

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 88-25

Date issued: October 28, 1988

Requested by: David M. Crane  
Hettinger County State's Attorney

- QUESTION PRESENTED -

Whether a petitioner may appeal to the State Board of Public School Education from the decisions of two county committees which have considered and rejected an annexation petition.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a petitioner may not appeal to the State Board of Public School Education from the decisions of two county committees which have considered and rejected an annexation petition.

- ANALYSIS -

The Mott School District recently attempted to annex land in Hettinger and Adams Counties. The Hettinger and Adams County reorganization committees held a hearing on the annexation, and both committees failed to approve the petition for annexation. The Mott School District wishes to appeal the determinations made by the two committees but the Department of Public Instruction expressed the opinion that no appeal is possible in this situation. The issue, therefore, is whether the petitioner may appeal to the State Board of Public School Education ["State Board"] from the decisions of the county committees when two counties committees have considered an annexation petition and both have rejected the petition.

N. D. C. C. §15-27.2-04 sets forth the provisions governing school annexation petitions and appeals from the county committees to the State Board. Subsection 7 provides as follows:

7. If the school districts involved in the proposed annexation are situated in more than one county, the county committee of the county encompassing the major portion of each school district shall consider and jointly effect the annexation if a majority of the members of each of such county committees approves the annexation. If the annexation is approved by a majority of the members of one of the two county committees, the county

superintendent of the county in which the annexing district is located shall submit the annexation to the state board for approval or disapproval, and in such instance approval of the annexation shall have the same effect as approval by all county committees.

N. D. C. C. § 15-27.2-04(7). Subsection 11 provides that "[a]ny determination made by a single county committee with respect to an annexation proposed under this section may be appealed to the state board." N. D. C. C. § 15-27.2-04(11).

A statute must be considered as a whole to determine the intent of the Legislature, and the Legislature's intent must be sought initially from the statutory language. County of Stutsman v. State Historical Society, 371 N. W.2d 321, 325 (N. D. 1985).

Subsection 7 of N. D. C. C. § 15-27.2-04 specifically addresses the situation in which more than one county committee considers an annexation petition. Subsection 7 provides that in an multi-county situation, if the annexation is approved by a majority of one of the county committees, it is then submitted to the State Board for approval or disapproval. Subsection 11, on the other hand, provides a right to appeal to the State Board from any determination made by a "single county committee." Construing N. D. C. C. § 15-27.2-04 as a whole indicates that subsection 7 applies to multi-county annexation decisions and that subsection 11 applies to single county annexation decisions. Therefore, the statute as a whole indicates that the use of the phrase "a single county committee" in subsection 11 refers to a single county committee as opposed to a county committee acting in a multi-county situation.

Furthermore, every word used in a statute is to be given its plain, ordinary, and commonly understood meaning within the context in which it is used. Rheaume v. State, 339 N. W.2d 90, 92 (N. D. 1983).

The American Heritage Dictionary (2d college ed. 1982) defines "single" in relevant part as "not accompanied by another or others; sole" and "consisting of one alone." Id. at 1143. The use of the word "single", therefore, within the phrase "a single county committee" indicates that the Legislature intended that subsection 11 apply only in those instances in which a single county committee is acting alone, not in combination with any other county committees.

Considering the plain, ordinary, and commonly understood meaning of the word "single" and the language of N. D. C. C. § 15-27.2-04 as a whole, therefore, it is my opinion that when two county committees have considered an annexation petition and both have denied the annexation, the petitioner does not have the right to appeal to the State Board of Public School Education.

I believe that the statutory language of N. D. C. C. § 15-27.2-04 is clear and unambiguous as to the Legislature's intent with respect to appeals in multi-county situations. However, if the statutory language could be construed to be ambiguous, making resort to the legislative history appropriate in order to determine the legislative intent, see County of Stutsman, 371 N. W.2d at 325, the legislative history of N. D. C. C. § 15-27.2-04

indicates that the Legislature did not intend to permit appeals to the State Board from the decisions of county committees when all of the committees involved had denied the annexation petition.

Prior to 1983, the statute respecting annexation provided in relevant part as follows:

If the school districts involved in the proposed annexation are situated in more than one county, the county committee of the county encompassing the major portion of each school district shall consider and jointly effect the annexation if a majority of the members of each of such county committees approves the annexation. In the event that the annexation is approved by a majority of the members of one of the two county committees, the county superintendent of the county in which the annexing district is located shall submit the annexation to the state committee for approval or disapproval, and in such instance approval of the annexation shall have the same effect as approval by all county committees. If the annexation does not receive the approval of any county committee, it shall not be presented to the state committee.

N. D. C. C. § 15-53.1-06 (1981) (current section at N. D. C. C. § 15-27.2-04 (Supp. 1987)) (emphasis supplied). Prior to 1983, then, the statutory annexation provisions did not permit an appeal to the State Board from decisions of county committees where none of the committees had approved the annexation petition.

In 1983, Legislature rewrote the annexation, reorganization, and dissolution statutes. Among the changes to the annexation statutes were amendments to the provisions concerning the right to appeal from the decision of a county committee to the State Board. With respect to appeals to the State Board, the 1983 legislation provided, in part, as follows:

7. If the school districts involved in the proposed annexation are situated in more than one county, the county committee of the county encompassing the major portion of each school district shall consider and jointly effect the annexation if a majority of the members of each of such county committees approves the annexation. In the event that the annexation is approved by a majority of the members of one of the two county committees, the county superintendent of the county in which the annexing district is located shall submit the annexation to the state board for approval or disapproval, and in such instance approval of the annexation shall have the same effect as approval by all county committees.

