

**OPINION  
47-211**

August 26, 1947 (OPINION)

SPECIAL SCHOOL DISTRICTS

RE: How Organized - Chap. 15-27

Your letter of August 18, 1947, addressed to this office, has been received in which you ask for our opinion on the following state of facts.

The Steiner School District No. 29, Hettinger County, had an election a year and a half ago on the question of consolidation of the schools in the district which election duly carried. Shortly thereafter a one-room school building was moved to the townsite of St. Placidus and this school was operated with one teacher during last year. This year the school board believes that two teachers will be needed. The school board has now inquired whether it may rent a room for school purposes in a building located in block 1 in the platted townsite of St. Placidus, which building is a combination dormitory and parochial school.

You state further that Steiner School District No. 29 voted on May 31, 1947, to change from a common school district to a special school district, and on June 25, 1947, a special election was held to elect a board of education.

The question which first arises is whether or not the Steiner Common School District may legally change to a special school district.

Section 15-2701 of the 1943 Revised Code, dealing with the organization of special school districts, provides that:

"All cities and villages organized under the general school laws and which have a board of education shall be governed by the provisions of this title relating to special school districts. Any provisions of this title relating to special school districts. Any city or village may be constituted a special school district in the manner prescribed in this chapter, and shall be governed thereafter by the provisions of this chapter. \* \* \*"

Section 15-2703 provides:

"When a petition signed by one-third of the electors of a school district embracing or containing a city or village is presented to the school board asking that the territory contained in such district be organized into special school district, the board, within ten days after the petition is filed, shall order an election to pass upon the question submitted in the petition. Notice of the election shall be given, the election conducted, and the returns of election made, in the manner provided by law for the annual school election. At such election, the electors shall vote for or against organization as a special school district."

Section 15-2704 provides as follows:

"When any city or village constitutes a portion of a school district, it may be organized into a special school district, alone or with contiguous territory, and the prosperity and indebtedness of the organized school district shall be divided as provided in this chapter."

It is clear from the statutes quoted that a special school district can be organized only where a part of the territory embraced therein is an incorporated city or village. Therefore, a common school district cannot be changed into a special school district where it does not embrace an incorporated city or village it could not, therefore, reorganize into a special school district, notwithstanding the fact that the platted townsite of St. Placidus is within its territory since St. Placidus is neither an incorporated city or village. It must follow, therefore, that the election held in Steiner Common School District to organize into a special school district is a nullity and, therefore, of no effect whatever.

It is true that prior to the adoption of the 1943 code, section 1230 of the Compiled Laws of 1913, relating to the organization of special school districts, provided that whenever any platted or incorporated city, town or village shall constitute a portion of a school district it may organize into a special school district, alone or with contiguous territory. But as we have pointed out, this section was amended and is now section 15-2704 of the 1943 Revised Code, which we have set out, and as you will note the words "platted town" are omitted, and consequently a special school district may not be organized unless there is included in such territory an incorporated city or village.

In this connection we call your attention to section 1-0219 of the 1943 Revised Code, which provides as follows:

"No statute, law, or rule is continued in force because it is consistent with the provisions of this code on the same subject, but in all cases provided for by this code all statutes, laws, and rules heretofore in force in the state, whether consistent or not with the provisions of this code, unless expressly continued in force by it, are all repealed and abrogated. \* \* \*"

The result is, therefore, that Steiner School District No. 29 is still a common school district, and since the district voted sometime ago to consolidate the schools therein, the district is, therefore, a consolidated common school district and must be governed by the laws relating to consolidated school districts.

Section 15-2606 of the 1943 Revised Code, relating to the establishment of consolidated schools, reads as follows:

"The school board of a common school district may call, and if petitioned by one-third of the electors of the district shall call, an election to determine a proposal to consolidate two or more schools, or the territory usually served by two or more

schools, and shall provide school facilities either by:

1. Selecting a site and making provision for a suitable building for the consolidated school; or
2. Selecting a school already established and, when necessary, authorizing suitable additions to the building to accommodate the pupils of the schools to be vacated.

The election shall be conducted, both as to notices and as to the manner of canvassing the votes as the annual school election is conducted. If a majority of the votes cast at the election favor the consolidation, and the plans submitted to provide school facilities, the board shall carry out the decisions of the district within four months after the election. The school established pursuant to the election shall be known as a consolidated school. The board, if it deems it expedient, shall move schoolhouses already constructed to the site selected, or it may sell schoolhouses which are vacated pursuant to the consolidation."

Assuming that the election to consolidate was carried out in conformity with the provisions of said section 15-2606, supra, the school board is required to comply with the provisions thereof, namely, to select a site as determined by the election, and to make provisions for a suitable building or selecting a school already established, or when necessary to construct suitable additions to the building to accommodate the pupils of the schools to be vacated. The board has the power, if it deems it expedient, to move schoolhouses already constructed to the site selected or it may sell schoolhouses which are vacated pursuant to the consolidation and erect other buildings in their place.

Where the schools of a district have been regularly consolidated, the board may not conduct part of a school in one building which has been moved to the site of consolidation and lease a room in another building situated on property not owned by the school district, as this would be contrary to the statutes we have quoted, particularly section 15-2606, supra.

A similar question was before the Supreme Court of this state in the case of Pronovost v. Brunette, 36 N.D. 288. The facts in that case were briefly as follows: The school board of school district No. 40, Cass County, passed resolution calling a special election to vote upon the question of whether or not a school in school district No. 40 should be changed and removed from the present schoolhouse to a room in St. Joseph's Convent in the same district. The election carried by 28 votes in favor and 3 against it. The school board refused to remove the school and an action was brought in district court to compel the board to make such removal. The district court entered its order requiring the board to remove the school to St. Joseph's Convent. An appeal was taken from such order and the same was reversed. In passing upon the question, the Supreme Court said:

"\* \* \* We are satisfied, indeed, that both the order of the school board and the election were void, and that the lease of the new building and the removal of the school thereto were

absolutely unwarranted by the law and outside of the power of the directors.

"It is a self-evident proposition that the public schools of the state are under legislative control, and that school directors have no powers, except those which are conferred by the statutes upon them. A perusal of sections 1174, 1184, 1185, 1187, 1188, 1192, 1332, and 1461 of the Compiled Laws of 1913 will, we believe, make it apparent to all that the only instance in which a common-school board may lease a building is in the case where there are none children of school age who reside 2 1/2 miles from the schoolhouse already erected, and when an additional school is needed for such persons. Even in such a case there must be a petition signed by the persons charged with the support, and having the custody and care of the children. It is apparent that in every other case it was the purpose of the Legislature and that the public schools in the so-called common-school districts of the state should be exclusively conducted in buildings which are not only controlled by, but which are owned by, the public. This intention, we believe, to be clear. \* \* \*"

From the foregoing, it is clear, therefore, that the school board of Steiner Common School District No. 29 has no authority to lease a room in St. Placidus parochial school.

Section 15-2604 of the 1943 Revised Code authorizes a common school district to lease a building only in case where there are 9 children of school age who reside 2 1/1 miles from the schoolhouse already erected and when an additional school is needed for such persons. And this can be done only upon petition signed by persons charged with the support and having the custody and care of 9 or more children of compulsory school age. However, said statute provides specifically that "the provisions of this section shall not apply in cases where schools have been consolidated."

If, therefore, the election to consolidate Steiner School District No. 29 was in all things regular, it is the duty of the school board to provide the necessary buildings for the operation of a consolidated school. This the board may accomplish by either constructing a new building or by moving other school buildings in the district to the site of the consolidated school, and by putting such buildings in proper condition of repair to accommodate the pupils therein.

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