

**OPINION
61-205**

November 3, 1961 (OPINION)

SCHOOL DISTRICTS

RE: Reorganization - Transfer of Assets

We have received your letter dated October 30, 1961, with reference to school reorganization.

You state that in July 1960, a reorganization election was held in your county. A portion of Hay School District in your county was included in the plan. The election board declared that the election had failed. This election was contested and the court held the election had carried. Later an action was brought challenging the validity of the reorganization proceedings. While this action was pending Hay School District held its annual 1961 school election and elected a new member who later took office and is now serving on the board.

You state you believe the last election held in Hay District is invalid and the transfer of assets to the newly reorganized district will have to be made by the board as constituted prior to the annual election held in June 1961 rather than by the board as presently constituted.

Since the reorganization election was held in July, 1960, the reorganization could in no event have taken effect until July 1, 1961. (See section 15-53-20 of the North Dakota Century Code.) In June, 1961, Hay District, while an action was pending as to the legality of the reorganization election, held its annual election and elected a new member. This action was later dismissed. In the June 1961 election Hay District elected one new school director.

The question then is whether the board that represented Hay District before July 1, 1961, or the board as now constituted shall transfer the share of assets to the reorganization district which belongs to it under the terms of the reorganization plan.

Since Hay District is still an operating district, I believe if the present board members are all residents of the area of the district left after reorganization that the present board could transfer whatever assets were assigned to the newly reorganized district under the terms of the plan.

I do not believe the board as constituted prior to the annual election in June 1961 could at this time perform any legal and binding acts on behalf of the school district.

I would, therefore, suggest that the present board representing Hay District make the transfer.

LESLIE R. BURGUM
Attorney General