

of the amount of the assets, the treasurer of the school district must follow those provisions of the school code, 1955 PA 269; MCLA 340.1 *et seq*; MSA 15.3001 *et seq*, which control the deposit and investment of school district funds. My examination of the pertinent provisions of the school code indicates that a school district has no authority to deposit or invest funds in a credit union. See 1955 PA 269, §§ 568, 610, 611; MCLA 340.568, 340.610, 340.611; MSA 15.3568, 15.3610, 15.3611.

It is therefore my opinion that, in the absence of express enabling legislation, a school district may not invest deferred compensation funds in a credit union.

FRANK J. KELLEY,
Attorney General.

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SCHOOL BONDS: Consolidation of school districts.

SCHOOLS AND SCHOOL DISTRICTS: Effect of consolidation on pre-existing bonded indebtedness.

Upon consolidation of school districts, the consolidated school district may assume any pre-existing bonded debt of the original districts which is not subject to constitutional limitations on taxes. The assumption of the indebtedness, however, may occur only with approval of the school district electors either at the time of the consolidation or at any time after 3 years following the consolidation.

A bonding issue within a school district must apply equally to the entire district.

Opinion No. 5136

November 9, 1976.

Honorable Ralph Ostling, State Representative
Honorable Dan Stevens, State Representative
Honorable Robert Davis, State Senator
Capitol Building
Lansing, Michigan

You have asked the following questions concerning the Twin Valley School District:

1. Does the fact that the bonded indebtedness of the Boyne City School District was never assumed by the East Jordan School District have any bearing on the legality of the merger of these districts into the Twin Valley District?
2. Can East Jordan and Boyne City create new and separate bonding issues for their respective high schools while being a part of the Twin Valley School District?
3. If the answer to No. 2 is negative, could a law be amended or

altered to permit new and separate bond issues without creating two separate school districts?

The Twin Valley School District was formed pursuant to a favorable consolidation election held on July 29, 1968. There was no inclusion in the consolidation referendum of the question of assumption of the pre-existing bonded indebtedness of the Boyne City School District.

1955 PA 269; MCLA 340.1 *et seq*; MSA 15.3001 *et seq*, hereinafter referred to as the School Code of 1955, provides the statutory framework for the operation of schools and school districts within the state.

Section 412 of the School Code of 1955, *supra*, provides:

"If any district becoming part of the consolidated district has a bonded indebtedness incurred after December 8, 1932, or has outstanding tax anticipation notes at the time of consolidation, the identity of such district shall not be lost by virtue of such consolidation and *its territory shall remain as an assessing unit for purposes of such bonded indebtedness* and such tax anticipation notes until such indebtedness has been retired or the outstanding bonds refunded by the consolidated district. . . ." (Emphasis added)

It is clear from the above quoted statute that a school district consolidation may be effectuated without an assumption of pre-existing bonded indebtedness of one of the original school districts by the consolidated school district.

Section 413 of the School Code of 1955, *supra*, provides for the subsequent assumption of pre-existing bonded indebtedness by the new consolidated school district upon a favorable vote of electors therein.

Section 414 of the School Code of 1955, *supra*, delineates the procedure for making the consolidation contingent on the assumption of the debt and increasing the debt limitation of one of the original school districts by the new consolidated school district:

"Whenever the petitions filed with the county superintendent of schools as set forth in section 403 of this act include a request that the questions of increasing the constitutional limitation on taxes of the consolidated school district for the purpose of providing a debt levy for the bonded indebtedness incurred after December 8, 1932, of 1 or more of the districts to become part of the consolidation and of assuming such bonded indebtedness . . . it shall be the duty of the county superintendent to include such question for the vote of the electors. . . . The proposition to form a consolidated district shall be declared to have failed regardless of the vote thereon if the proposition to increase the limitation on taxes for the debt levy, the proposition to assume such bonded indebtedness . . . was not approved at said election."

Section 415 of the School Code of 1955, *supra*, allows the consolidated school to assume any pre-existing bonded debt of the original districts which is not subject to the constitutional limitation on taxes. The assumption of the debt, however, may occur only with the approval of the school district electors either at the time of consolidation or at any time after three (3) years following the consolidation.

