

Opinion No. 13-1089

August 4, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Filadelfo Baca, Assistant State Superintendent of Public Instruction, Santa Fe, N. M.

SCHOOLS.

How adjoining territory may be annexed by a town for school purposes.

OPINION

{*260} Your letter of the 31st ultimo was received while I was absent from Santa Fe, and I take the first possible opportunity I have had to answer.

It appears from your letter and the letter from Mr. W. L. Bishop of Gallup, which you enclosed and which I return herewith, that an attempt was made by the people of Gallup and of some adjoining territory, to annex that adjoining territory to the town of Gallup for school purposes under Section 22 of Chapter 97 of the Laws of 1907, which effort was unsuccessful only because upon appeal to the county commissioners as provided in the last clause of that section, the board set aside the order of the county superintendent on account of protests made by the school district of Gibson and by the railroad company. It appears also that an attempt was made by means of certiorari to have the district court review the action of the board, but this effort was unsuccessful, presumably because the statute provides that the decision of the board shall be final. It is now asked whether it may not be possible to annex the desired territory to the town of Gallup for school purposes under Section 1563 of the Compiled Laws of 1897 and whether, if such effort were made, any appeal could be taken to the county commissioners.

I am of opinion that said Section 1563 of the Compiled Laws is still in force, unaffected by Section 22 of Chapter 97 of the Laws of 1907, and is the only one under which territory may be annexed to an incorporated city or town for school purposes. Said Section 22 of the act of 1907 cannot be considered as referring to anything except school districts, the creation, alteration and organization of which are committed to the county superintendent. That officer has no control over the formation of a school district of an incorporated city or town which is co-incident with the municipal limits. Section 1563 of the Compiled Laws provides for the attaching of territory outside the municipal limits to a city or town for school purposes, upon application to the board of education of the city or town by a majority of the electors of the adjacent territory, and the board of education is given the discretionary authority to issue an order attaching such territory to the city or town for school purposes, and from the date of such order the attached territory becomes a part of such city or town for school purposes only. There is no provision for any appeal to the county commissioners or to anyone else, and for

reasons already stated this section must be considered as still in force, unchanged by any subsequent legislation. I believe it is exclusive, and that the attempt to attach adjacent territory to the town of Gallup by proceeding under Section 22 of the act of 1907 was without any {261} foundation in law, and that the court might have decided against the annexation upon that ground alone without reference to what the board of county commissioners may have done.

You say, however, in substance, that there may be some doubt on this subject because the territory to be attached is part of the Gibson district, but I can see no ground for objection in that fact. If that were sufficient to prevent such annexation of adjacent territory to a town for school purposes, the effect would be practically to nullify Section 1563, of the Compiled Laws, as it is almost certain that no territory adjacent to towns can be found in New Mexico which is not already included within some school district outside of the town. The Gibson school district has no vested right to hold any part of the territory now included within its limits, nor indeed any vested right to continue in existence. The only possible complication which can rise might be found in the existence of some bonded indebtedness of the district, for which all of the property therein might be held, but that cannot be regarded as an obstacle. It is well established that counties and municipalities may be abolished, divided or annexed to other political subdivisions of the state, without regard to the existence of debts, and if a portion of a county is taken away and added to another county, or erected into a separate county, if no provision is made by law for an adjustment of claims as to public debts, the old county or what there is left of it, assumes the burden of those debts. If any such condition exists in this case perhaps the Gibson district can make some appeal to the courts with the object of holding property in that part of the territory annexed to the town, subject to taxation for the purpose of paying any debt. Bondholders would have a standing to maintain such action, but it is doubtful if the school district itself could, but as to this, which is only a conjectural possibility, I have not had time to make any careful examination.