

**OPINION  
64-221**

January 11, 1964 (OPINION)

SCHOOL DISTRICTS

RE: Reorganization - Petitions

This is in reply to your letter of January 9, 1964, in which you state a county committee on school district reorganization will be faced with the question of approving an annexation petition which has a sufficient number of signatures, but it expects to receive a counterpetition with enough names to bring the number of the original petition below the two-thirds required by law.

The question which that committee raises is: "Would it be lawful for the Committee to pay no attention to the counterpetition and approve the original petition for annexation since originally it had the necessary signatures and that petition was approved by the State Board of Public School Education?"

Apparently some of the electors in this are have signed both petitions, i.e., the original petition for annexation and the so-called "counterpetition." The question which apparently must be decided is whether the signing of the "counterpetition" by these individuals has the effect of removing their signature from the original petition for annexation in time to prevent the annexation.

This office has previously indicated that a person may remove his signature from a petition until the time the petition has been acted upon by the authorities. Thus we note the statement contained in 78 C.J.S. 706, SCHOOLS AND SCHOOL DISTRICTS, sec. 37(3): "A signatory of a petition for the creation or alteration of a school district may have his signature withdrawn or erased therefrom before the petition is filed or the jurisdiction of the officer or board to whom the petition is directed has attached, but according to some authorities a signatory may not as a matter of right withdraw his signature thereafter, although withdrawal may be allowed where good cause is shown. However, other authorities hold that in the absence of statute providing otherwise, a signatory may withdraw his signature from the petition as a matter of right at any time before final action on the petition. In any event, a signatory has no right to withdraw his signature after action on the petition has been taken except where the attempted action is entirely unauthorized and void, although if he was induced to sign by misrepresentations he may apply for leave to withdraw his signature. Applications to withdraw signatures may and should be considered in passing on the petition, where discretion to grant or refuse it is vested in the officer or board to which it is presented.

It has been held that if the withdrawal of a signature or signatures results in reducing the number of signatories joining in the petition below the number required by statute, the petition is insufficient and no action may validly be taken thereon, \* \* \* it has also been held that the withdrawal of signatures after the jurisdiction of the board or officer to

whom the petition is addressed has attached does not deprive the board or officer of power to proceed further."

There is a North Dakota Supreme Court decision on the matter of removal of signatures from a school district annexation petition. In *Rosten v. Board of Education*, 43 N.D. 46, 173 N.W. 461 (1919) our Court held that the petitioners had a legal right to withdraw their names from the petition at any time prior to the time of the making of a legal order by the board of education annexing territory. While the present laws are somewhat different from those considered by the Court in 1919, the reasoning of the Court in the *Rosten* case would still appear to be applicable. The basis of the Court's decision was the fact that the law required fourteen days' notice of hearing before the area could be annexed. The Court indicated that one of the reasons for this fourteen-day notice of hearing is to permit persons to withdraw their names from the petition prior to the time the final action is taken thereon.

It is true that in 1919 there was no requirement that the petition be submitted to the State Board of Public School Education for its approval prior to the time the hearing by the local committee on the annexation petition was held. (See section 15-53-21 of the North Dakota Century Code, as amended). It could be argued that since the county committee, before submitting the petition for annexation to the state committee, must determine the sufficiency of signatures on the petition, the signers of the petition would no longer have the right to remove their names from the petition once the determination was made. However, we doubt this argument would outweigh the decision of the Court in the *Rosten* case.

It is therefore our opinion that if the county committee in question receives a request for the removal of signatures from the petition for annexation prior to the time the final order of annexation is made it must honor such request. It is further our opinion that if the removal of these signatures results in the annexation petition being signed by less than two-thirds of the electors in the area to be annexed, no valid annexation order can be issued.

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