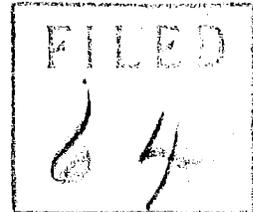


TOWNSHIP

ATION: "In counties voting out township organization the county assessor and county collector take office immediately upon being appointed and assume powers and duties of ordinary county as provided by law; county takes title to money and property of township and assumes their liabilities; settlement of accounts between township officers and county court.

January 17, 1947



Mr. Bert E. Morgan
Clerk of the County Court
Daviess County
Callatin, Missouri

Dear Sir:

This acknowledges your request for an opinion, based on the following facts:

"Daviess County voted at the last general election to abolish township organization.

"The Governor has appointed a County assessor and a County collector.

"Our questions are:

"Who is to do the assessing for the year 1947 beginning now, the township assessors or the appointed assessor?

"When does the appointed collector begin and what does he take over?

"Our township collectors are collecting now and are making the regular monthly settlements in January for collections made in December 1946.

"To whom should these township collectors pay the taxes collected?

"If the township money and the road and bridge money is paid to the trustees of the townships the county will not have road funds until another year. If the money is deposited with the County treasurer I presume that the county will assume the

liabilities of the townships."

The question of who shall do the assessing for 1947 and when the appointed collector takes office or assumes his duties as county collector is answered by Section 14023, R.S. No. 1939, which provides:

"At any general election holden in this state, in any county having adopted township organization under this chapter, upon the petition of one hundred voters of the county, praying the county court to re-submit the question of township organization to the voters at said election, it shall be the duty of the county court to submit the question again at such election, in like manner as provided in article 1 of this chapter; and if it shall appear, after the canvass of the votes as provided in article 1 of this chapter, that a majority of all the votes cast upon that question shall be against township organization, then township organization shall cease in said county; and all laws in force in relation to counties not having township organization shall immediately take effect and be in force in such county."

The above section provides township organization shall cease immediately upon the canvass of the votes. The court construed this section and a similar provision in the Constitution of 1875 in the case of *The State ex inf. John T. Barker, Attorney General, v. H. I. Duncan, et al.*, 265 No. 26, l.c. 50, and said:

" * * * * Briefly, we reach this conclusion upon those grounds: The last clause of section 9 of the Constitution, supra, provides that when township organization is voted out, at once thereupon 'all laws in force in relation to counties not having township organization shall take effect and be in force in such county.' The view contended for by relator would have the effect of placing such counties as voted township organization out, back into the category of ordinary counties to be governed by the usual and ordinary laws;

while the insistence of learned counsel for respondent Duncan would make of such a county a thing apart from all ordinary counties, with different laws to govern it. The makers of the Constitution saw no reason apparently, as we see none, why a county which had before had township organization, but which had elected to return to the common fold, should by that fact alone be set apart in a wholly different category. So they provided clearly that all the usual laws governing ordinary counties should reattach to and govern counties relinquishing township organization, immediately upon their voting it out. The 'laws in force in relation to counties not having township organization,' which laws as we see the Constitution, automatically applied to Butler county, provided at the time of the accrual of this vacancy and at the time the Governor filled it and now provide that as to an office like this 'such vacancy shall be filled by appointment by the Governor.' This being the law which at all of said times applied to 'counties not having township organization,' such law applied ipso facto and immediately to Butler county, the moment said county voted out township organization. * * * *

There can be no question that township organization ceased to exist upon same being voted out, and it necessarily follows that its offices and officers ceased to have any official existence.

The ordinary form of county government would immediately come into being and be operative, so that the assessor and collector appointed to fill the vacancies would assume the duties of their offices immediately upon their appointment. They would take over all the duties placed upon them by law under the ordinary form of county government in counties not having township organization.

As to the question of disposing of the township's money and property and the assumption of its liabilities, we have concluded that the assets immediately accrue to the county and the county likewise assumes its liabilities. This conclusion

is based upon the opinions in the cases of State ex rel. Consolidated School Dist. No. 8 of Pemiscot County et al., v. Smith, State Auditor, 131 S.W. (2d) 160, and Thompson v. Abbott et al., 61 No. 176. The court said in the Consolidated School District case, l.c. 162:

"It has long been the rule in this state, and generally throughout the country, that the power of the legislature in the creation of public corporations (which term includes school districts) is absolute except where limited by the constitution. The legislature may also change, divide, consolidate and abolish them as the public welfare demands. Harris v. M. W. Compton Bond & Mortgage Co., 244 No. 664, 149 S.W. 603; State ex rel. School District No. 1, etc. v. Andrae, 218 No. 617, 118 S.W. 561; State ex inf. Barnahan, etc. v. Jones et al., 266 No. 191, 181 S.W. 50; State ex rel. Richard v. Stouffer, Mo. Sup., 197 S.W. 242; School District of Oakland v. School District of Joplin, 340 No. 779, 102 S.W. 2d 909.

