

**OPINION
61-203**

June 1, 1961 (OPINION)

SCHOOL DISTRICTS

RE: Reorganization - Composition of Board of Education

This is in response to your letter in which you recite a short history on the reorganization of the McVile Community Special School District No. 46. You also advise that the reorganization plan as finally drafted by the Reorganization Committee, which was approved by the State Committee and voted on by the electors of the territory involved, provides that the reorganized district shall be a Special School District with the Board of Education consisting of five members elected by the voters from the zone that each director represents, as follows: Two members from Hamlin Township; one member from Bergen, Norway and Pilot Mound as such are in the district; one member from the district of Field as such is in the district; and one member from the districts of Center and Melrose as such are in the district.

You then advise that the initial Board of Education for the reorganized district included one member from the City of McVile and one from Hamlin Township with each being elected by the voters of their respective areas, that is, the City of McVile and Hamlin Township. The term of the office holder from the City of McVile now expires. The Board of Education has given notice that at the annual election to be held on June sixth, one board member is to be elected from the City of McVile.

The City of McVile and Hamlin Township constitute two separate political entities. The only thing in common is that they constitute the original Hamlin School District, and also geographically the City of McVile, the municipal corporation, lies completely within Hamlin Township.

You then ask the following questions:

1. Is it proper and legal for the Board of Education to recognize candidates from the City of McVile and to have the electors of said City solely elect the board member or should such candidate or candidates be residents of Hamlin Township?
2. If you determine that to qualify as a candidate for the office, such person must reside within Hamlin Township and not the City of McVile, are the electors of McVile eligible to vote for both or either board members of Hamlin Township?
3. If you determine that a candidate can be a resident of the City of McVile, which electors, those of the City of McVile, those of Hamlin Township, or Both, can vote for said board member?"

Our reply to your questions must be based solely on the matters incorporated in the school reorganization plan which was adopted by the electors of said district. Subsection 5 of section 15-53-10 permits, and for that matter provides, that the directors of the Special School District may be elected at large or from designated geographical areas. Quite obviously the reorganization plan provided for the election of directors from designated areas.

The plan does not provide for a director to be elected from the McVillage municipality. It specifically provides that two members be elected from Hamlin Township. Thus, in response to the first question, our answer must be that the City of McVillage is not entitled to a candidate from its area for the reason that the reorganization plan does not so provide.

In response to your second question, we wish to advise that in order to qualify for a candidate for the office of school director, the individual must reside within Hamlin Township and not the City of McVillage. However, being that the City of McVillage lies within the geographical limits of Hamlin Township, and no other provision is made with reference to the City of McVillage, the electors of McVillage are eligible to vote for all of the directors for Hamlin Township. In other words, the City of McVillage is not entitled to a director who resides within the City of McVillage, but it is entitled to vote for a director of directors, as the case may be, for Hamlin Township. Being that the plan as approved by the electors specifically provides that two directors be elected from Hamlin Township and no other provision is made with reference to the City of McVillage, we must necessarily conclude that the directors must be residents of Hamlin Township to qualify for the office.

According to the plan approved, this established a qualification for the office of director, but inasmuch as no provision was made for McVillage having a director, and being that McVillage lies within Hamlin Township, the electors of McVillage are entitled to elect or cast their votes for directors who reside within Hamlin Township. To hold otherwise would in effect disenfranchise the electors of McVillage.

Question number three needs no response in view of the answers to questions one and two.

LESLIE R. BURGUM

Attorney General