OPINION
69-296

October 13, 1969 (OPINION)

The Honorable M. F. Peterson

Superintendent of Public Instruction

RE: Schools - Annexation - Approval by County Superintendent

This is in reply to your letter of October 1, 1969, in which you enclosed a petition calling for annexation of a portion of Little Heart School District in Morton County to Mandan. You state the following facts and questions:

> The Morton County Committee has approved this annexation, but the County Superintendent has not recommended it; as a matter of fact, she is not for it. The County Superintendent and Secretary of the County Reorganization Committee presented her position at the State Board meeting on Tuesday, September 30, 1969, and using as her basis Sections 15-53-21 and 15-53-23 of the North Dakota Century Code.
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> The Department of Public Instruction, as well as the State Board of Public School Education, would like to have an official Attorney General's opinion regarding the interpretations of these sections of the law, and a statement relative to the authority of the County Superintendent, who is also the Secretary of the county committee, and his or her authority relative to annexation and reorganization of school districts.
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> The thought presented to the State Board of Public School Education on September 30 by one of the proponents of the annexation was that 15-53-23 was repealed by implication. I note in the 1969 Supplement that 15-53-23 has not been amended."

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

> 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 final approval:
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> 1. After a hearing on petitions is held by the county committee, or
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> 2. After action is taken by the county committee in cases where no petition is required, or
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> 3. For approval 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 judgment of said committees, they constitute an acceptable part of a comprehensive program for the reorganization of the school districts of the county."

Section 15-53-23 of the North Dakota Century Code provides:

REORGANIZATION BOUNDARIES OF SCHOOL DISTRICTS NOT TO BE ALTERED WITHIN FIVE YEARS - EXCEPTION. Except as provided in section 15-27-01, the boundaries of a reorganized school district shall not be altered within five years after reorganization without the recommendation of the county superintendent and approval by the county and state committees during the life of said committees."

In answering these questions it is perhaps advisable to consider a brief history of the annexation and reorganization laws of this State. Prior to 1963 annexation, i.e., the attachment of an existing school district or a portion thereof to another existing school district, was a function of the Board of County Commissioners of each individual county. Reorganization, i.e., the creation of an entirely new school district from existing school districts or portions thereof, was a function of the county reorganization committee. The reorganization committee was created to be concerned primarily with alteration of school district boundaries. The county commissioners have many other duties and are not considered to have particular expertise with regard to the alteration of school district boundaries. For this reason it appears that the Legislature deemed it necessary to require the approval of the county superintendent of schools before the county commissioners could alter school district boundaries through annexation proceedings, and before altering the boundaries of a school district which had been reorganized by the county and state reorganization committees within the past five years, requiring the recommendation of the county superintendent of schools and approval of those committees.

In 1963 the Legislature removed these functions from the county commissioners and all matters involving alteration of school district boundaries were placed under the jurisdiction of the county reorganization committee. See chapter 147, 1963 Session Laws. The bill (Senate Bill 42) was the result of a study by the Legislative Research Committee. On page 11 of the 1963 Legislative Research Committee Report we find the following statement:

This bill would relieve the county commissioners of all duties relating to school district annexation proceedings and transfer such functions to the county committee for the reorganization of school districts. At present, confusion results from the overlap of functions and duties of the county reorganization committee and the board of county commissioners. It cannot be expected that a board of county commissioners, whose principal duties lie in other fields, will have the degree of knowledge and interest in the field of education that will be found among

members of a county committee on school district reorganization."

In considering this matter we should also consider the section under which the annexation is proposed. Section 15-27-04 of the North Dakota Century Code, as amended, provides:

> ATTACHMENT OF ADJACENT TERRITORY TO SCHOOL DISTRICT - PETITION. - Territory contiguous to the public school district, whether in the same county or in another, may be attached to such school district and detached from the district of which it is a part by the county committee for the reorganization of school districts upon written application signed by two-thirds of the electors residing in the contiguous territory after hearing and subject to the limitations of sections 15-27-06 and 15-53-21."

