

**OPINION
64-264**

September 28, 1964 (OPINION)

Mr. M. F. Peterson

Superintendent

Public Instruction

RE: Schools - Involuntary Dissolution - Approval of State Board

This is in reply to your letter of September 13, 1964, relative to the interpretation of Sections 15-22-21 and 15-53-21 of the North Dakota Century Code, as amended. You state the following facts:

In behalf of the State Board of Public School Education, which met on Monday and Tuesday of this week, I am submitting a question relative to the interpretation of Sections 15-22-21 and 15-53-21, both of which were amended in 1963.

According to 15-53-21 the State Board of Public School Education should approve all school district boundary changes. Section 15-22-21 provides for the dissolution of school districts, which dissolution aspect was enacted into law subsequent to Chapter 15-53 and subsequent to Section 15-53-21.

For that reason the State Board of Public School Education has not at any time requested that county committees send to the state for review the dissolution and attachment of school districts under Section 15-22-21. The State Board, however, has considered such dissolutions if they affected reorganized districts and in all cases has approved them.

* * *

I am writing in behalf of the State Board requesting an official opinion of your office regarding the duties and responsibilities of the State Board as the state committee for school district reorganization under Sections 15-22-21 and 15-53-21."

Section 15-53-21 of the North Dakota Century Code, as amended, provides:

VOLUNTARY PROPOSALS FOR ORGANIZATION OR ALTERATION OF SCHOOL DISTRICTS. - Proposals for the organization of a new school district, for the consolidation of two or more districts, or for the alteration of the boundaries of established school districts, by any of the means provided for by law, must be submitted by the county committee and county superintendent to the state committee for approval before any hearings on petitions are held by the county committee, or before final action is taken by the committee in cases where no petition is

required, or before proposals are submitted to the vote of the electors, as the law may require in each case. Such proposals shall be approved by the county committee and county superintendent and approved by the state committee if in the judgement of said committees they constitute an acceptable part of a comprehensive program for the reorganization of the school districts of the county."

This section was enacted in its present form by the 1963 Legislative Assembly. It was a portion of a bill recommended by the Legislative Research Committee (S.B. #34) and the purpose of the amendment, according to the Report of the North Dakota Legislative Research Committee, Page #11, was to "remove surplus and ambiguous language" which would have remained in the section had it not been amended. The surplus and ambiguous language consisted of the references to the boards of county commissioners since, by other legislation, the duties of the boards of county commissioners with respect to school district boundaries had been repealed and all such duties were placed in the hands of the various county reorganization committees. Therefore, Section 15-53-21, as amended, is in substantially the same form as when it was originally enacted insofar as the question here presented is concerned. The section was originally enacted by Section 21, Chapter 142 of the 1953 Session Laws.

Section 15-22-21 of the North Dakota Century Code, as amended, provides, insofar as is here pertinent:

DISSOLUTION OF SCHOOL DISTRICTS - DUTY OF COUNTY SUPERINTENDENT. - The county superintendent of schools shall notify the county committee for the reorganization of school districts when any school district within the county has had its assessed valuation reduced to an amount which will no longer enable the district to raise sufficient funds to carry on normal school operations, or when any school district within the county has not operated a school for the immediately preceding two years providing pupils from such school district are not attending school in another state. Upon receipt of such notice, the county committee shall forthwith give notice of hearing to dissolve the school district and shall provide for its attachment to one or more adjoining school districts. The county superintendent shall notify the county committee for the reorganization of school districts of the existence of territory not organized into school districts and recommend that the same shall be attached to one or more adjoining school districts; the county committee shall forthwith provide for its attachment to one or more such districts. * * * "

This office has previously indicated the dissolution and attachment of districts referred to in this section to be mandatory.

Section 15-22-21 of the North Dakota Century Code was amended to approximately its present form by the 1961 Legislative Assembly. (See Chapter 157, 1961 Session Laws.) Further changes were made by Chapter 145 of the 1963 Session Laws but the provision quoted above was, for the purposes of the question here presented, enacted in substantially its present form in 1961. The 1961 amendment did not alter the provisions of Section 15-22-22 of the North Dakota Century

Code. However, Section 2 of Chapter 145 of the 1963 Session Laws did substantially amend Section 15-22-22 of the North Dakota Century Code. Prior to the amendment, the section provided the county superintendent of schools, upon order of the board of county commissioners, must notify the clerk of each school district adjoining the district which was to be dissolved that a hearing was to be held at the next regular meeting of the board of county commissioners for the purpose of determining which school district the dissolved territory was to be attached to.

