OPINION
62-199

August 2, 1962 (OPINION)

SCHOOL DISTRICTS

RE: Bond Issue - Responsibilities of Board in New Reorganized District

This is in reply to your letter of 27 July 1962 in regard to the above bond issue.

Essentially the facts of which you inform us indicate that the bond issue election was held on 12 June 1962. The vote was in favor of issuance of bonds. Subsequently an election on a reorganization plan which included the original district's territory and other was voted on and approved. By reason of statute, the reorganization plan went into effect on July 1, 1962. As of this date the bonds of the original district had not as yet been issued. The reorganization plan provided that the bonded indebtedness of any district included in the plan must be spread to the entire area of the new district. There is like provision made concerning interest and sinking fund and the levy to pay a State School Construction Fund lease-contract.

We have not found a case squarely in point involving statutes precisely like ours on these matters.

We find at 47 Am. Jur. 313, School, Section 22, the following:

> * * * many cases hold that upon the consolidation or other merger of two or more districts, the new or enlarged district becomes liable for the existing indebtedness of its constituent districts, either by virtue of statute or because the new district, having acquired the property of the constituent districts, is burdened with their liabilities. And such liability may extend to bonded indebtedness, in the absence of special statutory provision with respect to such debts. On the other hand, the liability of a consolidated or enlarged district, or of the property included in one of its constituent districts, for the debts of others of the constituent districts has been denied in some jurisdictions. In still other cases, the courts, while not specifically stating that upon consolidation of school districts, the indebtedness of the constituent district was not assumed by the new district, have observed that such indebtedness remained an obligation of the old district. * * * *"

Here, however, if there is existent indebtedness it has been purposely accepted by the new district by adoption of the reorganization plant.

Looking to Schouweiler et al., v. Allen et al., 17 N.D. 510, 516, we find:

> * * * * The code provides for an election in school districts

> to vote upon the issuance of bonds in such cases, and section 911, Revised Codes 1905, contains the requirement that, if the majority of all votes cast 'shall be in favor of issuing bonds, the school board, through its proper officers, shall forthwith issue bonds in accordance with such vote.' The bonds cannot be issued except upon an affirmative vote. The wisdom of their issuance is a question solely for the voters of the district themselves, and not for the board, to determine. The members of the board are but the special agents of the people constituting the school district. The law has provided the method whereby the principal - in this case the voters - may instruct its agents, and when the instruction is in favor of issuing bonds the legislature has not seen fit to provide any method for revoking such instruction. After an affirmative vote at the election, the duties of the school board are ministerial, and consist in obeying implicitly the directions of the voters so given.* * * *"

The statutes have been changed, revised, recodified, etc. on many occasions since the date of that decision; however, we see no reason to assume that the court would come to a different conclusion than reached in that case at the present date and we thus conclude that the issuance and sale of bonds after a municipal election on the question presented is merely a ministerial act.

In Coler v. Dwight School Township, 3 N.D. 249, we find the court holding that a school township organized under a new statute becomes, immediately upon such organization, liable for debts of a district, the school house and furniture of which had become the property of the school township, even though apparently the court does recognize the separateness of the corporate identity of the old and new municipalities.

The statutes regarding reorganization of school districts provide for an immediate change over from the governing boards of original districts as of the statutorily specified date. (SEE sections 15-53-18 and 15-53-20 of the 1961 Supplement to the North Dakota Century Code). We note in State v. District Court, 78 N.D. 541, at page 546, the statement that:

> "* * * *This proposed order of the trial court which would direct the old boards to function in part and the new boards to function also in party, is not conducive to the orderly operation and government of school districts and will necessarily result in detriment to the schools involved.* * * *"

However, in the present instance the bonds were authorized as an indebtedness of the original district only, to be executed by the officers of that district. The assumption of same by the newly reorganized district is, of course, a function specifically of the reorganized district.

Basically in view of the Schouweiler v. Allen decision, we would conclude that the duty of issuance of bonds of the original district was and is a ministerial function of the original district's board. However, in view of the subsequent effectuation of a reorganization

plan providing for spreading the bonded indebtedness over the entire reorganized district, and the existence of the new governing body, which the State v. District Court decision would indicate has charge of the governing functions of the territory as included in the reorganized district, we believe that the new reorganized district's governing board would have a voice in determining the methods and procedure of issuing such bonds. However, assuming that both the governing boards of the original districts and the new reorganized district cooperated in the issuance and sale of said bonds, we would approve a sale of such bonds to any of the state agencies.

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