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SPECIAL TAX SCHOOL DISTRICTS IN NORTH CAROLINA

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THE NORTH Carolina Constitution provides¹ for "a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the state between the ages of six and twenty-one," to be maintained by "taxation or otherwise." It also provides that "each county of the state shall be divided into a convenient number of districts, in which one or more public schools shall be maintained at least six months in every year."

The Constitution also limits the power of taxation for general state and county purposes,² and it was held in *Barksdale v. Comrs.*,³ that the county commissioners could not levy an additional tax, above the constitutional limit, for the purpose of running the public schools for four (now six) months. This was overruled in *Collie v. Comrs.*,⁴ and now there is no difficulty in making a sufficient levy to run the public schools for six months in every county. But if any county, or other subordinate division desires a longer term than six months, and the general school levy, under the constitutional limit, will not supply sufficient funds, a special tax is required.

Counties, school districts, and other subordinate divisions for governmental purposes, are municipal corporations, as that term is used in the Constitution, Art. 7, and as such cannot levy a tax or incur a debt for other than necessary expense, without legislative authority and the approval of a majority of the qualified voters.⁵ And since it has been held that the support of the public schools is not a "necessary expense," even for a school district, such authority is required to levy a tax or incur a debt for special school purposes.⁶

There is a material difference between creating or changing school districts and authorizing them to levy a tax or incur a debt. In the absence of constitutional restrictions, it is within the power of the legislature to subdivide the territory of the state and invest the inhabitants with corporate functions for the purposes of government. In the exercise of this power, the legislature can create, directly or indirectly, and with or without the consent of the inhabitants within the district, such subordinate divisions as may be considered necessary for governmental purposes, and confer upon them certain governmental functions. But when the power conferred extends to levying a tax or incurring a debt for a special purpose in the district, the popular vote is required.⁷

¹ Art. 9, sec. 2, 3.

² Art. 5, sec. 1, 6.

³ 93 N. C. 472 (1885).

⁴ 145 N. C. 170, 59 S. E. 44 (1907).

⁵ Const., Art. 2, sec. 14; Art. 7, sec. 7; *Smith v. Trustees*, 141 N. C. 143, 53 S. E. 524 (1906); *Dickson v. Brewer*, 180 N. C. 403, 104 S. E. 887 (1920).

⁶ *Stephens v. Charlotte*, 172 N. C. 564, 90 S. E. 588 (1916); *Sprague v. Comrs.*, 165 N. C. 603, 81 S. E. 915 (1914), and cases therein cited. See also 1 N. C. L. Rev. 124, *post*.

⁷ *Smith v. Trustees*, 141 N. C. 143, 53 S. E. 524 (1906); *Hollowell v. Borden*, 148 N. C. 255, 61 S. E. 638 (1908).

Prior to the constitutional amendment of 1917, now Art. 2, sec. 29, the legislature freely exercised the power to create school districts by special acts;⁸ and at the same time general laws were enacted, delegating this power to the county board of education.⁹ By the amendment of 1917, the legislature is prohibited from passing certain special, private, or local acts, and among these is "establishing or changing the lines of school districts." Such districts can now be established or changed only under general laws, and several special acts for such purpose have been declared void.¹⁰

In the creation of school districts generally, the power is vested in the county board of education, "to divide the townships, or the entire county or any part of the county, into convenient school districts;"¹¹ and no popular vote is required. But where a special tax is to be levied or bonds issued, different plans have been provided.

For a special school tax in the whole county, application is made by the county board of education to the board of county commissioners to order an election, and if a majority of the qualified voters favor the tax, it is to be levied.¹² But where the statute provided that if such a county election failed in the whole county but was carried in any township, then the tax should be levied in such township, it was held to be invalid, because the two propositions could not be submitted as one.¹³ In a township, an election is to be ordered by the county commissioners, upon petition of one-fourth of the freeholders in the township, approved by the county board of education.¹⁴ In an incorporated city or town, an election is to be ordered by the governing body, upon petition of one-fourth of the freeholders.¹⁵ Under another section, if the established district includes a city or town, the election is to be held upon petition of one-third of the qualified voters, approved by the committee or trustees of the district, the order to be made by the governing body of the town if no other territory is included, and by the county commissioners if outside territory is included.¹⁶ There is some conflict in these sections, but no question has arisen as to their application. In all of these cases, the question is as to the levy of a special tax in an established district, and it becomes a special tax district simply by voting for the tax.

