

**OPINION
60-191**

August 24, 1960 (OPINION)

SCHOOL DISTRICTS

RE: Bond Issue Elections - Percentage of Votes Needed for Approval

This is in reply to your letter of August 17, 1960, requesting an opinion of this office as to the applicability of subsection 3 of section 21-0307 of the 1957 Supplement to the North Dakota Revised Code of 1943 to an election recently held in a school district in your county.

You inform us that you are advised by school board officers that Richardton Special School District No. 4 had maintained and operated a public school building in Richardton, North Dakota, since 1907. This school was operated for many years and was a large brick school building with class rooms for all eight grades and some high school. School was discontinued there some time about 1940. During the late 1940's and early in the 1950's the school building began to deteriorate to a point where one of the entire brick side walls collapsed. The building was no longer used as a public school and arrangements had been made to operate one of the parochial schools as a public school. About six years ago, the remains of the building were torn down because of the danger to the lives of the people in the community. Since that time no other public school was built in the city of Richardton and the city does not now have any public school building.

The school district concerned was reorganized in 1960 to include additional territory. As a condition to such reorganization the State Reorganization board required the construction of a public school building in Richardton. Immediately following July first in 1960 the school board started proceedings to authorize a bond issue for the construction of this public school building. You inform us that the proposed building will in effect replace the old building that collapsed and was finally torn down.

The Richardton District held a bond election on August 13, 1960 and at that time there was a vote of 307 in favor of the issue of bonds and 165 against it. Thus there was slightly over 65 percent of the vote in favor of the bond issue.

You request the opinion of this office as to the applicability of subsection 3 of section 21-0307 of the 1957 Supplement to the North Dakota Revised Code of 1943 to such circumstances.

Subsection 3 of section 21-0307 of the 1957 Supplement to the North Dakota Revised Code of 1943 does provide:

3. Any municipality, as defined and listed in section 21-0306, may issue its bonds for the replacement of municipally owned public buildings within such municipality upon the authorization of sixty percent of the electors voting upon

the question of such issue in the following cases:

- a. When such building has been destroyed by fire, wind, explosion, or other cause;
- b. When, after a public hearing, the governing body of such municipality shall adopt a resolution declaring it necessary to replace a municipally owned public building for the reason that such building has become unsafe or inadequate for use and occupancy as a public building, or for keeping the public records or property of such municipality housed therein. The governing body of such municipality shall give notice of such public hearing by a statement published once each week for two successive weeks in any legal newspaper, published within such municipality, or in the official county newspaper, if the municipality is the county, or if no newspaper is published within such municipality then by publication in the official newspaper of the county, and by posting a statement in five separate public places within the municipality. Such statements shall set forth the time and place of the hearing and the reason therefor; and"

In the present instance it would appear that the situation has gone beyond the point where the building concerned is unsafe or inadequate. It has actually been physically destroyed as a direct result of the action of the elements thereon. While considerable time has elapsed since the original deterioration of the building, it would appear that there has not been a replacement of same up to the present time. The statute contains no limitation as to time when such replacement should be made. Also, the building if existent would have been transferred to the district as reorganized along with the other assets of the district. On this basis, it is our opinion that the district can properly replace the building under the provisions of section 21-0307, subsection 3a of the 1957 Supplement to the North Dakota Revised Code of 1943, upon an affirmative vote of sixty percent of the electors voting upon the question.

We agree that the building can be replaced by a 60 percent majority. But we do not believe that they can use this election (the election just held) for that purpose unless the procedure prior to and including the election was on that basis. In our opinion the basis for the bond issue would have to be under the provisions of the statute. We don't think they can set up the election for one purpose and then use it for another. We think the procedure should be gone into first.

If the procedure was not such so as to bring it within section 21-0307 of the 1957 Supplement, we think it is too late now. A new election should be held under the provisions of such section.

The bonds, if issued under current elections would be difficult to sell. This is not a legal proposition, but we think it should be taken into consideration. The bond issue is only as good as the existing market for such bonds. Unless procedure was under the provisions of section 21-0307, a new election would have to be held

in our opinion.

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