

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 96-F-14

Date issued: July 18, 1996

Requested by: Dr. Wayne G. Sanstead
Superintendent of Public Instruction

- QUESTION PRESENTED -

Can two school districts, voting on the question of reorganizing into one new school district, vote at the same election on whether the new reorganized school district may issue bonds to finance a new school facility?

- ATTORNEY GENERAL'S OPINION -

It is my opinion that two school districts, voting on the question of reorganizing into one new school district, may not vote at the same election on whether the new reorganized school district may issue bonds to finance a new school facility.

- ANALYSIS -

Two school districts may attempt to reorganize to form a new school district pursuant to N.D.C.C. ch. 15-27.3. After approval of the proposed reorganization by the State Board of Public School Education, the county superintendent calls a special election of the voters residing within the proposed new district to determine whether the school districts involved should reorganize into one new school district. N.D.C.C. § 15-27.3-08(1). Notice of the election must be published, clearly stating that the election has been called for the purpose of affording the voters an opportunity to approve or reject the proposal for the formation of a new school district. N.D.C.C. § 15-27.3-08(2). The notice must also contain a description of the boundaries of the proposed new district, a statement of the terms of adjustment of property, debts, and liabilities applicable to the proposal, if any, and the proposed tax levy. Id. If a majority of electors residing within each school district votes in favor of the formation of the new school district, the county superintendent is directed to take steps to accomplish the reorganization. N.D.C.C. § 15-27.3-08(5). N.D.C.C. § 15-27.3-12 provides for the governance of the involved school districts between the time of the voter approval of the formation of the new school district and the effective date of the new school district:

After the establishment of any new school district, the school board for the new school district must be elected

at the regular annual school district election or at a special election called by the county superintendent of schools for that purpose Members of school boards elected in the newly reorganized districts may not enter upon the duties of office until the time specified in section 15-27.3-15 except as provided by section 15-27.3-13. School boards in original school districts included within a reorganized district continue and remain in existence until the time specified in section 15-27.3-15 at which time the new school board elected for the newly reorganized district as provided in this section becomes the governing body of such school districts. Prior to the completion of the reorganization of any school district under this chapter, the existing school board of any school district may not contract or place the district under any obligation, except upon the recommendation of the county committee [for the reorganization of school districts].

(Emphasis added.) N.D.C.C. § 15-27.3-15 provides, in part, "[e]xcept as provided by section 15-27.3-13, any reorganization proposal voted upon and approved becomes operative and effective on the first day of July following its final approval."

N.D.C.C. § 15-27.3-13 provides:

1. Notwithstanding any provision of this chapter, the school board for a new school district established pursuant to this chapter shall negotiate in the manner provided by chapter 15-38.1 with the teachers of the district in lieu of the old board or boards prior to the effective date of assumption of its other duties pursuant to section 15-27.3-15. The school board may enter into agreements with representative organizations pursuant to chapter 15-38.1.
2. After the establishment of any new school district pursuant to this chapter, the school board for the new school district shall, on or before February first of the year in which the reorganization takes effect, hold a public hearing and present at the hearing a detailed plan setting forth the curriculum, class offerings, and staffing positions which will be offered by the new school district. The school board shall give notice of the hearing by publication in

the official county newspaper in each county affected by the proposed reorganization, at least fourteen days prior to the date of the hearing. The school board for the new school district shall, on or before April fifteenth of the year in which the reorganization takes effect, notify those teachers of the districts which are being reorganized whether, taking into account reductions in staff positions due to the reorganization, they will be offered contracts of employment with the new district.

The foregoing statutes in N.D.C.C. ch. 15-27.3 are specific to the reorganization of school districts and clearly specify the authority of the board of the newly reorganized district before that district actually becomes operative and effective. See N.D.C.C. §§ 15-27.3-12, 15-27.3-13.

School districts may issue bonds to finance a new school facility. N.D.C.C. § 21-03-06(4). When a school district is required to put the question of issuance of bonds to the electors, the bonds may be issued only after 60 percent of all the qualified voters of the school district voting on the question approve. N.D.C.C. § 21-03-07. The proceedings for the issuance of bonds pursuant to N.D.C.C. ch. 21-03 must be instituted by the adoption of an initial resolution. N.D.C.C. § 21-03-09. The initial resolution may be adopted by a majority vote of the governing body of the school district, or may be proposed in connection with the filing of a petition which must be acted on by the governing body of the school district. N.D.C.C. § 21-03-10.

Upon or after the adoption of an initial resolution by the governing body, or at the first meeting of the governing body held after the filing of a petition and proposed initial resolution by the qualified electors as specified in subsection 2 of section 21-03-10, the governing body by resolution shall provide for submitting to the qualified electors of the . . . [school district] the question whether such initial resolution shall be approved.

N.D.C.C. § 21-03-11.

The school district must publish a notice of election which "must specify the date, polling hours, and polling places of such election and must contain a complete copy of the initial resolution and a statement that the question to be submitted thereat shall be whether said initial resolution shall be approved." N.D.C.C. § 21-03-12.

The ballot for a bond election must be separate from other ballots and the question on the ballot must be stated substantially as indicated in state law. N.D.C.C. § 21-03-13.

As the foregoing statutes in N.D.C.C. ch. 21-03 indicate, a specific procedure must be followed for the issuance of bonds. Particularly, proceedings for the issuance of bonds must be instituted by the adoption of an initial resolution. N.D.C.C. § 21-03-09. The initial resolution is either adopted by a majority vote of the governing body of the school district, or proposed in connection with the filing of a petition which must be acted on by the governing body of the school district. N.D.C.C. § 21-03-10. Thus, the initial resolution is either adopted or acted on by the governing body of the school district.

When school districts are reorganized, the school board for the new reorganized school district may not enter upon the duties of office, except for the limited purposes described in N.D.C.C. § 15-27.3-13, until the first day of July following final approval of the reorganization. N.D.C.C. §§ 15-27.3-12, 15-27.3-15. Thus, the school board for a new reorganized school district does not have the authority, before the first day of July following final approval of the reorganization, to adopt or act upon an initial resolution for the issuance of bonds.

Therefore, two school districts, voting on the question of reorganizing into one new school district, may not vote at the same election on whether the new reorganized school district may issue bonds to finance a new school facility.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

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Assisted by: Leah Ann Schneider
Assistant Attorney General