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ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 84-001

SCHOOLS AND SCHOOL DISTRICTS:
Bonded Indebtedness of a Detached
and Annexed Area of a Unit School
District

Honorable William A. Schuwerk, Jr.
State's Attorney of Randolph County
Randolph County Courthouse
Chester, Illinois 62233-0368

Dear Mr. Schuwerk:

I have your letter wherein you advise that certain described territory was detached from Sparta Unit School District No. 140 and annexed to Chester Unit School District No. 139. You ask the following questions relating to the detachment and annexation:

1. With regard to bonded indebtedness of the Sparta Unit School District No. 140, should the

Randolph County Clerk extend real estate taxes to the property of the detached area on all of the bonded indebtedness of Sparta Unit School District No. 140 or only a percentage of the bonded indebtedness?

2. Should the Randolph County Clerk, when he extends the real estate taxes for the year 1983, include the property in the detached area in the general school levy for Sparta Unit School District No. 140, or for Chester Unit School District No. 139?

In response to your first question, it is my opinion that the Randolph County Clerk should extend real estate taxes to the property of each district, as it exists on and after the annexation, a proportionate amount of the bonded indebtedness of Sparta Unit School District No. 140 to be determined according to the method hereinafter described. In response to your second question, it is my opinion that the property in the annexed area should be included in the general school levy for Chester Unit School District No. 139.

You advise that, on May 31, 1983, an order was entered by the Regional Board of School Trustees allowing the detachment of certain territory from Sparta Unit School District No. 140 and the annexation thereof to Chester Unit School District No. 139. In November, 1983, both the Sparta Unit School District No. 140 and the Chester Unit School District No. 139 made and filed their tax levies for the 1983 real estate taxes payable in 1984.

Section 7-14 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 7-14, as amended by P.A. 83-0686 effective September 23, 1983), provides as follows:

"Bonded indebtedness--Tax rate. Whenever the boundaries of any school district are changed by the annexation or detachment of territory or by the dissolution of a district and its annexation to another district under any of the provisions of this Act, each such district as it exists on and after such action shall assume the bonded indebtedness as well as financial obligations to the Capital Development Board pursuant to Section 35-15 of 'The School Code', of all the territory included therein after such change. The tax rate for bonded indebtedness shall be determined in the manner provided in Section 19-7 of this Act, except the County Clerk shall annually extend taxes against all the taxable property situated in the county and contained in each such district as it exists after the action."

Section 7-14, as amended, requires that the bonded indebtedness of the detached and annexed territory is to be assumed by the district which annexed the territory.

Statutory provisions substantially similar to those presently contained in The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 1-1 et seq.) were discussed in People ex rel. Ackwill v. Illinois Central Railroad (1953), 1 Ill. 2d 392, 398-9, wherein the court stated as follows:

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* * *

By amendments to the School Code adopted in 1953, (Ill. Rev. Stat. 1953, chap. 122, pars. 4B-12, 19-9, 19-33,) the General Assembly has provided a method for the allocation of the obligation of underlying bond issues which differs

substantially from that which was in effect at the time of the levy here in question. It is unnecessary to recite in detail the new statutory plan. It is sufficient to note that while the statute now contemplates that bonds of the underlying districts shall become the obligations of the new district, whether the absorption is partial or total, explicit provisions appear to be made for a full accounting of existing assets and liabilities between the districts upon the basis of school population. Ill. Rev. Stat. 1953, chap. 122, pars. 4B-12--4B-24.

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The amount of indebtedness attributable to the annexed territory, which the new district assumes, is to be computed according to the method provided in section 19-29 of The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 19-29) which provides:

"Computation of debt incurring power. In computing the debt incurring power of any school district where there has been included in any such school district only a part of any former school district which at the time of such inclusion has outstanding bonded indebtedness, a proportionate amount of such bonded indebtedness shall be chargeable to such school district based upon the ratio that the assessed valuation of taxable property as equalized and determined by the Department of Revenue in that part of the territory of such former school district that has been included in any such school district bears to the total assessed valuation of the former school district as equalized and determined by the Department of Revenue for the year in which the change occurred, and the proportionate amount of such bonded indebtedness shall be chargeable against such school district in determining its debt incurring power."

Section 19-29 requires that the proportion of bonded indebtedness that is assumed by an annexing district is to be based

upon the ratio that the assessed valuation of taxable property, as equalized and determined by the Department of Revenue, in that part of the territory of the former school district that is included in the new school district, bears to the total assessed valuation of the former school district for the year in which the change occurred. This proportional amount of the bonded indebtedness is chargeable against the annexing district.

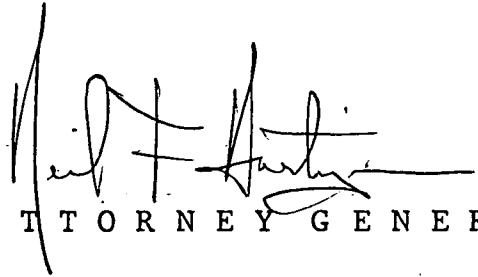
After the amount of the proportional part of the bonded indebtedness to be assumed by the new district is ascertained, section 7-14 of The School Code, as amended, requires that the tax rate for the bonded indebtedness be determined in the manner provided in section 19-7 of the Code, except that taxes for the indebtedness are to be extended against "all the taxable property situated in the county and contained in each such district as it exists after" the detachment and annexation. Consequently, it is my opinion that the Randolph County Clerk should extend taxes for the proportional share of the bonded indebtedness of Sparta Unit School District No. 140 against all of the property contained in each of the newly aligned districts.

You also inquire whether the Randolph County Clerk should include the detached territory in the general school levy for Sparta Unit District No. 140, or Chester Unit District No. 139, when he extends the 1983 real estate taxes. Since the

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order of detachment and the formation of the new boundaries of the district was entered on May 31, 1983, the new boundaries of the district had been established prior to the time of the school levies in November, 1983. The law is well settled in Illinois that the power of a school district to levy taxes is limited to the property within the boundaries of the district at the time of the levy, and any attempt to levy a tax on property detached from a district is unlawful. (People ex rel. Davis et al. v. Spence et al. (1954), 3 Ill. 2d 244, 246-7; People ex rel. Hagler v. Chicago, Burlington to Quincy Railroad Company et al. (1942), 380 Ill. 120, 127-29.) Therefore, it is my opinion that when the Randolph County Clerk extends real estate taxes for the year 1983, he should not include the detached area in the school levy for Sparta Unit School District No. 140. Instead, he should extend real estate taxes for Chester Unit School District No. 139 with regard to the detached area.

Very truly yours,


A T T O R N E Y G E N E R A L