

## Opinion No. 41-3738

March 12, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. R. H. Grissom Educational Budget Auditor Santa Fe, New Mexico

{\*45} This will acknowledge receipt of your letter of March 11, wherein you state in substance that the municipality of Taos, being in School District No. 1, contemplates extending its boundaries, and in doing so a part of the territory to be annexed to the said municipality will be in School District No. 39. Under the above statement of facts, you desire to know whether or not the territory so annexed to the municipality of Taos would become a part of Municipal School District No. 1, or remain as a part of School District No. 39.

The question which you have propounded is most perplexing, and the writer doubts the wisdom of rendering any dogmatic opinion on the same, but will attempt to review the law in regard to the matter in an intelligent manner.

Section 120-901, of the New Mexico Statutes, Annotated, 1929 Compilation, reads as follows, to-wit:

"Except as otherwise provided in section 817 (120-817) hereof, cities, towns and villages, including territory annexed thereto for school purposes, shall be known as municipal schools and districts."

In 1935, construing the above section quoted, in Opinion No. 936, addressed to Mr. Wesley Freeburg, superintendent of the Taos Public Schools, this office held that when the Village of Taos originally incorporated, so much of the school district as was included within the incorporated limits of said municipality, automatically became a municipal school district.

In 1937, the Legislature of the State of New Mexico, enacted a law, the same being Chapter 204, Session Laws of 1937, which reads in part as follows, to-wit:

{\*46} "\* \* \* Section 2. Hereafter, upon incorporation of any city, town or village, a petition bearing the signatures of not less than 10% of the qualified electors of the municipality and the **territory annexed thereto for school purposes** may, at any time after such incorporation, be presented to the county board of education asking that an election be held to permit the qualified electors of the municipality and the **territory annexed thereto for school purposes** to vote upon the question as to whether the school or schools of such district shall become a municipal school, schools, or school district. \* \*

\*"

Subsequent to the enactment of the 1937 law above quoted, in Opinion No. 3423 this office again adopted and re-affirmed the principle laid down in Opinion No. 936.

You will note that the 1937 law above quoted from provides for the annexation of territory **for school purposes only**. In that the Legislature has seen fit to use the expression "for school purposes," it appears to my mind that where territory is annexed to a municipality **for all purposes**, as in the instant case, that the electors of the municipality and the territory annexed thereto **for all purposes** would not have any right to vote on the question as to whether or not said annexed territory should become a part of the municipal school district. Therefore, I am of the opinion that when and if the municipality of Taos extends its boundaries in a legal manner, that the annexed territory thereto immediately, ipso facto and automatically will become a part of the existing municipal school district.

Section 90-210, New Mexico Statutes, Annotated, 1929 Compilation, the same being relative to annexation of contiguous territory to a municipal corporation, is silent as to the effect of such annexation in regard to schools or school districts; and hence I believe, and it is my opinion, that Section 120-901 of the New Mexico Statutes, Annotated, 1929 Compilation, is controlling.

I am enclosing copies of Opinion 936 and 3423, above referred to.

Trusting that the foregoing sufficiently answers your inquiry, I am

By Howard F. Houk,

Asst. Atty. General