

**OPINION**  
**57-165**

December 30, 1957            (OPINION)

SCHOOL DISTRICTS

RE: Annexation - Limitation on Power to Detach

We have received your letter dated December 10, 1957, wherein you request an opinion from this office with reference to interpretation of the above statute.

A petition was filed with the Pembina County Board of Commissioners for annexation of territory from the Bowesmont school district to the Drayton school district. After the filing of said petition, but before the hearing, the Bowesmont school district employed a part-time music teacher. If this teacher is to be considered even on the basis of twenty percent, the petition would be defeated, because it would not have the required taxable property value in the Bowesmont District as provided for in section 15-2716 of the 1943 Code.

The question then is whether this part-time teacher is to be considered as a teacher in construing the language of the above statute.

Section 15-2716 of the 1943 Code reads as follows:

15-2716. LIMITATIONS ON POWER TO DETACH AND ATTACH TERRITORY. No territory shall be detached from one school district for annexation to a special school district if the part of the original district remaining after the proposed annexation would have an assessed valuation of less than one hundred thousand dollars for each teacher employed in the remaining territory, or less than one hundred twenty-five thousand dollars for each teacher employed in the remaining territory if the remaining territory has a graded or consolidated school with two or more teachers."

It is our view that any teacher to be counted in determining taxable or assessed valuations under the above statute must teach courses that are a part of the school curriculum and for which credit is given by the school.

We have checked with the office of Superintendent of Public Instruction and find that the Bowesmont school has never reported the employment of a music teacher and does not offer credits for courses in music, and we must therefore assume that music is in the nature of an extra-curricular activity in the Bowesmont school and not a part of the course of study offered by the school.

For the above reasons, we are of the opinion that the Bowesmont district cannot count this music teacher in determining whether property of sufficient assessed or taxable value is being left the district in case the annexation petition is approved by the Board of County Commissioners.

In answer to your second question, we wish to advise that we have previously held that it is the fifty percent or taxable valuation that is to be applied in interpreting section 15-2716 of the 1943 Code.

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Attorney General