

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-04

Date issued: February 1, 1994

Requested by: Representative Jack Howard, District 29

- QUESTION PRESENTED -

Whether land area from two school districts may be annexed to another school district in the same proceeding.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that land area from two school districts may not be annexed to another school district in the same proceeding.

- ANALYSIS -

The factual situation described in the opinion request can be represented as follows: There are three school districts; school district B is east of, and borders on school district A; school district C is east of, and borders on school district B. Land area sought to be annexed to school district A lies within school districts B and C. Taken as one parcel, the land area to be annexed in district B and C is contiguous to district A. The land area to be annexed extends across school district B, however, the land area north and south of it in school district B remains contiguous. The question asked is whether land area in the two school districts B and C in the example may be annexed to school district A, when the land area to be annexed is contiguous to school district A.

North Dakota law provides that "[t]erritory contiguous to a public school district . . . may be annexed to the school district" N.D.C.C. ? 15-27.2-01(1).

An issue similar to the one raised here was addressed by the North Dakota Supreme Court in 1962, in Cathay Special School District No. 3 v. Wells County, 118 N.W.2d 720 (N.D. 1962). The court, in Cathay, addressed the question of "whether or not the statutes . . . [regarding annexation] contemplate the joining of territories from adjacent school districts in one application [or petition] for the purpose of having them annexed to a third district." Id. at 724. The court held an application to annex parts of two school districts to a third

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school district to be invalid. In doing so, the court cited favorably an Ohio Supreme Court case and said that court held "a proposed transfer of territory in two separate school districts to another district may not be included in one petition." Id. at 725-26 (citing State ex rel. Finley v. County Board of Education of Guernsey County, 178 N.E. 313 (Ohio, 1931)).

In 1983, the North Dakota Legislature defined annexation to mean "an alteration of the boundaries of school districts through the attachment of territory from one existing operating school district to another existing operating school district." 1983 N.D. Sess. Laws, ch. 235, ? 1, (emphasis supplied). This definition received a minor revision in 1985 to provide, "'[a]nnexation' means an alteration of the boundaries of school districts through the attachment of territory from one existing school district to another existing operating school district." 1985 N.D. Sess. Laws, ch. 209, ? 1, (emphasis supplied). The current definition of "annexation" remains the same as the 1985 version. See N.D.C.C. ? 15-27.1-01(1). This definition of the term "annexation" clearly indicates that North Dakota law contemplates the annexation of land from only one school district to a contiguous school district.

Given the North Dakota Supreme Court's decision in Cathay, and the subsequent legislative definition of the term "annexation", it is my opinion that land area from two school districts may not be annexed to another school district in the same proceeding.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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ATTORNEY GENERAL

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