

**OPINION
65-277**

March 25, 1965 (OPINION)

Mr. M. F. Peterson,

Executive Secretary and Director

State Board of Public School Education

RE: Schools - Reorganization - Division of Reorganized District

This is in reply to your letter of March 23, 1965, in which you ask two questions relative to reorganization. The questions are as follows:

1. "Under Chapter 15-53 is it lawful for a portion of a reorganized district to pull out, so to speak and form a new and separate district without annexing to or reorganizing with another district, districts, or parts of districts."
2. Your second question has to do with the remaining value when territory is removed by either annexation or reorganization. You state that according to the statutes, territory cannot be annexed from a district if the remaining portion has less than \$100,000 per teacher. You point out that the district in question has a valuation of \$5,788,992, and since the valuation of the portion that wishes to withdraw is \$1,239,072, the valuation remaining would be \$4,549,920. The school in the remaining territory employs 52 teachers and at \$100,000 per teacher a valuation of \$5,200,000 would be required. You ask whether on such basis the territory which wishes to withdraw could be annexed out of the district. You further note that in the case of reorganization, a certain amount of valuation must be left also or the territory remaining after the reorganization plan has been approved, and which has not been included within the plan, must be annexed to an adjoining district or districts.

With regard to the withdrawal of a portion of a district through annexation proceedings and the establishment of such portion of the district as a new and separate district, we note the provisions of Sections 15-27-04 and 15-27-06 of the North Dakota Century Code, as amended. These sections provide:

15-27-04. ATTACHMENT OF ADJACENT TERRITORY TO SCHOOL DISTRICT - PETITION. Territory contiguous to a public school district, whether in the same county or in another, may be attached to such school district and detached from the district of which it is a part by the county committee for the reorganization of school districts upon written application signed by two-thirds of the electors residing in the contiguous territory after

hearing and subject to the limitations of Sections 15-27-06 and 15-53-21." (Emphasis supplied.)

15-27-06. LIMITATIONS ON POWER TO DETACH AND ATTACH TERRITORY. - No territory shall be detached from one school district for annexation to another school district if the part of the original district remaining after the proposed annexation would have an assessed valuation of less than one hundred thousand dollars, or less than one hundred twenty-five thousand dollars for each teacher employed in the remaining territory if the remaining territory has a graded school with two or more teachers." (Emphasis supplied.)

We have no difficulty in holding, under the wording of the above statutes, that the procedure for annexing of school districts contemplates a withdrawal from an existing district and the attachment to an existing district. The statutes do not contemplate the withdrawal from an existing district and the creation of an entirely new and separate district by such territory.

The language as used in the above statutes leaves no room for construction on this point. By the very use of the word "attachment" it is obvious the statutes contemplate only the addition of territory to an existing district and not the creation of a new district under the procedures outlined in the above quoted statutes.

The only other provisions for the alteration of school district boundaries (other than involuntary dissolution as provided for in Sections 15-22-21 and 15-22-22 of the North Dakota Century Code, as amended, and which is not involved herein) found in the statutes is under the reorganization procedure as set forth in Chapter 15-53 of the North Dakota Century Code, as amended. In this connection, we note the provisions of the following pertinent sections.

15-53-01. TITLE AND PURPOSE. - This chapter shall be known and may be cited as an 'Act to provide for the reorganization of school districts.' It shall have for its purpose the formation of new school districts and the alteration of the boundaries of established school districts in order to provide a more nearly equalized educational opportunity for pupils of the common schools, a higher degree of uniformity of school tax rate among districts, and a wiser use of public funds expended for the support of common school system."

5-53-02. DEFINITIONS. - In this chapter unless the context or subject matter otherwise clearly requires:

- c. "1. 'Reorganization of school district' shall mean and include the formation of new school districts, the alteration of the boundaries of established school districts, and the dissolution or disorganization of established school districts, through or by means of:
 - a. The uniting of two or more established districts;
 - b. The subdivision of one or more districts;

- c. The transfer to an established district of a part of the territory of one or more districts; or the attachment thereto of all or any part of the territory of one or more districts subject to disorganization for any of the reasons now specified by law; or the transfer therefrom of any part of the territory of one or more districts subject to disorganization for any of the reasons now specified by law; or the transfer therefrom of any part of the territory of said established districts;
- d. And any combination of the methods of (sic) aforementioned.

* * *."

