

"MR. MARTIN: Mr. Chairman, just one additional word of explanation. The fundamental purpose of this section is to get the attention of the legislature to the main business of appropriations, that is, the general appropriation bills before it acts on so-called special bills for this, that, or the other thing, which are thrown in by individual legislators and which do not come from a consideration of the total needs of the state government and the total revenue. This seems to be the only way and the best way to do it, and it is certainly the orderly way to get these matters considered. We think it is an integral part of this whole proposal and makes extremely good sense in getting the legislature to consider the main problems first and then, if it is desired, to add additional appropriations. This does not prevent it. This does not prevent any special bill from being acted upon. It simply says, act on the main bills first." *Official Record, Constitutional Convention 1961*, p. 1653.

In order to accomplish such purpose this requirement was inserted in mandatory form. This is not a legislative rule which may be suspended or disregarded by the legislature as it sees fit. It is, instead, a constitutional limitation. Nor is this a case where the court's writ of mandamus is sought to require the legislature to comply with a constitutional mandate.

Instead, the issue presented is what is the effect of the failure, as evidenced by the legislative journals, to comply with the limitation prescribed by Article IV, Section 31. Upon that authority of the above cited cases, it is my opinion that Act No. 249 is unconstitutional and void, and for that reason does not authorize the expenditure of the \$12,000 appropriation purported to be made thereby.

FRANK J. KELLEY,
Attorney General.

640817.1

SCHOOLS: Districts — Transfer of territory between.
Consolidation — Assumption of debt.

Where territory is transferred from school district and appeal to the State Board of Education was duly taken, the transfer is not effective until the State Board of Education acts upon the appeal. Such territory is subject to the assumption of bonded indebtedness of a consolidated school district which is formed by favorable vote prior to the time that the State Board of Education acts upon the appeal.

No. 4199

August 17, 1964.

Hon. Fred O. Olsen
State Representative
328 S. Main Street
Sheridan, Michigan

You indicate that certain territory located in school district "A" was transferred by the intermediate board of education to school district "B" pursuant to Sec. 461 of Act 269, P.A. 1955, as amended. An appeal was

duly taken to the State Board of Education in accordance with Sec. 467 of Act No. 269, P.A. 1955, as amended. Pending the appeal, school district "A" was consolidated with school district "C" to form school district "D". School district "C" had an outstanding bonded indebtedness and such bonded indebtedness was assumed by the consolidated school district. Subsequent to such consolidation the State Board of Education heard the appeal on the property transfer request and confirmed the transfer of the said territory to school district "B". School District "B" also has an outstanding bonded indebtedness.

Based upon these facts you ask the following question:

Is territory transferred from one school district to another by the State Board of Education subject to the bonded debt assumed by the consolidated school district from which it was transferred where the intermediate board of education had ordered the transfer of the territory before the vote on the consolidation but an appeal was taken to the State Board of Education, which appeal was acted upon by the State Board of Education after the vote on consolidation?

Act 269, P.A. 1955, as amended, being C.L.S. 1961 § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the School Code of 1955.

Sec. 461 of the School Code of 1955 empowers the intermediate board of education, in its discretion, to detach territory from one school district and attach it to another upon proper petition. Previously this power was reposed in the county board of education but is now exercised by the intermediate board of education, its successor, as set forth in Sec. 292a of the School Code of 1955, as added by Act 190, P.A. 1962.

Sec. 467 of the School Code of 1955, supra, authorizes an appeal from the action of the intermediate board of education to the State Board of Education and this portion of the School Code of 1955 provides in pertinent part as follows:

"Such appeal shall have the effect of holding the effectiveness of the resolution from which appealed in abeyance until the appeal is acted upon by the state board of education."

The statute is clear and unambiguous and no construction is required. *School District No. 9, Pittsfield Township, Washtenaw County v. Washtenaw County Board of Supervisors*, 341 Mich. 388 (1954).

Although the intermediate board of education had transferred the territory from school district "A" to school district "B", the appeal to the State Board of Education served to hold in abeyance the effectiveness of the transfer so that the territory in question remained a part of school district "A" until the State Board of Education had an opportunity to hear the appeal in accordance with the statute. *Rutter v. Handy #1 Fractional School District Board*, 359 Mich. 461 (1960).

The provisions for consolidation of school districts are found in Secs. 401 through 415 of the School Code of 1955, supra. The consolidation of school districts may be made subject to the assumption of bonded indebtedness of any or all of the school districts which seek consolidation as set forth in Secs. 414 and 415 of the School Code of 1955, supra.

The consolidation of school districts "shall become effective as of the day of the election on which such votes were cast," as provided by Sec. 409 of the School Code of 1955, *supra*.

From these provisions of the School Code of 1955, it is clear that the territory in question was still a part of school district "A" on the date that the electors approved the consolidation of school districts "A" and "C" to form school district "D". As such the territory became subject to the bonded indebtedness on the date of the said election.

The subsequent rejection of the appeal by the State Board of Education gave effect to the transfer previously ordered by the intermediate board of education and on the date of the action by the State Board of Education the territory in question became a part of school district "C", but the territory was transferred subject to the assumed bonded indebtedness of school district "D", since the transfer so effected by action of the State Board of Education was from school district "D" to school district "C".

Therefore, it is my opinion that territory which is transferred from one school district to another by an intermediate board of education, and which transfer is appealed to the State Board of Education, becomes subject to the assumption of bonded indebtedness of a consolidated school district which is formed through favorable vote prior to the time that the State Board of Education acts upon the appeal.

Under Sec. 466 of the School Code of 1955, in the event that such territory is detached from the district having certain bonded indebtedness and attached to another district with a bonded indebtedness, such territory shall remain a part of the district from which detached for purposes of levying the debt retirement tax for outstanding bonded indebtedness at the time of transfer, and shall not be subject to the bond debt retirement tax levy for bonded indebtedness of the district to which transferred existing at the time of transfer until the bonded indebtedness of the district from which it was transferred has been retired or sufficient funds are available to retire such bonded indebtedness.

FRANK J. KELLEY,
Attorney General.
