

**OPINION**  
**47-209**

January 29, 1947 (OPINION)

SCHOOL DISTRICTS

RE: Special School Districts - How Established

Your letter of January 11 addressed to this office was received, but owing to the rush of work in connection with the Legislature we have been unable to give it our attention until now.

You refer to an act of the territorial Legislature approved March 13, 1885, which created Brightwood Independent School District No. 1 consisting of 22 sections of land in Richland County. Later and in 1913 an act was passed increasing the debt limit of the district.

This act, however, was omitted from the North Dakota Revised Code of 1943, and consequently is no longer the law. The question presented is as to the status of Brightwood School District.

Section 15-3301 of the North Dakota Revised Code of 1943 covers this situation and provides as follows:

"SCHOOL ORGANIZATIONS UNDER SPECIAL LAWS; EFFECT OF REPEAL OF SPECIAL LAWS. Any school district organized under a special law shall become, by the repeal of the special law, organizing or governing it:

1. If it does not include or is not included in any city or village, a part of the common school district in which it is located; or
2. If it includes or is included in any city or village, a special school district.

Any common school district or special school district so constituted in whole or in part shall be governed by the provisions of this title relating to the kind of district which it has become by the provisions of this section. Nothing contained in this section shall prevent any school district organized under a special law from coming under the operation of this title in the manner therein provided."

Subdivision 2 of the statute quoted covers the status of Brightwood Independent School District since the territorial law creating it is no longer in existence. It will not be necessary, therefore, to take any action for the purpose of establishing your district as a special school district because under subdivision 2 of section 15-3301 your district automatically becomes a special school district and as such will be governed by all the laws relating to special school districts.

Section 15-3302 relating to the board of education and the members thereof provides as follows:

"SCHOOL OFFICERS HOLD OVER UNTIL ELECTION. The board of education or other governing board of a school district existing under a special act shall continue to exercise the powers and duties devolving upon it under the provisions of the special act governing the district until the second Tuesday in July following the repeal of such special law. All that portion of the general school laws which provides for an annual school election shall apply to such district and shall be in full force and effect for the purpose of electing school officers at the annual election. The officers shall be elected in and for the whole common or special school district, including the district organized under a special law or portion thereof located therein, the same as though no special law had ever existed providing for the organization of such district. In a special district formed and created as provided in this chapter, a board of education shall be elected as provided by law for first elections, but in school districts formed by the addition of a district organized under a special act or a portion thereof, only such officers shall be elected as are required to fill the regular vacancies in the school offices of the district which is organized and existing when the special act is repealed.

You will note that under the provisions of the section quoted the board of education continues to exercise the powers and duties devolving upon it under the special act until the second Tuesday in July following the repeal of such special law, which would be the second Tuesday in July following the repeal of such special law, which would be the second Tuesday in July, 1943. Said section also provides that in a special district formed and created as provided in this chapter, a board of education shall be elected as provided by law for first elections. The first election of members of a board of education for special school districts is governed by sections 15-2801 to 15-2810, both inclusive.

You will note that under subdivision 2 of section 15-2801 the electors are required to elect five members of the board of education, continues to exercise the powers and duties devolving upon it under the special act until the second Tuesday in July, 1943. Said section also provides that in a special district formed and created as provided in this chapter, a board of education shall be elected as provided by law for first elections. The first election of members of a board of education for special school districts is governed by sections 15-2801 to 15-2810, both inclusive.

You will note that under subdivision 2 of section 15-2801 the electors are required to elect five members of the board of education, two of whom shall serve until the first annual election, two until the second annual election and one until the third annual election thereafter, and until their successors are elected and qualified, and the length of their respective terms shall be determined by law.

I believe the foregoing answers your question.

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