

## **Opinion No. 55-6084**

January 24, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mrs. Georgia L. Lusk State School Superintendent, Santa Fe, New Mexico

In your letter of January 18, 1955, you enclosed a copy of a letter from the President of the Board of Education, Las Cruces School District No. 2, addressed to you, together with a copy of his letter addressed to this office requesting our opinion concerning the legality of a bond election contemplated by the above mentioned school district.

According to the letter from Mr. Darden, President of the Board of Education, three school systems, formerly known as the Dona Ana County Schools, the Las Cruces Municipal Schools and the Las Cruces Union High School, were consolidated into one school district, known as "Las Cruces School District No. 2." The consolidation appears to have been made by an Order of the State Board of Education on March 16, 1954, pursuant to the provisions of § 73-20-1 and succeeding sections of the 1953 Compilation, and the Order defines the boundaries of the consolidated school district excepting School District No. 16, Gadsden, and declares that the district shall be known as School District No. 2, Las Cruces.

§ 72-20-3 of the 1953 Compilation is as follows:

"Resolutions and orders for consolidation of districts. -- Whenever any county board of education shall determine by resolution that substantial economies can be effected and standards of education improved by the consolidation of any two (2) or more rural school districts within the county and shall furnish a copy of such resolution to the state board of education, the state board of education may order the consolidation of such districts; and likewise, when the state board of education shall determine and make definite finding at the conclusion of any survey made under the provisions of this act (73-20-1 to 73-20-4) that substantial economies can be effected and the educational standards raised by the consolidation of any two (2) or more school districts, said board may order the consolidation of such districts."

Since the authority given the State Board under this section, to order a consolidation of two or more school districts, does not specifically limit the authority to rural districts, it may be argued that the authority is broad enough to apply to municipal school districts. This specific question apparently has never been passed upon directly by the Supreme Court although the Court has assumed the authority of the State Board to be broad enough to include municipal districts. In *Stokes vs. New Mexico State Board of Education*, 55 N.M. 213, 230 P. 2d 243, it was held that the above consolidation statute repealed by implication the provisions in § 55-907 of the 1941 Compilation, requiring an election before consolidating a municipal school district with a rural district.

The compiler of the 1953 Compilation considered this decision of the Supreme Court sufficient authority to omit § 55-907 of the 1941 Compilation entirely from the 1953 Compilation, the parallel tables of the 1953 Compilation show the entire section to be superseded by the foregoing consolidation law.

§ 55-907 of the 1941 Compilation authorizes municipal school districts to be consolidated with other school districts. The Supreme Court held that the requirement of an election to accomplish this purpose was unnecessary because of the authority granted to the State Board of Education to order consolidation after a survey and determination that such consolidation was advantageous. In view of these two statutes as construed by the Supreme Court, it is apparent that municipal school districts may be consolidated with other school districts by the State Board in conformity with the statutory requirements.

In connection with union high school districts, they are authorized to be created upon presentation of a petition for that purpose and an election therefor and, under § 73-11-6 of the 1953 Compilation, authority is given to union high school districts to be dissolved or to consolidate with other districts only upon petition and election in a manner as provided for their creation. This section was amended in 1951 to require a petition and election for consolidation of union high school districts and since it is a later enactment of the Legislature, it would not be governed by the consolidation law of 1941.

Undoubtedly, over the years, consolidations have been made involving municipal school districts and perhaps union high school districts or other districts. In 1923 the Legislature, in effect, validated such previous actions under § 73-10-1 of the 1953 Compilation, which recognizes municipalities, including territory annexed thereto for school purposes, to be municipal schools and districts.

In 1937, under § 73-10-11 of the 1953 Compilation, another validating act was passed in this language: "All municipal schools or school districts in existence prior to the first day of January, 1937, are hereby validated."

In 1947, under the provisions of Chap. 9, Laws of 1947, another validating act was passed by the Legislature concerning the organization, existence or consolidation of all school districts theretofore ordered by the State Board of Education. It is thus apparent that the Legislature, over the years, has recognized a deficiency in the school laws concerning consolidation by municipal districts with any and all types of school district and has followed the procedure of validating such consolidations previously made.

In connection with the Las Cruces School District, as purportedly consolidated by the State Board, we have a situation in which all of the county schools are consolidated in the new district and the county board of education is no longer in existence nor is there a county school superintendent. We also have a municipal district consolidated with the remaining districts and, in addition, we have a union high school district which has not been legally dissolved nor consolidated with the new district. There is no declaration by the Legislature concerning the governing board of such a new consolidated district nor

authorizing such a board to issue bonds. For that reason, it is our opinion that no existing board of the consolidated school district involved has authority to call a bond election or to issue bonds which will be legally binding upon the entire district. Legislation in the nature of a validating act and authorizing the existing board, or some other board to be created, to conduct a school bond election and issue bonds is recommended.

By

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