Based on the above sections of the statute, the only way that assumption of pre-existing bonded indebtedness may have legal effect on a consolidation is if such question had been included in the original consolidation vote. Since other statutory sections discuss the procedure for situations where the debt assumption question is not a part of the original vote, it is clear that sections 414 and 415 of the School Code of 1955, *supra*, are permissive rather than mandatory. Since the question of assuming the pre-existing bonded indebtedness of the Boyne City School District was not included in the school consolidation election to form the Twin Valley School District, it has no relationship to the validity of the consolidation of the Boyne and East Jordan School Districts into the Twin Valley School District.

Therefore, in answer to your first question, it is my opinion that the failure of the East Jordan School District to assume the bonded indebtedness of the Boyne School District upon consolidation, has not effect on the legality of the consolidation of those districts into the Twin Valley School District.

Your second question concerns the legality of separate bonding issues within a single school district. Const 1963, art 9, § 3 requires uniformity in property taxation. In *Huron-Clinton Metropolitan Authority v Boards of Supervisors of Five Counties*, 304 Mich 328, 335; 8 NW2d 84, 88 (1943), the Michigan Supreme Court adopted the following as a definition of "taxing by uniform rule":

"Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of the assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation; and this equality of burden cannot exist without uniformity in the mode of the assessment, as well as in the rate of taxation. But this is not all. The uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform over all the State; if a county, town or city tax, it must be uniform throughout the extent of the territory to which it is applicable."

As the rule of uniform taxation is also controlling within school districts, OAG, 1961-1962, No 3577, p 69 (March 22, 1961), it follows that the burden for school taxes cannot be imposed upon any territory greater or smaller than the entire school district.

Further support for the rule of uniform taxation within school districts can be found in section 412 of the School Code of 1955, *supra*, which, after discussing the treatment for bonded indebtedness existing prior to consolidation, provides:

"All other tax levies for the purpose of the consolidated school district shall be spread over the entire area of the school district."

Therefore, it is clear that a bonding issue within the Twin Valley School District must apply equally to the entire district. Separate bonding issues for separate regions within the same school district would contravene the Constitution and laws of the State.

In answer to your third question, it is not constitutionally permissible to enact legislation to permit separate bond issues without creating two

separate school districts inasmuch as the restriction upon such bonding is constitutional in origin.

FRANK J. KELLEY,
Attorney General.

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ADMINISTRATIVE RULES: Adoption of Rules Regulating Use and Occupancy of Unpatented Submerged Bottomlands of the Great Lakes.

DEDICATION: Dedication of Unpatented Submerged Bottomlands of Great Lakes as a State Park.

GREAT LAKES: Adoption of Rules Regulating Use and Occupancy of Unpatented Submerged Bottomlands of the Great Lakes.

Dedication of Unpatented Submerged Bottomlands of Great Lakes as a State Park.

STATE PARKS: Dedication of Unpatented Submerged Bottomlands of Great Lakes as a State Park.

NATURAL RESOURCES COMMISSION: Adoption of Rules Regulating Use and Occupancy of Unpatented Submerged Bottomlands of the Great Lakes.

Dedication of Unpatented Submerged Bottomlands of Great Lakes as a State Park.

The Legislature has by provisions of 1899 PA 171 dedicated as a State park, all unpatented submerged bottomlands of the Great Lakes. The responsibility for control over use and occupancy of the State park is imposed upon the Commission of Natural Resources.

While the Commission is without authority to "dedicate" lands already dedicated by law, there is nothing appearing in the statutes preventing the Commission in the exercise of its duties and responsibilities from: (a) designating a particular portion of the park by distinctive name, e.g. Thunder Bay State Underwater Park; or (b) adopting administrative rules regulating use and occupancy of the area specifically designated.

Opinion No. 5078

November 10, 1976.

Dr. Howard A. Tanner, Director
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Your recent letter requests my opinion concerning the authority of the Commission of Natural Resources over the bottomlands of the Great Lakes. To quote from your letter:

"Does the Natural Resources Commission have authority to dedicate