We note the section makes specific reference to section 15-53-21. However, section 15-53-21, as amended, is not entirely clear. In the last sentence it specifies a proposal for the alteration of a school district "shall be approved by the county committee and county superintendent and approved by the state committee if in the judgment of said committees" the proposal constitutes an acceptable part of a comprehensive program for the reorganization of the school districts of the county. While the language appears to require approval of the county superintendent of schools in one part of the sentence, it ignores that requirement in another part of the statute. In addition, the requirement of approval prior to submitting the proposal is not stated in clear terms, although this is the obvious implication.

We might also question the necessity of section 15-53-23, since, whether or not a school district has been reorganized within five years, the alteration of boundaries of such school district can only be accomplished by action of the county committee and state committee.

However, it appears this provision is again a result of the situation in which the county commissioners, prior to 1963, could attach territory to a reorganized district without action of the county reorganization committee. Therefore, except for the requirement of recommendation of the county superintendent of schools, section 15-53-23 would appear to be repetitious. In this connection, we are not entirely clear as to what the Legislature intended when they required "approval" of the county and state committees and "recommendation" of the county superintendent of schools. We might surmise it was a recognition of the fact the county superintendent of schools is not a voting member of the county committee and would not therefore approve the proposal. In any event, it appears that the statute contemplates some affirmative action on the part of the county superintendent of schools with regard to the proposal.

We must also note that section 15-53-23 requires the recommendation of the county superintendent of schools before altering the boundaries of a school district reorganized within the last five years. It would appear this requirement was enacted to protect the reorganized district for a period of time in order to implement the proposals in the reorganization plan without interruption. In this

instance, the objections of the county superintendent of schools do not appear to be concerned with the reorganized district, but rather with the district from which the territory is to be detached. Whether such objections are relevant to this requirement appears to be academic, however, since the statute does not limit the reasons for which the county superintendent may refuse to recommend the proposal for alteration of the boundaries of the reorganized district.

As noted above, we are aware that the significance of requiring approval of the proposal by the county superintendent of schools is most probably a part of the history of the statutes under consideration. We are also aware that more recent statutes involving alteration of school district boundaries do not require such approval or recommendation. See, e.g., section 15-27-05 of the North Dakota Century Code, as amended, which governs the annexation of territory if the two or more districts involved are situated within two or more counties. Thus we have the situation in which such approval is apparently required if the territory involved is situated within one county, but no approval is required if two or more counties are involved. See also sections 15-22-21 and 15-22-22 of the North Dakota Century Code, as amended, involving the involuntary dissolution and attachment of school districts, and section 15-53-26 involving the attachment of territory remaining in a school district after a portion of the district has been included within a reorganized district.

It appears to us that the Legislature might very well have believed the approval and recommendation of proposals for the alteration of school districts by the county superintendent of schools was no longer necessary after the county reorganization committee assumed all the duties and powers involving such procedures. However, the Legislature did not remove these requirements from the statutes and, whatever our belief as to the intent of the Legislature, this office cannot, by administrative decision, diminish such statutory requirements. We realize the statutes may be somewhat ambiguous and that the construction placed on such statutes by the State Board of Public School Education would be of significance in their construction. However, if the State Board of Public School Education has had previous occasion to consider whether the approval and recommendation of the county superintendent of schools is necessary in these matters, we have not been informed of such decision. It is our understanding that this question may not have previously arisen and therefore it may be doubtful whether there is, in fact, any clear interpretation of this matter by the State Board of Public School Education. Lacking any such administrative interpretation, we believe the language used in section 15-53-21, requiring approval of an annexation proposal by the county superintendent of schools, and section 15-53-23, requiring the recommendation of the county superintendent of schools before the boundaries of a reorganized district may be altered, cannot, although ambiguous, be ignored. It is our opinion that approval and recommendation by the county superintendent of schools is a necessary part of the annexation procedure in this instance.

HELGI JOHANNESON

Attorney General