

**OPINION
45-270**

May 24, 1945 (OPINION)

SCHOOL DISTRICTS

RE: Schoolhouses - Removal

I received your letter of May 21, in which you state that about eighteen years ago an election was held in Cedar School District in Williams County, North Dakota, for the purpose of removing an existing school to another location, which location was specifically designated in the notice of election and in the ballot. Nothing was ever done by the board of directors of the school district to comply with the wishes of the voters. Then you further state that the present board of directors of this school district now desire to move this schoolhouse to the new location, all in accordance with the vote taken eighteen years ago.

You want to know whether or not the present board of directors of Cedar School District, in relying upon the results of the election taken in the district eighteen years ago, would be authorized to proceed and now move the schoolhouse to the location then agreed upon by the electors of the school district.

Section 15-2601 of the North Dakota Revised Code of 1943 provides for the submission of the removal of a schoolhouse from one site to another to the electors of the school district. It further provides the exact form of the ballot to be used. Then Section 15-2602 states:

If a majority of the votes cast at an election called under the provisions of section 15-2601 favor the selection of a specified schoolhouse site or are in favor of the purchase, exchange, or sale of a schoolhouse, as the case may be, the school board shall proceed to carry out the decision of the electors."

The section then goes on to provide for other matters not pertinent to your question.

It would seem to me that the fact that the school directors of Cedar School District never did carry out the wishes of the electors of that district after the election held eighteen years ago is an indication of some change of conditions in the school district which did not necessitate carrying out the wishes of the electors. Certainly the electors had it within their power to force the board of directors to carry out their wishes, if they had so seen fit. What that change of condition was, I, of course, do not know, but it appears to me that there must have been some change of conditions after the election which made it unnecessary or perhaps unwise to follow the wishes of the electors, and that the electors acquiesced in the action of the board by failing to force the board of directors to carry out the mandates of the election.

It would further appear to this office that failure of the board of directors to carry out the mandates of the election was an abandonment of the expressed desires of the electors in which they tacitly agreed at least.

It must also be borne in mind that the present electors of Cedar School District might not be of the same mind as the electors of that district were eighteen years ago with reference to the removal of the school involved. Undoubtedly, there has been considerable change over that period of time in the electors of the district.

Accordingly, it is the opinion of this office that the present board of directors of Cedar School District cannot now rely upon the election conducted eighteen years ago as a basis for the removal of the schoolhouse from its present site to the one that was designated in the election held at that time. It is further the opinion of this office that under section 15-2602 the directors of the school district must carry out the mandates of the people within a reasonable time after the election.

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Attorney General