

## Opinion No. 60-150

August 11, 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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Can Pojoaque Rural School District now be made an independent rural school district by the State Board of Education?

#### CONCLUSION

Yes.

### OPINION

#### {\*535} ANALYSIS

Your question comes as a result of our Opinion No. 60-119, dated June 20, 1960, in which we held that the State Board of Education had no authority to consolidate and at the same time create a single independent rural school district out of the Pojoaque and Santa Cruz Rural School Districts. We based our opinion on the recent holding in **Trujillo, et al. v. State ex rel. Gandert**, Supreme Court No. 6652, dated April 27, 1960.

Since the date of our opinion, the State Board of Education has ordered that the Pojoaque Rural School District be made an independent rural school district separate and apart from any consolidation with the Santa Cruz district. Your question is whether such action by the State Board is proper.

You have informed me that the Pojoaque District has had an average daily attendance exceeding 300 for at least two consecutive school terms and has successfully maintained a four-year high school course meeting State Board requirements regarding certification of teachers, standardization of subjects taught and sufficiency of equipment.

The statute covering this situation is the same one construed in the **Gandert** case, i.e., Sec. 73-9-14, N.M.S.A., 1953 Comp. (PS), which reads as follows:

"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 boards of education."

Clearly, upon the facts you have presented us, the Pojoaque District meets the qualifications required to become an independent rural school district. Therefore, it is our opinion that the action of the State Board of Education was proper. The present State Board action is to be distinguished from the facts presented in the **Gandert** case or in the State Board's prior attempted consolidation together with independent status action in connection with Pojoaque and Santa Cruz, since the present action of the Board makes no attempt to consolidate {\*536} two previously separate districts and at the same time make them one independent district. The State Board's action in this case merely converts the Pojoaque District from a rural school district to independent rural school district, such district having met the minimum qualifications specified in Sec. 73-9-14.

By: Philip R. Ashby

Assistant Attorney General