Several cases have recently come before the North Carolina Supreme Court, involving the construction and application of the general statutes enacted for establishing and changing special tax school districts. There is little difficulty where the only question is one of establishing new school districts with special

⁸ *Smith v. Trustees*, 141 N. C. 143, 53 S. E. 524 (1906); *Howell v. Howell*, 151 N. C. 575, 66 S. E. 571 (1909).

⁹ C. S. sec. 5469-5479.

¹⁰ *Trustees v. Trust Co.*, 181 N. C. 306, 107 S. E. 130 (1921); *Sechrist v. Comrs.*, 181 N. C. 511, 107 S. E. 503 (1921).

¹¹ C. S. sec. 5469.

¹² C. S. sec. 5505.

¹³ *Hill v. Lenoir Co.*, 176 N. C. 572, 97 S. E. 498 (1918).

¹⁴ C. S. sec. 5511.

¹⁵ C. S. sec. 5519.

¹⁶ C. S. sec. 5523.

tax features. The county board of education may, under the general law,¹⁷ establish new school districts, without the popular vote, where no question of taxation is involved; and where a special tax is desired, the county board of education may establish such districts without regard to township lines. Upon a petition of one-fourth of the freeholders in the proposed district, endorsed by the county board of education, the county commissioners must order an election, and upon approval by a majority of the qualified voters, the tax is to be levied.¹⁸ Since the only purpose in establishing the new district is to have the benefit of a special tax, voting for the tax is voting for the district. It was held that the term "freeholders" in this statute did not include women;¹⁹ but this has since been changed by statute.²⁰

Districts may be changed by consolidating two or more districts or by adding new territory to an established district. Since it is the present policy of the school law to encourage the enlargement or consolidation of school districts, so as to furnish increased school advantages, this has become an important question, and is the question considered in the more recent cases.

The statute provides that, upon written request of the committee or trustees of any special tax district, the county board of education may enlarge the boundaries of the district by adding contiguous territory. An election must be held in the new territory, and if a majority of the qualified voters favor it, the new territory is to be added and to become subject to the same tax.²¹ Another section authorizes the county board of education to redistrict the entire county or any portion of it, to change the boundary lines between local tax school districts, and to consolidate such districts, when satisfied that the best interests of the residents require it.²² There is no election provided for in the exercise of this power. The act of 1921, ch. 179, which purports to be an amendment to the section giving the power just mentioned, provides that the county board of education may consolidate non-local tax districts with special tax districts, with the consent of the governing body of the special tax district. They may also consolidate local tax districts, having a different rate of taxation, and local tax districts with non-local tax districts. But the rate in any consolidated district, created from local tax districts having different rates, is to be made uniform by the county commissioners, upon the recommendation of the county board of education—"and no taxpayer in such consolidated district shall be required to pay a higher special tax rate than that originally voted in his district." No election is provided for in this statute, except that the "consolidated districts herein authorized have authority to vote special tax rates for schools in the entire district in accordance with law."

The foregoing are, in brief, the general statutes with regard to establishing

¹⁷ C. S. sec. 5469.

¹⁸ C. S. sec. 5526.

¹⁹ *Gill v. Comrs.*, 160 N. C. 177, 76 S. E. 203 (1912).

²⁰ 1915, ch. 22; *Chitty v. Parker*, 172 N. C. 126, 90 S. E. 17 (1916).

²¹ C. S. sec. 5530.

²² C. S. sec. 5473, 5474.

and changing special tax school districts. The policy of these statutes seems to be, to allow the county board of education to establish school districts as the interests of the public schools may demand, and if a special tax is desired the popular vote must be taken in the district. In changing established school districts, the same power exists, but the special tax feature presents a difficulty, and there is some conflict in the statutes.

In *Riddle v. Cumberland*,²³ there was an attempt to convert a whole township into a special tax school district, in which there already existed two special tax districts and three non-tax districts. Upon a petition of one-fourth of the freeholders in the township, as required by the statute for special tax districts in a township,²⁴ endorsed by the county board of education, an election was held in the township, and a majority of the qualified voters in the township voted for the tax. Less than one-fourth of the freeholders in the non-tax districts signed the petition; less than a majority of the qualified voters in the non-tax districts voted for the tax; and no separate election was held in the non-tax districts. It was contended that this was changing or consolidating special tax districts, and therefore should be governed by the statute regulating such change;²⁵ but the proceeding was sustained as, in effect, creating a new special tax district, since the order for the election provided that if the tax carried in the whole township, the special tax in the two tax districts should cease, and the whole new district should be subject to the new tax.

