

**OPINION
65-294**

April 28, 1965 (OPINION)

Mr. Martin N. Gronvold, Director

North Dakota Old Age & Survivor

Insurance System and the Social

Security Contribution Fund

RE: Social Security - School District Annexation and Reorganization
Surviving District

This is in response to your letter in which you ask for an opinion on the provisions of House bill No. 778 as enacted by the Thirty-ninth Legislative Assembly. Your specific question is whether or not a new political subdivision is created upon the reorganization of a school district or districts in view of the provisions of House Bill No. 778.

Basically, school districts can be enlarged or reduced by attachment, annexation or reorganization. The several methods of detaching, attaching or annexing area to or from existing school districts are generally found in Chapters 15-27 and 15-22 of the North Dakota Century Code and are generally referred to as annexations. Under the annexation proceedings a new entity is not created. Under these proceedings it is also possible for a district to be dissolved and "merged" with the district to which it is attached. In such instances, the dissolved district becomes part of the district to which it is attached. No new entity is created. Thus, in response to a portion of your question, it is our opinion that, independent of House Bill No. 778, a new district is not created by annexation proceedings. The district to which new area is attached or annexed continues to exist and the district from which the area was detached can continue to exist, or in certain instances be attached or annexed to some other district. In such instances, the "old" area or "former" area is dissolved and becomes part of the area to which it is annexed.

Under reorganization procedures, a different conclusion can result. Under reorganization provisions (Chapter 15-53), the "reorganizers" are given some latitude as to what is to be included in the reorganization plan. Generally a reorganized district is a new entity for certain purposes. Under the reorganization plan, provisions can be included to provide for the retention of certain indebtedness by certain areas within the reorganized district, or it may specify how the indebtedness will be shared. This constitutes what is normally referred to as adjustment of assets and liabilities. In reorganization this can be accomplished by the plan to be adopted, whereas in annexation proceedings the adjustment is pursuant to law. Even in the reorganization plan, the same must conform to the laws

relating thereto and if no specific mention is made of certain items in the plan, the law specifically comes into operation for purposes of disposing matters not included in the plan. For example, if the plan does not specifically provide for retention of indebtedness for certain areas within the newly organized district it is, as a matter of law, assumed that all within the new area will share and share alike on all liabilities and assets.

Chapter 15-53 has been amended several times since its enactment. The amendments provide that certain matters be included in the reorganization plan and in certain instances prescribe with exactness what provisions must be contained in the reorganization plan. In instances where the plan leaves out mandatory provisions, the plan is construed as if the mandatory provisions were contained therein. The law in this instance is very similar to that pertaining to insurance policies.

Prior to House Bill No. 778 the plan could provide for continuing social security coverage and designate the "surviving district" for such purposes, or in the alternative make no mention at all, at which time the newly reorganized district would be required to go through a process in continuing its social security coverage.

House Bill No. 778 now specifically provides for a continuation of social security coverage and designates the district which is to "survive" for such purposes. The Legislature has the authority to provide how and under what conditions a school district may reorganize.

While reorganization in some instances is considered a new entity, it is not so for all purposes. Basically reorganization is a consolidation of area and school districts. This process does not require a formal dissolution of other areas or districts within the reorganized district. It is, in a sense, a "merger". Under the provisions of House Bill No. 778, the continuation of social security coverage and the designation of a certain district for such purposes as the "surviving" district is deemed a condition under which the school districts may be reorganized. Thus under the provisions of House Bill No. 778, for the purposes of social security coverage, a new entity is not created. History has established that all reorganized districts continued coverage by going through an "empty process". The Legislature has not provided for a more secure method of accomplishing this.

It is our opinion that House Bill No. 778 is valid legislation and that for social security purposes a reorganized school district is not a new entity but rather a consolidation or merger of pre-existing districts or areas and continued social security coverage is a condition under which reorganization may be accomplished.

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