

Opinion No. 65-121

July 7, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Leonard J. Delayo, Superintendent of Public Instruction, Department of Education, Santa Fe, New Mexico

QUESTION

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Does Section 73-20-1.3, N.M.S.A., 1953 Compilation, as amended, require continuing state school reorganization surveys be made by the State board of Education and submitted to the Legislature at each regular session where the State Board has not received the resolutions called for by Section 73-20-3, N.M.S.A., 1953 Compilation, as amended?

CONCLUSION

Committees for the study and survey of possible school districts reorganization provided for under Sections 73-20-1.1, 73-20-1.2, 73-20-1.3 and 73-20-3, N.M.S.A., 1953 Compilation, are to be organized whenever, in the sound discretion of the State Board of Education and the State Superintendent of Public Instruction, such reorganizations are deemed necessary or whenever the governing boards of two or more school districts by resolution request the State Board of Education to order consolidation of school districts. Under Chapter 30, Laws of 1965, First Session, county school district reorganization is mandatory and such reorganization must be approved by the State Board of Education. Reports of all such school district reorganization studies should be submitted annually to the State Legislature.

OPINION

{*206} ANALYSIS

Consideration of your question necessarily entails some preliminary background examination of each of six statutory provisions. (Sections 73-20-1, 73-20-1.1, 73-20-1.2, 73-20-1.3 and 73-20-3, N.M.S.A., 1953 Compilation and Chapter 30, Laws 1965, First Session) relating to school district reorganization survey studies.

Section 73-20-1, N.M.S.A., 1953 Compilation, specifies that whenever deemed necessary, the State Board of Education shall cause to be made a survey in the several counties of the state in cooperation with the State Transportation Director for the purpose of "determining the feasibility of making consolidations to effect the greatest

possible economics and so that proper educational facilities may be furnished to all school children of the state." Each survey must be acted upon within one year from the date of completion of the survey.

Section 73-20-1.1, N.M.S.A., 1953 Compilation, provides for the creation of a state school reorganization survey committee to study "each possible school district reorganization" and comprised of the state school transportation director acting as permanent chairman for each such committee, two members of **each proposed survey** committee selected by the State Superintendent of Public Instruction from the state at large and who reside outside the county concerned in the reorganization, and two members appointed by each board of education involved in the proposed reorganization survey, to be selected on the basis of knowledge of school consolidation problems.

Section 73-20-1.2, N.M.S.A., 1953 Compilation, spells out the power and duties of such committees and authorizes them, among other things, "to conduct necessary {207} studies and surveys of school conditions within one or more administrative school units or districts, to determine recommendations for the reorganization of administrative school units or districts and make report of them to the state board of education."

Section 73-20-1.3, N.M.S.A., 1953 Compilation, declares that "after conducting a study of any proposed school district reorganization, the committee may conduct public hearings on the district, county or state level to consider information pertinent to determination of the Committee's final reorganizations." This section further provides that:

"A report of the status of school district reorganization, based on the survey reports from the various counties, shall be made by the state board of education and submitted to each regular session of the New Mexico legislature hereafter."
(Emphasis supplied)

Section 73-20-3, N.M.S.A., Compilation states that whenever by resolution of each of the governing boards affected by a proposed school consolidation, the State Board of Education is asked to conduct a school reorganization and consolidation survey, then the State Board of Education "may order the consolidation of all classes of school districts pursuant to this act, including rural, rural independent, municipal, union high school, and prior consolidated districts, or any combination thereof upon the resolution of each of the governing boards, affected by such consolidation."

Significantly, the State Legislature passed, and the Governor signed into law, Chapter 30, Laws 1965, Twenty-Seventh Legislature, First Session (House Bill No. 106) carrying an emergency clause and which directs that "each county board of education shall prepare a plan for its administrative reorganization to combine it with an existing adjacent municipal or independent administrative unit or units, or to create new, independent, administrative units composed of all or some of the existing rural school districts under its jurisdiction." Under such law it is stated that the proposed administrative reorganization plan must be presented to the State Board of Education

on or before June 30, 1965, for approval, and if approved the plan becomes effective on a "date set by the State Board of Education, but not later than September 1, 1965."

We believe that whether or not state school district reorganization surveys are to be conducted on a continued basis, or upon specific occasions when deemed necessary, is a matter for determination by the State Board of Education and the State Superintendent of Public Instruction. However, statutory school reorganization surveys and consolidations of those types of school districts ordered by the Legislature pursuant to Chapter 30, Laws 1965, First Session, are of a mandatory nature and must be carried out in accordance with the time tables established in such statute. See also Attorney General Opinion No. 64-149, dated December 16, 1964.

By Law, Sections 73-20-1.1, 73-20-1.2 and 73-20-1.3, supra, contemplate individual surveys on a county-by-county basis to determine whether school reorganizations are desirable within such counties.

Section 73-20-3, N.M.S.A., 1953 Compilation, necessarily requires, under the wording of the statute, that whenever any board of education shall determine by resolution that two or more rural school districts within the county should be consolidated, then the State Board of Education may order consolidation of such districts after a survey and determination that substantial economics can be effected and the educational standards raised by such consolidation. This section also provides:

"The state board of education {²⁰⁸} may order the consolidation of all classes of school districts pursuant to this act, including rural, rural independent, municipal, union high school, and prior consolidated districts, or any combination thereof **upon the resolution of each of the governing boards, affected by such consolidation.**" (Emphasis supplied)

The above quoted section states as a legal prerequisite that **each** of the school boards concerned must concur in the proposed consolidation before the State Board of Education may order such school consolidation.

Additionally, under Chapter 30, Laws 1965, First Session, mandatory reorganization is necessary for all county school districts and such reorganizations are subject to final approval by the State Board of Education.

We conclude, after careful consideration of the provisions of the above statutory sections, that committees for the study and survey of possible school district reorganizations provided for under Sections 73-20-1.1, 73-20-1.2, 73-20-1.3 and 73-20-3, are to be organized whenever in the sound discretion of the State Board of Education and the State Superintendent of Public Instruction such reorganizations are deemed necessary or whenever the governing boards of two or more local schools districts by resolutions request the State Board of Education to order consolidation of such school districts. Further, it is our opinion that reports on the status of **all** school district reorganizations should be submitted to the State Legislature each year at the regular

session of the State Legislature in accordance with Section 73-20-1.3, N.M.S.A., 1953
Compilation.