In *Paschal v. Johnson*,²⁶ two special tax districts having the same rate of taxation were consolidated by the county board of education, and an election was held in the consolidated district for issuing bonds. This was held to be a valid exercise of power under C. S. sec. 5473, as amended by the act of 1921, ch. 179; and since the tax rate was already the same, there was no necessity for a separate election. It would seem that the county board of education could make the consolidation in this case without any election, under the general law.²⁷

In *Perry v. Comrs.*,²⁸ the county board of education consolidated a special tax district with two non-tax districts, and an election was held for a special tax in the consolidated district. While a majority of the qualified voters in the district favored the tax, no separate election was held in the non-tax territory, and in fact a majority in the non-tax territory did not favor the tax. The court declared the consolidation invalid, on the ground that while the county board of education, under C. S. sec. 5473, as amended by P. L., 1921, c. 179, might consolidate special tax districts, having different rates, and the county commissioners could make the rate uniform so as not to require any taxpayer to pay a higher rate than that originally voted in his district, this could not apply to the consolidation of special tax districts and non-special tax districts; that this

²³ 180 N. C. 321, 104 S. E. 662 (1920).

²⁴ C. S. sec. 5511.

²⁵ C. S. sec. 5530.

²⁶ 183 N. C. 129, 110 S. E. 841 (1922).

²⁷ C. S. sec. 5474; P. L., 1921, ch. 179.

²⁸ 183 N. C. 387, 112 S. E. 6 (1922).

could be done only under C. S. sec. 5530, which requires a separate election in the non-special tax territory.

Substantially the same question arose in *Hicks v. Comrs.*,²⁹ where an attempt was made to organize a new special tax district out of two special tax districts and certain non-special tax territory. A petition was filed by one-fourth of the freeholders, an election was held for a special tax, as provided in C. S. sec. 5526, and a majority of the qualified voters sustained it. It was held that this was enlarging or consolidating districts rather than creating a new one, that the procedure was governed by C. S. sec. 5530, which required the committee or trustees of the special tax district to take the initiative, and that an election should be held separately in the non-special tax territory.

It was further held in *Woosley v. Comrs.*³⁰ that the county board of education had no authority to create a super-district containing several smaller districts, and leave the smaller districts intact for certain school purposes. This does not mean, however, that such power might not be conferred by the legislature.

There would seem to be some difficulty in reconciling the results reached in the case of *Riddle v. Cumberland*, and in the later cases of *Perry v. Comrs.*, and *Hicks v. Comrs.*, although the latter cases approve and distinguish *Riddle's* case, either upon the ground that it was establishing a township high school district under C. S. sec. 5511, or that it was creating a new special tax district under C. S. sec. 5526. In either case, a majority in an existing special tax district might impose a tax upon non-tax territory, by annexing the new territory and then outvoting them. The principle which the decisions explain is clear enough, that the county board of education, in exercising the power conferred upon it to establish and change school districts, either with or without the special tax feature, must proceed in the manner prescribed in the statute, since it is a delegated power. But the decisions do not extend to the limitation of the power of the legislature, further than that limitation is clearly expressed in the Constitution. In one or two later cases, the court considers the power of the legislature, as distinguished from the general statutes mentioned above, and the conclusions reached may have a very important bearing upon future changes in the public school law. The distinction to be kept in mind is that between creating or changing a school district, and conferring the power of taxation.

In *Roebuck v. Board of Trustees*,³¹ the question involved was the validity of a special act of the legislature, conferring additional taxing power upon an established special tax school district. The district was established by special act in 1905, and authorized to levy a special tax for school purposes. By a special act in 1921, ch. 152, the same district was authorized to issue bonds and increase the tax levy, subject to the popular vote. It was contended that this amending act violated the Constitution, Art. 2, sec. 29, which prohibits the enactment of any private law creating or changing school districts. It was held

²⁹ 183 N. C. 394, 112 S. E. 1 (1922).

³⁰ 182 N. C. 429, 109 S. E. 368 (1921).