While the reorganization procedure set forth in the statutes has been primarily used for the consolidation of existing districts or parts thereof since the enactment of the school district reorganization law, Section 15-53-02, quoted above, clearly indicates that reorganization of school districts means and includes the formation of a new school district by means of "The subdivision of one or more districts." The statute appears unambiguous in this regard and it would appear that, under the reorganization act, a presently constituted school district could be divided under the procedure set forth in Chapter 15-53, as amended. This, of course, does not mean that such a plan must be approved since, as you are aware, the State Board of Public School Education has been vested with powers to determine whether any reorganization plan meets the specifications and the regulations of the board as set forth in Section 15-53-13 of the North Dakota Century Code, as amended. It is our understanding the purpose of this request is, and of necessity must be, since we cannot substitute our judgment for that of the Board, whether under the present laws such a plan could be approved if it met the other criteria for the reorganization of school districts.

Insofar as the procedure is concerned, it would be governed by the applicable statutes relative to other reorganization plans involving the consolidation rather than the subdivision of a district. We believe you are familiar with this procedure and there is no necessity for us to go into detail relative thereto. One point should, however, be considered and this is the voting units which would be required should the plan receive the approval of the county and state committees and be submitted to the electorate for a vote as provided in Section 15-53-14 of the North Dakota Century Code, as amended. This section provides in part:

In holding such election all existing districts within the proposed new district containing one or more incorporated villages or cities regardless of number or size shall vote as a single unit; and, all existing districts within such proposed new district regardless of number or size which do not contain one or more incorporated cities or villages shall vote as a single unit. For the purposes of this section, all districts containing incorporated cities or villages which do not contain at least one incorporated city or village shall be considered a rural area."

Under these provisions it is possible to have two voting units in a reorganization election. However, under the specific facts as set forth in your letter, it is our understanding a specified area wishes to be detached from the existing school district and established as a new school district. It is our belief that the "proposed new district" would be the area which wishes to establish itself as a separate school district. Therefore, unless there are other areas not included within the present district which would be included within the proposed new district, the area of the present district which wishes to be established as a separate new district would vote as one unit. The remainder of the present district would not vote since they are not included within the "proposed new district."

If such a plan is presented to the voters and approved, we note Section 15-53-26 of the North Dakota Century Code, as amended, provides:

ANNEXATION OF REMAINING PORTIONS OF REORGANIZED DISTRICT TO OTHER DISTRICTS. - When a portion of any public school district has become a part of a reorganized school district under this chapter and a portion of the public school district is not included in the reorganized district, such remaining portion, having a taxable assessed valuation of less than one hundred thousand dollars for each teacher employed in the remaining territory, shall become a part of a school district adjacent thereto in the following manner:

1. The county school district reorganization committee shall, within forty-five days after the reorganized district has been approved by the voters, order a hearing for the purpose of determining to which district or districts said remaining territory shall be annexed;
2. The hearing shall be held in a designated schoolhouse or a designated place located in the remaining territory and notice of the time and place of the hearing shall be given by publication in the official county newspaper at least fourteen days before the date of the hearing. Within ten days after the hearing, the county committee shall make an order annexing the territory to adjacent school district or districts; and
3. The decision of the county committee shall be subject to review by the state school district reorganization committee upon petition by a majority of the electors residing in said territory."

If a reorganization plan such as outlined in your letter is presented and approved by the county committee and the state board and submitted to the electorate and approved, it must then be determined if the remaining territory has a taxable assessed valuation of one hundred thousand dollars for each teacher employed in the remaining territory. We presume this would be done on the basis of whether, by the detachment of territory from the district, the number of teachers would thereby be reduced in the remaining district. Such determination would, we presume, depend in part upon whether any of

the students in the area to be detached are presently attending a school in the remaining territory in the present district and, if so, whether the subsequent separation of the school districts would result in a decrease in the number of teachers. It is to be noted in this regard that the laws governing annexation (15-27-06 of the North Dakota Century Code, as amended) specifically prohibit the detachment of territory unless a certain amount of taxable valuation remains. This same provision is not found in the laws governing reorganization of school districts. The only provision, as has been noted, relative to this matter in reorganization procedure is the requirement that if the remaining territory has less than one hundred thousand dollars of taxable valuation for each teacher employed, such territory is to be attached to an adjoining district. The lack of sufficient valuation does not bar the reorganization proceedings.

In summary, it is our opinion that the present laws relative to alteration of school district boundaries by annexation proceedings do not provide for the detachment of territory from an existing school district and the establishment of such territory as a new and separate school district. The annexation procedures are applicable only when the territory is to be detached from an existing school district and attached to an adjoining school district already established.

It is our further opinion that the laws governing the reorganization of school districts (Chapter 15-53 of the North Dakota Century Code, as amended) would authorize (but not, of course, require) the state board to approve a reorganization plan which would divide an existing district and permit a portion thereof to be established as a new school district without reorganizing such portion with another district, districts, or parts of districts. The remaining territory would, if the valuation requirements of Section 15-53-26 of the North Dakota Century Code, as amended, are not present, have to be attached to an adjacent district or districts as provided by Section 15-53-26.

HELGI JOHANNESON

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