

Opinion No. 47-4988

February 24, 1947

BY: C. C. McCULLOH, Attorney General

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

{*14} In your letter dated February 20, 1947 you refer to Section 55-1902 of the 1941 Compilation, and inquire whether a school district, in which no school has been conducted for the last two years and the children have been transported to an adjoining district, is to be considered as consolidated; or whether the State Board of Education must declare such a consolidation, in which case the same would not become effective for tax purposes until January 1st of the following year.

Section 55-1902 of the 1941 Compilation provides as follows:

"In all school districts where no schools were conducted for the fiscal year 1940-41, and in all school districts where no schools will be conducted for any subsequent year on account of the transportation of such pupils to other schools as provided in the preceding section, such districts are hereby consolidated with contiguous districts."

Section 55-1904 of the 1941 Compilation provides, in part, as follows:

{*15} "Where school districts are consolidated by virtue of the provisions in Section 55-1902 hereof, the county board of education shall determine by resolution the district or districts to which such consolidated areas are to be annexed and the boundaries of the consolidated districts and shall furnish the state board of education with a certified copy of such consolidation for its approval. * * *"

It is apparent that the consolidation is not complete until the county board by resolution has determined in which district the consolidated area applied, and the boundaries of the consolidated district, and until such consolidation is approved by the State Board of Education.

Section 55-1904 also provides that all consolidations made hereunder shall be for taxation purposes as of January 1st following such consolidations.

In view of this provision, although bonds might be voted prior to January 1st, they could not be issued and sold until after the district is in a position to levy taxes for the payment thereof.