

Opinion No. 65-158

August 18, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Leonard J. DeLayo, Superintendent of Public Instruction, Department of Education, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Does Chapter 30, Laws 1965, make it mandatory that the State Board of Education reorganize county school systems by combining its units with an existing adjacent municipal administrative unit or units, or by creating a new independent district to become effective not later than September 1, 1965?

CONCLUSION

Yes, subject to the proviso contained in Section 2, Chapter 30, Laws 1965.

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{*267} ANALYSIS

In answering your question it seems advisable to set forth the following portions of Chapter 30, Laws 1965, so that the mandatory nature of the language used may be examined:

"Each county board of education **shall** prepare a plan for its administrative reorganization to combine it with an existing adjacent municipal or independent administrative unit or units, or to create new independent administrative units composed of all or some of the existing rural school districts under its jurisdiction. The proposed plan **shall be presented** to the state board of education on or before June 30, 1965 for approval. If approved by the state board of education, the plan **shall** become effective on a date set by the state board of education, but not later than September 1, 1965. Should the state board of education propose amendments to, or refuse to approve, the plan as submitted, the county board of education **shall** revise the plan and present a revised plan to the state board of education for consideration prior to August 1, 1965. If the state board of education approves the revised plan, the reorganization shall become effective immediately. Should the revised plan be disapproved, or if the county board fails to submit a plan, **the state board of education shall effect the administrative reorganization of the county school system** by combining its units with an existing

adjacent municipal, administrative unit or units, or by creating a new independent district to become effective not later than September 1, 1965. . . ."

(Emphasis supplied).

We see then that while the State Board of Education has full discretion in approving or rejecting reorganization proposals submitted by county boards of education, if it does reject the proposals, the State Board must itself effect the reorganization.

Notwithstanding what we have said above, the State Board of Education is granted considerable latitude in Section 2 of Chapter 30, Laws 1965, wherein it is provided that:

"After survey the State Board of Education **may certify any rural school district or school district to be an independent rural school district** when satisfied that such certification will serve the best interests of the schools in the district or districts so certified." (Emphasis added).

There is absolutely no question but that the legislature intended Section 2 to give the Board of Education discretion in the certification therein referred to and quoted above. The bill in question (House Bill No. 106) was referred to the House Education Committee which reported it with a DO PASS, as amended. One of the amendments was the inclusion of Section 2 which was adopted by the House of Representative on February 10, 1965.

Thus while reorganizations are required under Section 1 of Chapter 30, Laws 1965, the State Board of Education may under Section 2, after survey, certify any rural school district or school district to be an independent rural school district if it makes the necessary "best interest" finding.