Section 15-22-22, as now amended, insofar as is applicable herein, as follows:

NOTICE OF HEARING - ORDER OF ATTACHMENT - JOINT COUNTY ACTION.
- The county superintendent of schools upon order of the * * * county committee for the reorganization of school districts * * * shall notify the clerk of each school district adjoining any district which is to be dissolved pursuant to Section 15-22-21 and any unorganized territory recommended for attachment as therein provided that a hearing will be held and the time and the place of the hearing of the * * * county reorganization committee, * * * for the purpose of determining to which school district or districts the dissolved or unorganized territory will be attached. Upon or after such hearing the * * * county committee for the reorganization of school districts, * * * may by resolution order the district dissolved and its territory attached, or the unorganized territory attached, to one or more adjoining school districts in such manner as will, in its judgment, provide the best educational opportunities for pupils of the public schools and the wisest use of public funds for the support of the public school system in such school districts and attached territory. The order shall become effective upon the adoption of the resolution, unless another effective date is provided for therein, and except as provided in Section 15-22-21. If any of such adjoining districts is situated wholly or partly in a county other than that which included the district to be dissolved or the unorganized territory affected, any order attaching territory to such adjoining school district shall become effective only upon the adoption of a concurring resolution by the * * * county committee for the reorganization of school districts * * * of the other county in which it is situated. * * *." (Emphasis supplied.)

The provisions of Section 15-53-21 are broad, and at first appearance would indicate that attachment under Sections 15-22-21 and 15-22-22 of the North Dakota Century Code requires approval of the state committee. However, the provisions of Sections 15-22-21 and 15-22-22 must also be considered with respect to this matter. Since Section 15-53-21 has not been substantially amended, insofar as the problem here presented is concerned, since its enactment in 1953, and since Sections 15-22-21 and 15-22-22 have been substantially amended in the 1961 and 1963 Legislative Assemblies, the dictates of the Legislature, as expressed in the later amendments, would control.

We would note the underlined portion of Section 15-22-22, quoted above, clearly indicates that the county committee, at the hearing to

consider the dissolution of the school district, may provide by resolution for its attachment to adjoining districts. The statute further provides that the order of the county committee dissolving the district and attaching it to an adjoining district or districts shall become effective upon the adoption of the resolution unless another effective date is provided in the resolution. If the county committee, at the hearing, may by resolution dissolve the district and attach it to an adjoining district, and if the order is to become effective upon the adoption of such resolution, it is obvious the approval of the State Committee is not necessary to the effectiveness of such resolution.

The law provides for no procedure by which any type of plan for the attachment of the districts to be dissolved is to be presented to the county committee prior to the hearing. The determination as to which of the adjoining districts the dissolved district is to be attached is to be made from the information received at the hearing provided for in Section 15-22-22. The county committee could not, therefore, present any plan for approval to the State Committee prior to the public hearing. Since the law permits the county committee to take final action in attaching the dissolved district to adjoining districts at the public hearing, compliance with the provisions of Section 15-53-21 would, in this instance, not be possible. Sections 15-22-21 and 15-22-22 as amended by the 1961 and 1963 Legislative assemblies would, therefore, appear to supersede the requirements of Section 15-53-21 insofar as the procedure under Sections 15-22-21 and 15-22-22, as amended, is concerned.

We would further note that in 1962 the Department of Public Instruction adopted a procedure for administering Section 15-22-21 of the North Dakota Century Code as amended by the laws of 1961. On June 16, 1962, this office approved the proposed procedure. The proposed procedure provided in part:

In the event that the district is annexed to an adjacent school district which has been reorganized within the last five years under the provisions of Chapter 15-53, the school district reorganization law, the annexation must have the approval of the county superintendent of schools, the county reorganization committee and of the State Board of Public School Education. This is in accordance with Section 15-53-21, N.D.C.C., 1960. *
* * The approvals of the county superintendent, county committee and state board are not required when the annexation is made to a reorganized school district which has been in effect more than five years."

It is a commonly accepted principle of law that an interpretation placed upon a statute by the department which administers such statute will be given great weight by the courts, particularly in those instances in which, subsequent to the interpretation, the Legislature has met and has not altered the statute. In this instance the Legislature did not merely leave the interpretation placed upon the statute by the Department of Public Instruction stand, but, as noted above, in effect amended the statute to specifically correspond with such interpretation.

In view of these facts, it is our opinion that a resolution of the

county reorganization committee dissolving a district and attaching it to an adjoining district or districts under the procedures set forth in Section 15-22-21 and 15-22-22 of the North Dakota Century Code, as amended, need not be presented to the State Board of Public School Education for approval unless the districts to which the dissolved district are attached have been reorganized within the five years preceding the date of such resolution.

HELGI JOHANNESON

Attorney General