

Opinion No. 60-119

June 20, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Tom Wiley Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

QUESTION

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May the Santa Fe County School Districts Numbers 1 and 18 be consolidated and simultaneously created into an independent school district?

CONCLUSION

No.

OPINION

{*494} **ANALYSIS**

On May 12, 1960 the Santa Fe County Board of Education passed a resolution requesting the State Board of Education and the Superintendent of Public Instruction to issue the necessary certification for the Santa Fe County School Districts Numbers 1 and 18 to become one rural independent school district. On the same day this resolution was presented to the State Board of Education and upon being duly considered, the State Board took the necessary action to consolidate Districts 1 and 18 and also attempted to create an independent rural school district.

The action of the State Board in connection with the attempted consolidation and creation of a rural independent school district was clearly without authority in law.

Section 73-9-14, N.M.S.A., 1953 Compilation (P.S.) provides as follows:

"Independent rural school districts -- Prerequisites -- Board of school directors -- Powers and duties. -- Any rural school district in which the average daily attendance for two (2) consecutive school terms exceeds three hundred (300), and has successfully maintained a regular four (4) year high school course that has met the requirements of the state board of education as to certification of teachers, standardization of subjects taught and sufficiency of equipment may become an independent rural school district upon the certification of the superintendent of public instruction and thereafter shall be governed by a board of school directors appointed or elected and holding office as in

other rural school districts, said board to consist of five (5) members and to hold office as hereinafter provided.

Said board shall have the same powers and perform the same duties as are provided by law for municipal board of education."

This section was considered very recently by the Supreme Court of New Mexico in the case of **Trujillo, et al., v. State ex rel Gandert**, Supreme Court No. 6652. The decision in this case was handed down on April 27, 1960 and motion for rehearing has subsequently been denied. In the **Gandert** case the Supreme Court held that a newly created consolidated school district must be in existence for two consecutive school terms before such district may be created as an independent rural school district. Therefore, in order for Santa Fe County rural school districts Numbers 1 and 18 to become an independent school district they must be consolidated for at least two consecutive school terms and otherwise meet the requirements of Section 73-9-14.

By: Philip R. Ashby

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