. . . .

11. Any determination made by a county committee or committees with respect to an annexation proposed under this section

may be appealed to the state board.

1983 N. D. Sess. Laws ch. 235, § 4.

The 1983 legislative history indicates that subsection 11 of N. D. C. C. §15-53.1-06 was intended to give the right to appeal to petitioners whose annexation petition had been denied by a county committee in a single county situation. During the House Education Committee hearings on House Bill 1458, the following discussion occurred between Representative Swiontek, Dave Thompson of the Legislative Council, and Al Koppang of the Department of Public Instruction:

Representative Swiontek: Mr. Chairman, Dave, what happens in the case of an annexation where two counties are involved?

Dave Thompson: Ok. There is a provision there in 06. . .

Representative Swiontek: I guessed I missed that.

Dave Thompson: We don't change that, there is no change here. These are multi-district, actually . . . Al, you can explain that probably better than I can, right. Al works with it, he sees the reality of it.

Al Koppang: There is no change, to answer your question Representative Swiontek, from the current process. Where there are two or more counties involved, and the major portion, unless there is a major portion of both districts in one county, both counties consider and hear the annexation and make a decision.

Representative Swiontek: They have the same appeal process and everything?

Al Koppang: Well, there is a little difference because in the multi-county, if one of two counties approves it, in current law, it comes before the state committee and is heard by the state committee, who makes a decision either to approval or disapprove and that decision, of course, is appealable. So in reality, we didn't change, this bill as proposed does not change the present system in multi-county [inaudible]

. . .

It's the single county one that we're addressing.

Dave Thompson: We provided the right of appeal from the single county annexation situation where the county committee would make a negative determination. There is already a right of appeal to a positive determination on the part of a single county committee, a single county annexation. It was felt by the subcommittee that this would just provide a right of appeal for everybody, to the

state board.

Hearings on H. 1458 before the N.D. House Comm. on Education, 48th Leg. (1983), House Educ. Comm. Tapes, Tape 29, Side 2, Historical Society Archives.

In 1985, the Legislature once again amended the provisions governing the right to appeal from the determinations of county committees to the State Board. Subsection 11 of the former section 15-53.1-06 was amended to read: "[a]ny determination made by a single county committee with respect to an annexation proposed under this section may be appealed to the state board." 1985 N.D. Sess. Laws ch. 209, § 2 (codified at N.D.C.C. § 15-27.2-04(11) (Supp. 1987)) (emphasis supplied).

The 1985 legislative history indicates that subsection 11 was amended in 1985 to clarify when appeals could be taken to the State Board in multi-county annexation situations. Merle Pederson of the Legislative Council testified before the Senate Education Committee as follows:

"And again, there is no substantive change, except in subsection 11 on page 12. Subsection 11 on page 12 deals with the appeals from annexation hearings and here is a change in that section.

As I mentioned before, the 1983 Legislature provided that an appeal could be taken from any county committee making a decision on school district, on a school district annexation proposal. This section we are saying 'any determination by a single county committee with respect to an annexation proposed under this section may be appealed.' So, we are restricting in this section, appeals from single county committee decisions.

And again, the reason for that is, is you have two or three or four or more committees involved in an annexation, it only takes one of them to approve the annexation to go on to the state board.

And, if none of them approve it, the feeling is that the proposal probably is without merit and should not be subject to the appeals process. "

Hearings on S. 2065 Before the N.D. Senate Comm. on Education, 49th Leg. (1985), Senate Educ. Comm. Tapes, Tape 3, Side 2, Historical Society Archives (emphasis by speaker).

The following discussion also took place during the House Education Committee Hearings on Senate Bill 2065:

Al Koppang: No, there was something in here, that there's a change of word because every one was appealable. Merle, I'm stuck. On this reorganization bill here, this single county thing, did you change the wording at all here during the interim or is that in law now?

Merle Pederson: Yeah. No. We added that.

Al Koppang: Ok.

Merle Pederson: That's what restricts the appeals.

Al Koppang: Ok. That's right. So, we added that. Before, the appeals, everything could be up before the board's appeal. . .

Merle Pederson: Used to say 'any determination made by a . . . .'

Al Koppang: 'Any determination. . .' Yeah. I knew there was slight change. So in that 11, there is a change.

Unidentified Representative: There is a change.

Al Koppang: It says "any determine [sic] made, made by any county committee" before; now it says "made by a single county committee." And the thought from the interim committee was that if there are two or three county committees, and all three say no, there really isn't much reason for a state board to overturn them. Because they have three separate county committees looking at it, and if they all say no, there's not much appeal.

Unidentified Representative: That was never the intent anyway.

Al Koppang: The intent was where there was a single county committee who made up their mind that they were not going to let anybody go, could sit on them forever and you could never get out, never had any recourse. And that was the reason. So now we got in there what we originally intended to get in it last time and we cleaned it up a little bit in the interim, I think.

Hearings on S. 2065 Before the N.D. House Comm. on Education, 49th Leg. (1985), House Educ. Comm. Tapes, Tape 38, Side 2, Historical Society Archives.

Therefore, legislative history reveals that the Legislature intended the language in subsection 11 of N.D.C.C. §15-27.2-04 to apply only to a single county committee and not to county committees acting jointly in a multi-county annexation situation. Moreover, the legislative history clearly indicates that the Legislature did not intend to provide a right to appeal to the State Board in a multi-county situation in which no county committee had approved the annexation petition.

Based upon the foregoing discussion, it is my opinion that the petitioner has no right to appeal to the State Board when two county committees have considered an annexation petition and both have rejected the petition.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the

actions of public officials until such time as the question presented is decided by the courts.

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