

Opinion No. 14-1350

October 5, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. R. B. Loring, Clovis, New Mexico.

SCHOOLS.

As to the consolidation of school district No. 3 of Curry county with the school district of the city of Clovis.

OPINION

{*211} I have received a letter from you and Mr. J. P. Mitchell, dated October 2nd, enclosing three petitions (the body of each of which is the same), signed by forty-eight persons as residents and free holders of School District No. 3 of Curry County, protesting against the recent action in consolidating said district with the Clovis District, and petitioning any Board having authority to restore said district to the status enjoyed by it prior to said consolidation. You say that the petition solicited for the consolidation of Liberty school with the Clovis school, was not understood by the residents of the Liberty district, and you ask me to inform you what it will be necessary for you to do in order to get your school district back as it formerly was.

This presents a different question from any that I have ever had occasion to consider, but I have no doubt that if the consolidation was brought about upon application to the Board of Education of the city by a majority of the electors of adjacent territory, in accordance with the provisions of Section 1563 of the Compiled Laws of 1897, but that such application was made under a misapprehension of what the effect of the proposed action would be, and that a majority of the electors actually do not want to be attached to the city for school purposes, there must be some way of undoing the objectionable action, unless the consolidation has been allowed to continue for such length of time that injustice would result to the city schools if the existing status were changed. My suggestion would be that you should first make application to the city Board of Education by a petition, signed by a majority of the electors in your former district, setting out that the first petition had been signed under a misapprehension {*212} as to what the effect of the proposed consolidation would be, and that it is the actual desire of the signers to have their former district reestablished, and praying that the Board rescind its order attaching your district to the city for school purposes. I believe that if that order is rescinded, you can then take up your former school district existence and be recognized by the county superintendent. You might, at the same time, by a petition, similarly signed by a majority of the legal electors residing within your district, addressed to the county superintendent of schools, ask him to recreate your district, or to establish it as a new district, setting out the same facts above suggested as proper to go in the petition to the city board. It is not, however, clear to my mind that he would have

jurisdiction to make such a district, thereby taking away from the city a part of the territory, which, at present, appears to belong to it for school purposes. It might be well, however, for you to be in position to show, if the matter should get into the district court, that you had made this attempt and exhausted the statutory remedies.

If you should fail in getting the order rescinded, I believe that then you would be compelled to resort to the district court by way of a suit against the City Board of Education to attempt to compel the rescinding of the order and the reestablishment of your school district. Such a suit would be based upon the well-known grounds of equitable jurisdiction which require relief to be given in cases of fraud or mistake, or both.

I have no knowledge of the merits of this question -- that is, as to whether or not the children of your district would be benefited or injured by your remaining attached to the city for school purposes. I assume that in your opinion, there would be no benefit, or you would not take the position you do. I have consulted with the State Board of Education and what I have written is in harmony with the result of that conference. It would seem to me that by consolidation with the city you ought to get stronger and better schools than you could have as an independent district, but I can also imagine that there might be difficulty as to children being able to attend in schools several miles distant from their homes, especially in bad weather. I believe that in some instances, school districts have expended, and I believe properly, part of the funds under their control, to provide transportation to and from school for scholars living at considerable distances. I merely mention this as a practical question which may be worthy of consideration, and which might lead to some adjustment of your present difficulty.

I return herewith the petitions that you sent.