OPINION
63-218

January 3, 1963 (OPINION)

SCHOOL DISTRICTS

RE: Reorganization - Assets, Debts and Means of Determining

This is in reply to your letter of December 27, 1962, in regard to reorganization of school districts.

Your first question is stated as, "May the Reorganization Committee Waive the assets of a portion of the District going into another District?" The basic statutory provision, section 15-53-08 of the North Dakota Century Code, provides:

> DETERMINATION AND ADJUSTMENT OF PROPERTY, ASSETS, DEBTS AND LIABILITIES AMONG DISTRICTS. The county committee shall determine the value and amount of all school property and all bonded and other indebtedness of each school district affected in a reorganization plan and consider the amount of all outstanding indebtedness and shall make an equitable adjustment of all property, assets, debts and liabilities among the districts involved after the hearing provided for in section 15-53-09."

Looking to the specific terms of the statute, the committee is required to consider all pertinent property and asset factors involved, weigh the worth of same as well, examine into the liability and indebtedness factors and arrive at its conclusion of an equitable adjustment of all such factors among the districts involved.

In arriving at their result, we find the Supreme Court of this state recognizing some flexibility in the methods of operation. In Anderson v. Peterson, 78 N.D. 949, 971, the court states:

> In the detailed administration of a law such as the Reorganization Act an honest and substantial compliance therewith is sufficient if there is compliance with its essential requirements and the object of the law is attained. Martien v. Porter, 68 Mont. 450, 219 P. 817; Fitzgibbons v. Galveston Electric Co., (Tex. Civ. App.) 136 S.W. 1186."

More specifically in the case of Kiner v. Well, 71 N.W.2d. 743, 752-753, we find discussion of the degree of consideration of the assets involved. The court states therein:

> * * * * Testimony was taken and terms of the adjustment of property, debts and liabilities among the districts involved, were discussed and approved and the plan was submitted to the state committee and approved by it. Both the notice of the election and the ballot provided that all of the assets of the districts which were to comprise the new district should become the assets and property of the new district and they further provided that the new district should assume all of the debts, and liabilities and obligations of each and all of the old

> districts that were to comprise the new district. If all of the assets of all the districts out of which the new district was to be formed were to become the assets of the new district, there was just as much an adjustment of the assets as if the assets of each district had been separately appraised, listed and set forth in some formal agreement and the same is true with reference to the liabilities and the obligations of the old districts out of which the new district was to be formed. If the new district assumed as its debts and obligations all of the liabilities of the old districts, nothing more could have been accomplished if the debts and liabilities, if any, of each district, had been separately listed."

Here, it would appear from the information you submit, that we have the converse of the situation there concerned. Assuming that the net result of the action of the committee in so doing is "an equitable adjustment of all property, assets, debts and liabilities" among the districts involved, we see no reason why such assets cannot be sent along with the territory where it is located or with which in justice and equity it would properly belong.

Your second question as stated is: "May the Board of Administration provide that a portion of the district that goes in with another carry its bonded indebtedness with them?" The statutory provision, section 15-47-19 of the North Dakota Century Code, provides:

> CHANGE IN DISTRICT BOUNDARIES - EQUALIZATION OF INDEBTEDNESS BY ARBITRATION. Whenever the boundaries of two or more school districts have been rearranged as provided in this title, all districts affected by the change shall effect an equalization of property, funds on hand, and debts. The board of each district affected shall select one arbitrator, and the several arbitrators, together with the county superintendent of schools, shall constitute a board of arbitration. When the number of arbitrators, including the county superintendent, is an even number, the county treasurer shall be a member of the board of arbitration. The county superintendent shall fix the time and place of the meeting of the board of arbitration."

Looking to the first part of the said section, we find that the Supreme Court of this state in State v. Rasmusson, 71 N.D. 267, has given quite thorough consideration to the method of establishing such equalization. Thus, at page 272 of the North Dakota Report, it states:

> * * * * We think it is apparent from a reading of the above section that the legislature intended that no tax levy should follow property after it had been detached from one school district and incorporated in another, except as directed by a board of arbitration.* * * *."

and on petition for rehearing at page 273 of the North Dakota Report, the following statement is found:

> * * * * The arbitrators must consider all the circumstances surrounding each case, and the pecuniary benefits and detriment necessarily accruing to each district; and when either district

> is necessarily benefited at the expense of the other, compensation should be awarded for such benefits. Where the old district was largely indebted, this equalization of their respective interests could readily be accomplished by fixing the proportion of such indebtedness to be borne by each of such districts."

On these bases, we believe that the board of arbitration can provide for debt service to follow detached territory into another district.

Your final question as stated is: "What test should be used in determining the value of the physical assets?"

The statute itself prescribing that the committees shall determine the value and amount of all school property gives no specific further tests for determination of this item of value, other than the entire context of the statute. Looking to the statute as a whole, this item of "value" is to be used as an element in the committee's final determination of an "equitable adjustment of all property, assets, debts and liabilities among the districts involved.* * * *." On this basis, in the absence of exceptional circumstances, such as were involved in Kiner v. Well cited supra, we believe it would be preferable to list monetary worth or value of each item, of the complete financial statement, on the basis of its cost, depreciation, utility, quantity, and expectancy as nearly as can practically done. The determination probably will be based on other than accounting factors in part, however, it is our thought that this element of the committee's determination should be carried out as exactly as can be done in view of all integral elements and surrounding factors, with a view towards the final result to be achieved - the equitable adjustment of all property, assets, debts and liabilities.

HELGI JOHANNESON

Attorney General