³¹ 113 S. E. 676, decision rendered Oct. 4, 1922.

that the act did not violate the Constitution, because it did not create or change a school district, but conferred the power of taxation upon an existing district. The same thing might probably have been accomplished under existing general laws,³² but this did not interfere with the exercise of legislative power.

In *Coble v. Comrs. of Guilford*,³³ the validity of a special act was also involved. In 1921, the legislature passed a special act³⁴ authorizing an election for a special school tax in the whole of Guilford county, except in Greensboro and High Point. There were several special tax districts in the county, and also several non-tax districts. The measure was submitted to the voters generally in the whole territory, and was approved by a majority of the qualified voters. No separate election was held in the non-tax districts, nor does it appear how the vote was in those districts. The act provided that if the measure carried, the special tax in the tax districts should cease to be levied, and there should be one special tax rate in the whole territory; but the school districts should remain as before.

It was insisted, first, that this violated the Constitution, in that it created or changed school districts by special act. The court declares that the act does not create a *school* district, but a *taxing* district, and is therefore valid. "Since the general power of the legislature to create a taxing district and to fix its boundaries is neither denied nor impaired by the constitutional amendment, Art. 2, sec. 29; since the school districts are retained with their former boundaries; and since the power of the school committees in each district is not affected; we conclude that the act is not in conflict with the Constitution." If the legislature may create special taxing districts for school purposes, including all or any portion of a county, it may also delegate such power to the school authorities in a county, to be exercised under such restrictions as may be prescribed. In fact, this seems to be the intention in the general law, P. L., 1921, ch. 179.

It was, again, contended that this act violated the Constitution, Art. 7, sec. 7, in that it authorized the levy of a tax in the non-tax territory without requiring the majority of the voters therein to approve it. Following the decision in *Riddle v. Cumberland*, *supra*, the court says that, since the special tax was to cease in the special tax districts, if the vote was favorable, and the same tax was to be levied in the whole territory, it was not necessary to take the vote of the non-tax territory separately. This section of the Constitution has not been construed to mean that, when a subordinate division has been created and has been authorized to levy a tax or incur a debt, no new territory can be added without the approval of the popular vote in the new territory. This power has been exercised by the legislature in changing the boundary lines between counties;³⁵ in adding new territory to cities and towns;³⁶ and in annexing or taking

³² C. S. sec. 5535, 5676.

³³ Decision rendered November, 1922, and not yet printed.

³⁴ Public-Local Laws, 1921, ch. 131.

³⁵ *Dare Co. v. Currituck Co.*, 95 N. C. 189 (1886); *Comrs. of Cumberland v. Comrs. of Harnett*, 157 N. C. 515, 73 S. E. 195 (1911).

³⁶ *Lutterloh v. Fayetteville*, 149 N. C. 65, 62 S. E. 758 (1908).

away territory from a special tax school district.³⁷ If the legislature may create a special tax district by special act, it may also annex new territory, as in the case of other governmental subdivisions. And it would also follow that if this may be done by special act, it may also be done through general laws delegating the power to the proper county authorities.

It was further contended that since some of the special tax districts had issued bonds or were in debt, that it would impair the obligation of a contract to destroy the special tax in these districts. But it was held that only a creditor could raise that objection; and if the objection were open to the plaintiff, the rights of creditors were not interfered with, since the debts were provided for under the new levy and in a larger territory.

The general statute makes provision for abolishing these special tax districts.³⁸ Upon a petition of two-thirds of the qualified voters in the district, approved by the county board of education, the county commissioners shall order an election upon the question of abolishing the district. This shall not be done within two years; nor can it be abolished when the district is in debt. This is the only way provided in the general law; but the legislature may adopt other measures for that purpose, so long as the rights of creditors are not affected.

The general result of these various cases upon the special tax school district laws may be briefly summarized, as follows: School districts may be established or changed only by general laws, and not by special acts. This power has been delegated to the county board of education; and no popular vote is required. When the taxing power is added, it must be by legislative authority, either under general laws or special acts, and there must be the popular vote. The taxing power may be conferred upon a school district when it is created, and this must be by general laws. It may be conferred upon an established district, either by special act or general law. And a special tax district may be created in a county or part of a county by special act, when it does not change the school districts; or under general laws when the school districts are changed.

³⁷ *Marsh v. Early*, 169 N. C. 465, 86 S. E. 303 (1915).

³⁸ C. S. sec. 5531-5533.