

**Opinion No. 26-3897**

June 25, 1926

**BY:** ROBERT C. DOW, Assistant Attorney General

**TO:** Miss Isabel L. Eckles, State Superintendent of Schools, Santa Fe, New Mexico.

This Office is in receipt of your request for an opinion relative to the consolidation of certain school districts in Colfax County, New Mexico.

Chapter 148, Laws of 1923, provides for calling and holding an election to determine whether or not school districts shall be consolidated; § 805 of said Chapter is in part as follows:

"If a majority of the qualified electors in each district shall vote in favor of the consolidation or change, it shall be made upon order of the County Board of Education."

While it has been held in a few cases construing similar statutes that a majority of the actual qualified electors of the district is essential in order to comply with the statute, I think the great weight of authority is against such view, and it has been so held in the following cases: *St. Joseph T. P. v. Rodgers*, 83 U.S. 644; *Columbia Bottom Levee Co. v. Meier*, 39 Mo. 53; *Sanford v. Prentice*, 28 Wisc. 358; *Schlicher v. Keiter*, 22 L. R. A. 161; *Smith v. Proctor*, 14 L. R. A. 403; *Taylor v. Taylor*, 10 Minn. 107.

I think the statute means a majority of the votes cast at the election and not a majority of the qualified electors who reside in such districts; it will be necessary, however, that each of the two districts have a majority of votes in favor of the consolidation, and should one district fail to have such a majority then such districts could not be consolidated.