

**OPINION  
43-104**

July 14, 1943           (OPINION)

SCHOOLS AND SCHOOL DISTRICTS

RE: Organization

You inquire as to the several statutory methods of procedure for organizing new common school districts.

Section 1147 of the Supplement to the Compiled Laws provides that the Board of County Commissioners and County Superintendent may organize a new school district from another district or from portions of districts already organized, if in their judgment the authorization of the new district is desirable and necessary upon being petitioned so to do by at least two-thirds of the school voters voting in the districts. When two or more adjoining counties are affected, such new district shall be organized by the concurrent action of the Boards of County Commissioners and County Superintendents of such counties. Action on such organization shall be taken only at the July meeting of the County Commissioners, provided that all assets and liabilities shall be equalized in accordance with section 1327.

Under the procedure outlined in the section quoted public notice must be given for at least thirty days, by mailing a notice of the proposed action to each school officer in the district affected and by publishing the same in an official paper of the county published nearest that district.

Section 1142 of the Compiled Laws of 1913 provides for that portion of any school district having not more than ten children of school age where such portion is separated from the other portion of such district by any natural obstacle which practically prevents such children from attending school in the original district. In such cases, the County Commissioners of the county may annex such portion to an adjoining school district, and the portion, so annexed shall constitute a part of such adjacent school district. If such adjacent district lies in another county, the County Commissioners of such county may make such annexation, provided that whenever portions of a school district lie in different civil townships there may be created therefrom two or more distinct school districts, when in the judgment of the commissioners and the county superintendent, such change can be made without detriment to the school or to the pupils therein, and division can be made by following the boundary line or lines of congressional townships or the meander lines of the government survey.

As may be observed, the section quoted provides for two situations. The one, where there are natural obstacles and the other where portions of the school district lie in different civil townships.

It would seem that in either situation the county commissioners in their discretion have the authority to establish a new district or attach to another district the portion separated from the original district by natural obstacles; also, to create two or more distinct school districts where portions of a school district lie in different civil townships.

While the county commissioners have such power under the section quoted, nevertheless, I believe that it would be necessary to give the notice as provided by section 1148 of the 1913 Compiled Laws. Such a change is one which would affect the residents of the territories which are to be changed or organized into new districts, and therefore, they are entitled to notice so that they may appear before the county commissioners and present such arguments as they may have for or against such action as proposed to be taken by the county commissioners.

With reference to your question as to whether section 15-2716 applies in all cases of detaching or annexing, you will observe that the code dealing with special districts. However, any procedure taken under section 15-2309 is an exception, and it provides that any proceedings taken thereunder shall be subject to the restrictions contained in section 15-2716.

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