

**OPINION  
60-180**

August 11, 1960            (OPINION)

SCHOOL DISTRICTS

RE: Annexation Petitions - Reconsideration by County Commissioners

This is in reply to your letter of July 28, 1960, in regard to legality of action taken by the board of county commissioners concerning a petition for annexation of school district territory.

You inform us that subsequent to approval by the state committee pursuant to section 15-5321 of the 1957 Supplement to the North Dakota Revised Code of 1943, and proper notice for hearing before the Steele County board of commissioners, a public hearing was held on May 23, 1960, upon several petitions for annexation pursuant to section 15-2308 of the 1957 Supplement to the North Dakota Revised Code of 1943. Some were granted and others denied. Subsequently at the next meeting held in June requests were made for reconsideration of their action on the petitions rejected but no action was taken on such requests. Subsequently at the July fifth meeting the commissioners decided and did reconsider the rejection of one such petition and adopted a resolution rescinding the former rejection and granting the petition.

You request an opinion of this office as to whether the board of county commissioners of this county had the right to reconsider its rejection of the petition in question, not at the next regular meeting after the hearing but at the meeting held subsequent thereto, and to take affirmative action thereon at such meeting.

You call our attention to the rule of parliamentary law stated in 46 C.J., 1383, Parliamentary Law, section 23, that:

All deliberative bodies have a right to reconsider their proceedings during their session as often as they think proper, when not otherwise provided by law, and it is the final result only which is to be regarded as the thing done. . . . A motion to reconsider tests exclusively in the discretion of the body whose action it is proposed to reconsider, and not other body or tribunal has the right to treat a reconsideration as void. . . ."

(Note in this regard the statements in *Glaspell v. Jamestown*, 11 N.D. 86, to the general effect that annexation and exclusion of territory from municipal corporations is a legislative rather than a judicial function.)

In this instance it would appear that the rights of the public, the citizens of the territory to be annexed, and the citizens of the annexing territory have been given the full protection of the substantive portions of the statute, i.e., there has been the required approval by the state committee, proper notice of hearing full consideration, and opportunity to be heard before the board of

county commissioners, and actually more consideration given the petition by the board of county commissioners than the statute actually requires.

We do note the provision of section 15-2308 of the 1957 Supplement to the North Dakota Revised Code of 1943 to the effect that the change in boundaries shall become effective within five days after the hearing; however, this obviously contemplates instances where there has been immediate approval of the proposed annexation by the board of county commissioners. (Note in this regard the consideration given in *Anderson v. Peterson*, 78 N.D. 949, 54 N.W.2d., 542, to matters mandatory and matters directory in reorganization proceedings.)

In conclusion it is the opinion of this office that there is no basis for holding the action of the Steele County board of commissioners invalid in this instance.

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