

## Opinion No. 54-5891

January 20, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Tom Wiley Superintendent of Public Instruction State Department of Education  
Santa Fe, New Mexico

{\*327} You have requested our opinion as to whether the extension of a municipal boundary automatically extends the boundaries of the municipal school district, as well.

The pertinent section is, we believe, Section 55-912 of the 1941 Compilation, which provides:

"Whenever a city, town or village has been or shall hereinafter be incorporated, the board of education of said city, town or village may, in its discretion annex thereto, for school purposes only, the remainder or any part of the remainder of the district or districts from which such city, town or village was organized, whenever a majority of the qualified electors residing within the territory to be annexed shall sign and file a written petition with said board of education for such purpose. When said remainder or part thereof of said additional outside territory has been, by resolution of said board, annexed to said city, town or village it shall be deemed to be a part of said city, town or village for all school purposes."

This matter involves a reconsideration of Attorney General's Opinion Nos. 3423 (February 12, 1940) and 3738 (March 12, 1941), holding that upon incorporation of a municipality, the area therein automatically becomes a school district, and that upon extension of the boundaries of the municipality, the boundaries of the municipal school district automatically extend to be coextensive with the municipality. Since the second opinion above mentioned is based upon the earlier, it will be necessary to consider the validity of the prior opinion. It was there held that the creation of a municipality automatically created a municipal school district without any further action on the part of the voters. This ruling, we feel, is in clear contradiction to the express wording of Section 55-909, 1941 Compilation, which provides specifically for a petition and {\*328} an affirmative vote of the qualified electors of the municipality and the territory annexed thereto for school purposes. If the creation of the school district were accomplished by the creation of the municipality, then the vote of the electors would be unnecessary and unsequential.

Opinion No. 3728 reasons that the creation of the district being automatic, then the extension of the municipality for all purposes a fortiori extends the boundaries of the municipal school district. This conclusion, aside from being based on a false premise (Opinion 3423), likewise fails to distinguish that a municipality and a municipal school district are two separate and distinct political subdivisions of the State. In fact, by specific statutory provision, there may exist a municipality without a municipal school

district. (Section 55-910, 1941 Compilation providing for dissolution of municipal school districts without disincorporating the municipality).

Feeling, as we do, that Opinions 3423 and 3738 are incorrect, the same are hereby overruled, and we proceed to an independent construction of Section 55-912, 1941 Compilation, above quoted. This section must be controlling, for absent it, there is no authority whatsoever for the extension of the boundaries of a municipal school district beyond its original limits.

It is our opinion that the authority to annex for school purposes the remainder of the "district or districts from which such city, town or village was **organized**", does not of necessity refer only to the original organization of the municipality, but includes also portions of school districts included within municipal boundaries by virtue of annexation, which in effect amounts to a reorganization of the municipality. Such annexation is not automatic, but is permissive on the part of the municipal school board and only upon petition of the majority of the qualified electors, residing in the area to be annexed, pursuant to § 55-912, supra.

Several additional questions are raised by your inquiry. First, does the land upon which the school buildings of the partially annexed territory are located, become the property of the municipal school district? Second, does the debt or obligation created by the construction of these buildings remain the debt and obligation of the county school district or does the municipal school district assume the debt? Third, do the children who are residents of the portion of the district not annexed have the right to attend school in the annexed district in buildings formerly belonging to the rural district?

A dogmatic answer to these inquiries is not possible inasmuch as there is no specific statutory procedure set forth. In **2 McQuillin Municipal Corporations, Third Edition, Section 7.47**, it is stated:

"In the absence of statute, it is the rule that the part of a school district or municipal corporation which remains after parts have been detached retains all its property, powers, rights and privileges, and remains subject to all its obligations and duties."

The above quoted section also states that the Legislature has unquestioned power to provide for an equitable disposition or division of the property of an annexed school district, and for the adjustment of its rights and obligations. This, the Legislature has not done and therefore it is probable that the above {\*329} quoted rule would be applicable to the situation presented in your inquiry. The annexed school district would retain the title to its school property and would be solely obligated for the payment of its indebtedness. The residents of the remaining portion of the school district would be entitled to the use and perhaps the exclusive use, of the facilities even though located within the exterior boundaries of another district.

As to whether or not the territory annexed would be obligated to pay existing debts of the territory annexed, it is not clear although insofar as bonded indebtedness is

concerned, we believe that the constitutional limitation of 6% on bonded indebtedness would apply and that in no event could the annexed territory be required to pay taxes on any obligation of the combined districts in excess of that percentage.

We would recommend that the State Board of Education consolidate with the municipality the rural school district involved in the proposed annexation. In such case the provision of Section 55-1904 of the 1941 Compilation would clearly settle the questions raised in your inquiry.

By: Walter R. Kegel

Assist. Attorney General