OPINION
62-182

June 29, 1962 (OPINION)

SCHOOL DISTRICTS

RE: Attachment - Definition of Adjacent Territory and Contiguous Territory

Your letter of June 5, 1962, has been received. The purpose of your letter was to secure an opinion from our office concerning the definition of "adjacent territory" and "contiguous territory." Your letter was prompted by the fact that the Atkinson School District in your county has for the past fourteen years transported their students to the Bowman Twin Butte Public School District for purposes of education and because of this, there has been no school in operation in the Atkinson School District for the past fourteen years.

As you know, after July 1, 1962, if the school district has not operated a school for the past preceding two years, it shall be the duty of the county commissioners to provide for its attachment to an adjoining school district. The persons residing in the Atkinson School District do not wish to take a chance on which district they will be attached to and consequently they have petitioned to be annexed to the Bowman School District. Their petition was approved by the county superintendent of schools, the county committee on reorganization and the county board of commissioners. It was then presented to the State Board of Public Instruction and there, as I understand it, Mr. M. F. Peterson refused to accept the petition and said it could not be approved because it did not meet the legal requirements for annexation. The reason the petition was denied for filing was the fact that Mr. Peterson contended that the areas were not contiguous and this brings us to the crux of our problem.

The statute provides that the territory to be annexed to another territory must be contiguous to that territory. As for the case in your county, the Atkinson School District only touches the Bowman School District on the corner. It was suggested that land which meets only at the corner is not contiguous.

Upon re-checking the definitions of the term "contiguous", we find that there is ample authority for this position. In fact to realize the problem, we need only to look at the Words and Phrases volume and go to the word contiguous, and under the subtitle of "Land that is cornering", we find that the first definition in this instance says "two tracts of land which touch only at common corner are not contiguous." We proceed to the second case in this section and it says "tracts which corner with one another are contiguous." Thus, we have two opposite results and we need only to look further to see that this is not only an isolated incident but is common. The word "contiguous" appears to mean many things to many different people. We also find authority for the fact that "contiguous" and "adjacent" are sometimes synonymous terms.

You stated you also wish our opinion as to the definition of "adjacent." We have defined the term "adjacent" in an official opinion to Mr. M. F. Peterson, Superintendent of Public Instruction, under date of September 25, 1959. In that opinion, we said that where the areas sought to be annexed have a common corner with the district it is to be annexed to and does not result in splitting any district into two separate areas without a common corner or boundary, that the areas sought to be annexed are adjacent to the annexing district as contemplated by section 15-53-26 of the 1957 Supplement. In that case, we also said that "adjacent" and "contiguous" are synonymous in some instances, although it usually would appear that the word "adjacent" has a broader meaning than the word "contiguous." The North Dakota Supreme Court in Griffin v. Denison Land Co., 18 N.D. 246, 252, 119 N.W., 1041, 1043, defined "contiguous". They said that contiguous may mean different things, however, in this instance the court said that land which merely cornered was not contiguous. Also, this 1909 definition was quoted with approval in 1956 in the case Williams Electric Coop v. Montana Dakota Utilities Co., 79 N.W.2d. 508, 519. Thus, as I stated before, there is ample authority to hold that the term "contiguous" means more than touching on a corner. However, as I also stated before, many courts, including both of the North Dakota cases cited, have held that the definition of the term depends upon its use. In this connection, I would like to point out that section 15-22-21, which is effective July first of this year, provides that a territory which has not operated a school for the immediately preceding two years shall be attached to an adjoining district. Here, you will note, the statute uses the term "adjoining" rather than "contiguous" or "adjacent." Further on in this section, it provides that whenever the county superintendent of schools recommends certain territory shall be attached to an adjacent school district, that the commissioners shall provide for attachment to an adjoining school district. There you will notice it appears that the terms. "adjacent" and "adjoining" are used interchangeably. Also in section 15-23-26, it provides that territory which is left over, so to speak, after a reorganization plan shall be attached to an adjacent territory. There you will notice it does not say "adjoining" or "contiguous" but merely uses the term "adjacent."

Section 15-27-04, the section which is specifically in question at this time, says that territory contiguous to a public school district may be attached to such school district under certain conditions. You will also notice that the headnote of section 15-27-04 provides for attachment of adjacent territory to a school district. While the headnote is not a part of the statute, in this case the headnote was enacted as part of the statute in the revamping and consolidation of the school laws by the 1961 Legislature. Thus, where the term "adjacent" is used in the headnote and the term "contiguous" is used in the statute, it would appear to us that there is some indication that the Legislature meant the terms were to be used interchangeably. If present construction is followed, we see that the Atkinson School District cannot be "annexed" to the Bowman School District, but the commissioners can attach it to the Bowman district because the areas are "adjoining." We can see no valid reason why there should be different requirements for consolidation of territory when the goal sought to be achieved is the same in all instances.

Thus, we can see now that we have three requirements for territory which is to be attached to another district. If territory is to become part of another district by annexation, the territory according to statute must be contiguous to that territory. If the territory is to be attached to another district by the county commissioners because it has not operated a school for the immediately preceding two years, we see that the statute requires such territory to be adjoining the area to which it is to be attached. If the area in question is an area which was not included in a reorganized district, we then see, according to section 15-23-26, that this territory shall be attached to another district which is adjacent to it. Thus, we have three similar instances where the statutes provide three different means and the end result is the same. We do not believe that the Legislature intended to have different requirements for each of these type of areas.

As a general rule, the school district must consist of compact and contiguous bodies of land and territory. While the district may be created of any desired shape or plan, it cannot be gerrymandered in a prejudicial manner or merely for the purpose of including the places of residence of persons desiring to be included and of excluding those territories where persons desire to be left out of a territory.

It is our opinion that the question of contiguity is one of fact. It must be determined by present day conditions and in many instances from the character of the territory and the means of travel from points in the territory to the school facilities. Thus, what was not contiguous fifty years ago might be contiguous today.

It is our further opinion that contiguous territory requires the territory of a district shall be so closely united and so nearly adjacent to the school building that all the children residing in the district, their ages considered, may conveniently travel from their homes to the school and return in a reasonable time and with a reasonable degree of comfort.

It would appear that these several statutes might well be brought to the attention of the Legislature so that they might better define their wished in this regard.

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