

**OPINION
56-163**

July 18, 1956 (OPINION)

SCHOOL DISTRICTS

RE: Annexation - Arbitration After

We have received your letter with reference to sections 15-4719 and 15-4720 of the 1943 Revised Code which deal with arbitration after school annexation proceedings have been completed. The facts submitted by you are as follows:

Recently two school districts were annexed to Drayton Special School District in your county. In 1953 a bond issue was voted and bonds sold in this special school district for the election of a school building. The circulators of the annexation petition verbally assured the signers in the two annexed districts that they would not be expected to help pay off the existing bonded indebtedness, and your questions in regard to the matter are as follows:

1. Is the action of the Board of Arbitration where a plan has not been set forth on the petition conclusive as to the division of assets and liabilities?
2. Does the Board of Arbitration legally have to accept statements made by the circulators of the petition verbally to those who signed the petition?
3. Does the action of the circulators of the petition in making such verbal statements which would assume that they had different interpretation of the things to be done with regard to said petition than was set forth therein invalidate the petition?"

Section 15-4719 of the North Dakota Revised Code of 1943 reads as follows:

CHANGE IN DISTRICT BOUNDARIES; EQUALIZATION OF INDEBTEDNESS BY ARBITRATION. Whenever the boundaries of two or more school districts have been rearranged as provided in this title, all districts affected by the change shall effect an equalization of property, funds on hand, and debts. The board of each district affected shall select one arbitrator, and the several arbitrators, together with the county superintendent of schools, shall constitute a board of arbitration. When the number of arbitrators, including the county superintendent, is an even number, the county treasurer shall be a member of the board of arbitration. The county superintendent shall fix the time and place of the meeting of the board of arbitration."

Section 15-4720 of the North Dakota Revised Code of 1943 reads as follows:

BOARD OF ARBITRATION TO LEVY TAX TO EQUALIZE AND PAY DEBTS. The board of arbitration shall take an account of the assets,

funds on hand, and debts properly and justly belonging or chargeable to each district or part of a district affected by a change in school district boundaries, and shall levy such tax against each as in its judgment will equalize their several interests justly and fairly."

The above sections of the Code authorize the board of arbitration to justly and equitably equalize the several interests of the districts concerned. Since the statute does not make the decision of the board final we assume their decision may be attacked in a proper action.

In the case of State v. School District, 6 N.D. 488, the court said, "The arbitrators must consider all the circumstances surrounding each case, and the pecuniary benefits and detriment necessarily accruing to each district; and, when either district is necessarily benefited at the expense of the other, compensation should be awarded for such benefits." The court goes on and says, "Where the old district was largely indebted, this equalization of their respective interests could readily be accomplished by fixing the proportion of such indebtedness to be borne by each of such districts."

In answer to question number one we do not believe action of the board of arbitrators is conclusive. We believe aggrieved taxpayers in any district affected could proceed to attack the award by proper legal action.

As to question number two we do not think a board of arbitration is bound by verbal promises of the circulators of the annexation petition, but they would certainly be morally bound to consider any such promises in making their decisions. Usually the circulators of petitions are the very persons who are interested in accomplishing what the petition asks for and people who are asked to sign should be able to depend on whatever promises are made by the circulators.

Your third question deals with the legal effect of promises made by circulators upon the petition. We believe that a court in a proper action would declare a petition null and void and perhaps set aside the entire annexation proceedings if it can be shown that signatures were procured on the petition by means of false promises made by the circulators of such petitions.

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