71 et seq.; M.S.A. 1959 Rev. Vol. § 15.1971 et seq., is known as the Tenure of Teachers' Act. Article VIII, Sec. 1 of the act provides as follows:

"This act shall apply to such school districts of the state in which the qualified electors thereof, by a majority vote of the electors voting thereon, shall adopt the provisions of this act: Provided, That any time after the adoption of this act by any school district, it shall cease to be in effect in said district if at any election called for that purpose, a majority of the electors in said district voting thereon, vote that the act shall no longer be in effect in said district. The question may be submitted at any general or special election in any such school district, and shall be governed by the laws of this state with respect to the submission of special questions in school districts."

Thus, the Tenure of Teachers' Act does not become effective in a school district until its qualified electors by a majority vote of the electors voting thereon adopt the provisions of the act.

Consideration must also be given to the provisions of the School Code of 1955, being Act 269, P.A. 1955, as amended, C.L.S. 1956 § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001, et seq. Chapter 3, Part 2 of the School Code of 1955 provides for the consolidation of school districts. Sec. 401 specifies that any two or more school districts, except districts of the first and second class, may consolidate to form a single school district, provided that the total number of children in said school districts between the ages of 5 and 20 years is 75 or more. The procedure for consolidation is enumerated in the provisions contained in Chapter 3, Part 2 of the School Code of 1955 as last amended by Act 248, P.A. 1963.

Section 409 prescribes that upon approval of the school electors the consolidation shall become effective as of the day of the election on which the votes were cast, and Section 410 authorizes the intermediate board of education, as the successor to the county board of education in accordance with provisions of the School Code of 1955, as amended by Act 190, P.A. 1962, to appoint qualified electors of the consolidated school district to serve as the first board of education of said district.

A school district formed by consolidation is a legal entity separate and distinct from its component districts. *Huffman v. School Board of Independent Consolidated School District No. 11, Hennepin County* (Minn 1950) 41 NW 2d 455.

Where two school districts are consolidated, the consolidated district succeeds to the assets and liabilities of its parts. *Wilson v. School District No. 4, Township of Ellington*, 233 Mich. 581 (1926).

Upon consolidation of school districts a new entity comes into existence and the old school districts cease to exist as legal entities. *Trujillo v. State of Mexico, ex rel. Gandert*, (NM 1960) 352 P 2d 80. It must follow that if school districts A and B vote to consolidate as a single school district, upon such consolidation being effective, school districts A and B would no longer exist as separate legal organizations. *Brewer v. Palmer*, 13 Mich. 104 (1865).

The Attorney General has ruled that where a school district under tenure annexes to a district not under tenure, the teachers of the annexing district are brought under the terms of the tenure act. O.A.G. 1959-60, Vol. I, page 181, No. 3364.

Reading the provisions of the Tenure of Teachers' Act and the School Code of 1955 together, it is clear that the school electors of the newly consolidated school district have not by their favorable vote adopted the provisions of the Tenure of Teachers' Act in the newly consolidated school district. The action of the school electors of District B in adopting the Tenure of Teachers' Act, is not controlling since school district B, as a legal organization, no longer has legal existence.

In order for the Tenure of Teachers' Act to be effective in the newly consolidated school district, the school electors of such district must vote to adopt the provisions of the Tenure of Teachers' Act in accordance with Article VIII, Sec. 1 thereof. The statute makes no provision for a consolidated school district to remain under tenure if one of the school districts so consolidated had previously adopted tenure.

Therefore, it is my opinion that when a school district under tenure votes to consolidate with a school district not under tenure, the consolidated school district is not subject to the provisions of the Tenure of Teachers' Act. It becomes subject to the Tenure of Teachers' Act if the school electors of the consolidated school district vote to come under the provisions of the act.

FRANK J. KELLEY,
Attorney General.

631206.1

REGIONAL PLANNING COMMISSION: School district may join in creation of.

SCHOOL DISTRICTS: School district operating funds for support of regional planning commissions.

School district, upon resolution of its board of education, may join in the creation of a regional planning commission under Act 281, P.A. 1945, as amended.

Board of education may use operating funds of school district to support regional planning commission created by it under Act 281, P.A. 1945.

No. 4196

December 6, 1963.

Hon. Paul M. Chandler
State Representative
The Capitol
Lansing, Michigan

You have requested my opinion on the following questions:

1. May the Board of Education of the Plymouth Community Schools participate in the organization of a regional planning commission in the Plymouth area in accordance with Act 281, P.A. 1945, as amended by Act 196, P.A. 1952?
 2. May the Board of Education use operating funds to pay a pro rata share of the cost of operating such a regional planning commission?
1. Act 281, P.A. 1945, as amended by Act 194, P.A. 1952, being C.L. 1948 and C.L.S. 1961 § 125.11 et seq.; M.S.A. 1958 Rev. Vol. § 5.3008(1) et seq., provides for the creation of a regional planning commission by action of two or more local governmental units.

Section 1 of the Act defines the term "local governmental units" to include:

"* * * cities, villages, other incorporated political subdivisions, counties, *school districts*, special authorities, townships, or any legally constituted governing body responsible for the exercise of governmental functions within a political subdivision of the state." (Emphasis supplied)

Plymouth Community Schools is a third class school district organized under the provisions of Chapter 4, Part 1 of the School Code of 1955, being Sections 101-122 of Act 269, P.A. 1955, as last amended by Act 271, P.A. 1959, C.L.S. 1961 § 340.101-122; M.S.A. 1961 Cum. Supp. § 15.3101-3122.