

OPINION
64-251

September 14, 1964 (OPINION)

Mr. Fabian E. Noack

State's Attorney

Foster County

RE: Schools - Dissolution - Annexation Approved by County Boards

This is in reply to your letter of September 9, 1964, relative to school district annexation. You set forth the following facts:

The Lake Washington School District No. 9 located within Eddy County, North Dakota, was recently dissolved by the Eddy County Committee on the Reorganization of School Districts under section 15-22-21 and 15-22-22 of the N.D.C.C. The resolution dissolving said school district by the Eddy County committee was passed on August 8, 1964. Thereafter, this procedure was affirmed by the State Board of Reorganization.

Under the Eddy County committee's resolution a portion of the Lake Washington School District was attached to the Warwick School District No. 29 of Benson, Eddy and Ramsey Counties. Another portion of the Lake Washington School District was attached to the New Rockford Public School District of Wells, Eddy and Foster Counties. The balance of the Lake Washington School District was attached to the McHenry Public School District No. 15 of Eddy, Foster and Griggs County.

The McHenry School District feels that the Eddy County committee did not treat them fairly and, further, did not comply with section 15-22-22 since the county committees of Wells, Foster, Benson, Ramsey and Griggs Counties did not pass concurring resolutions as provided in this code provision.

Therefore, I would appreciate your comments if all of the counties involved must pass concurring resolutions before the Lake Washington School District may be dissolved."

Section 15-22-21 of the North Dakota Century Code, as amended, provides that a school district may be dissolved by the county committee for the reorganization of school districts for specific reasons set forth therein. Since the school district in question was entirely within the boundaries of Eddy County, the Eddy County committee could dissolve the school district in accordance with section 15-22-21 without the concurrence of the county committees of any other county. In fact, this office has held such dissolution is mandatory upon certification by the county superintendent of the reasons set forth for dissolution in section 15-22-21.

Therefore, in direct response to your question, the Lake Washington

District could be dissolved by the Eddy County committee without concurrence of the other county committees. However, section 15-22-22 of the North Dakota Century Code, as amended, governs the attachment of the dissolved district to adjoining districts. This section requires the holding of a hearing to determine to which school district or districts the dissolved territory is to be attached, and provides that upon or after such hearing the county committee may be resolution order the territory attached to one or more adjoining districts. The statute further provides:

* * * * The order shall become effective upon the adoption of the resolution, unless another effective date is provided for therein, and except as provided in section 15-22-21. If any of such adjoining districts is situated wholly or partly in a county other than that which included the district to be dissolved or the unorganized territory affected, any order attaching territory to such adjoining school district shall become effective only upon the adoption of a concurring resolution by the * * * county committee for the reorganization of school districts * * * of the other county in which it is situated. * * *."

The term "adjoining districts" refers to the districts to which the dissolved district or parts thereof is to be attached. Since, as set forth in your letter, the dissolved district was attached to three adjoining districts, each of which include portions of three counties, it would appear the county committee of each county involved must concur in the order attaching the portion of the dissolved district to a district which lies wholly or partially within their county. Thus the portion of the dissolved district which was attached to Warwick District of Benson, Eddy and Ramsey counties would have to be approved, by concurring resolution, by the county committees of Benson and Ramsey Counties as well as Eddy County. The portion attached to New Rockford District of Wells, Eddy and Foster Counties would have to be approved, by concurring resolution, by the county committees of Wells and Foster Counties as well as Eddy County. The portion attached to McHenry District of Eddy, Foster and Griggs Counties would have to be approved, by concurring resolution, by the county committees of Foster and Griggs Counties as well as Eddy County.

We would emphasize that the dissolution order itself need not be approved by the other counties since, as we understand it, the Lake Washington District is located entirely within Eddy county. However, in order for the order attaching this district to the adjacent districts to be effective, it must be concurred in by the county committees of the affected counties, as set forth above.

HELGI JOHANNESON

Attorney General