"It has also been held to be the general rule in this state that in the absence of constitutional or statutory provisions to the contrary where one corporation goes entirely out of existence by being annexed to or merged in another corporation, then the subsisting corporation will be entitled to all the property and will be answerable for all the liabilities. When the benefits are taken, then the burdens are assumed. This general rule was applied to school districts in the case of Thompson v. Abbott, 61 No. 176, which case was cited with approval in Mt. Pleasant v. Beckwith, 100 US. 514, 25 L. Ed. 699, where it is stated that as extinguished municipal corporations have no power to levy taxes to pay debts, the town to which the territory and property of the annulled municipality was annexed should become liable for its outstanding indebtedness. The rule has been repeatedly approved in Hughes v. School District, 72 No. 643; Wilson v. Drainage District, 257 No. 266, 165 S.W.

734; Id. 257 No. 39, 139 S.W. 136; Alber v. School District, 141 No. App. 189, 124 S.W. 564; Gray v. School District, 224 No. App. 905, 28 S.W. 2d 683; Roswell v. Consolidated School District, No. App., 10 S.W. 2d 665; 43 C.J., Municipal Corporations, p. 143, secs. 122 and 123; 19 R.C.L. 732."

In the Thompson case the court said, l.c. 177:

"* * * Now, where one corporation goes entirely out of existence by being annexed to or merged in another corporation, if no arrangements are made respecting the property and liabilities of the corporation that ceases to exist, the subsisting corporation will be entitled to all the property, and be answerable for all the liabilities. After sub-district No. 3 had ceased to exist, there was then no power remaining as an independent organization in its behalf to control its funds or pay off its indebtedness. Its property passed into the hands of the defendant, and when the benefits were taken, the burdens were assumed. The pleadings admit that plaintiff's claim is a just and honest debt, and that the annexation took place, and that defendant obtained possession of and control over the property of the sub-district which owed the debt. Then manifestly, it became liable for its obligations."

These two decisions both deal with school districts, but the Supreme Court holds that generally the rule announced applies to all corporations, that is, when one corporation goes out of existence and is merged into another corporation, the corporation taking over the property of the dissolved corporation becomes liable also for its obligations.

We are unable to find a specific section of the statutes applying to township officers settling their accounts with the county when said organization is voted out, but we believe the general provisions of Section 13615, R.S. No. 1959, apply. This section is broad enough in its terms to cover any person having money in his hands belonging to the county (in this case either township collectors or trustees). Said section is as follows:

"All collectors, sheriffs, marshals, clerks, constables and other persons chargeable with moneys belonging to any county shall render their accounts to and settle with the county court at each stated term thereof, pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county court within five days thereafter."

Section 13824, R.S. No. 1939, defines the powers of the county court to enforce such a settlement. This section has been amended by the 63rd General Assembly (Senate Bill No. 226), and, as amended, reads as follows:

"The county court shall have power to audit, adjust and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money found due by the county on such accounts; to enforce the collection of money due the county; to order suit to be brought on bond of any delinquent, and require the prosecuting attorney for the county to commence and prosecute the same; to issue all necessary process to secure the attendance of any person, whether party or witness, whom they deem it necessary to examine in the investigation of any accounts; and in order to procure the exhibition or delivery to them of any accounts, books, documents or other papers, the said court may issue process directed to the person in whose custody or care the said accounts, books, documents or other papers may be, commanding him to deliver or transmit the same to said court, which process shall be served by the sheriff; and the said court may examine all parties and witnesses on oath, touching the investigation of any accounts, and if any person, being served with such process shall not appear according to the command thereof, without reasonable cause, or if any person in attendance at any hearing or proceeding shall, without reasonable

cause, refuse to be sworn or to be examined, or to answer a question or to produce a book or paper, or to subscribe or swear to his deposition, he shall be deemed guilty of a misdemeanor: Provided, that if the county court finds it necessary to do so, it may employ an accountant to audit and check up the accounts of the various county officers."

Your request mentions only the money of the townships, but you will note that the Consolidated School District case and the Thompson case, supra, provides not only the money but that title to assets and properties of all kinds belonging to the township shall pass to the county.

Conclusion.

It is therefore the opinion of this department that the county assessor and county collector appointed to fill the vacancy created by the county having voted out township organization shall take office immediately upon their being appointed, and assume the powers and duties prescribed by law governing counties not having township organization; that title to all township money and property immediately passes to the county; that the county must assume liability for the township debts, and a settlement of accounts must be had between any persons having township money or property in their hands with the county court of such county and such money paid to the county treasurer.

Respectfully submitted,

F. BRADY DORCAN
Assistant Attorney General

A. PROVED:

J. V. TAYLOR
Attorney General

EEB:ml