

OPINION
64-241

July 10, 1964 (OPINION)

Mr. M. F. Peterson

Superintendent

Public Instruction

RE: Schools - Annexation - Approval of State Board

This is in reply to your letter of July 7, 1964, relative to section 15-27-05 of the North Dakota Century Code, as amended, which governs the procedure involved in annexing a portion of a school district to another district. This statute makes provisions governing the procedure to be followed in those instances in which the districts involved encompass portions of two or more counties. As noted in your letter, section 15-27-05 of the North Dakota Century Code, as amended, provides in part:

* * * * If the adjoining district is in another county, the county committees for the reorganization of school districts of both counties affected may jointly effect the annexation if a majority of the members of each of the county committees approve the annexation. In the event that a majority of the members of each committee fail to approve the annexation, the county superintendent of the county in which the annexing district is located shall submit the petition to the state committee for school district reorganization for approval or disapproval, and in such instance approval of the petition by the state committee shall have the same effect as approval by the county committees. * * * *

You further state: "The state board and this office have been operating on the basis that the county receiving the annexed territory may submit an annexation petition to the state board when turned down by the county in which the territory in question is located.

My specific question is this, may the county superintendent of the annexing county submit a petition of annexation if both committees reject the petition?"

The specific provision relative to districts encompassing portions of two or more counties was inserted in the law by the 1963 Legislative Assembly. The purpose of the amendment was to include a provision governing this situation since the previous statutes contained no reference to the procedure to be followed in those instances in which the school districts encompassed portions of two or more counties. In other words, a question had arisen as to which of the county committees involved had authority to act. This office had indicated a majority of the county committee of each county involved must approve.

The law with regard to school districts located entirely in one county makes no provision for filing with the state board if the county committee rejects the annexation application. It perhaps could be argued that the intent of the amendment was to permit the county superintendent of the annexing county to submit a petition of annexation to the state board only if at least one but not all of the county committees involved approve the annexation petition. However, the language of the statute, i.e., "in the event that a majority of the members of each committee fail to approve the annexation", cannot be construed in this manner. It is all inclusive. It in effect provides that if any or all of the committees involved fail to approve the annexation petition the petition may be submitted to the state board. In other words, if less than a majority of each committee, (whether it be one or all of the committees concerned), fail to approve the petition it may be submitted to the state board.

It is therefore our opinion that the county superintendent of the annexing county may submit a petition of annexation to the state board for their approval if any one or all of the county committees reject the petition.

HELGI JOHANNESON

Attorney General