

Opinion No. 55-6071

January 6, 1955

BY: RICHARD H. ROBINSON Attorney General,

TO: Mr. Floyd Santistevan Assistant Superintendent of Public Instruction Department of Education, Santa Fe, New Mexico

In your letter dated January 4, 1955 you inquire whether the area comprising a newly incorporated municipality and the territory annexed thereto for school purposes, may be declared a municipal school district pursuant to Section 73-10-1, N.M.S.A., 1953 Compilation, instead of in the manner prescribed in § 73-10-7, N.M.S.A., 1953 Compilation.

§ 73-10-1 was enacted in 1923 and provides as follows:

"Except as otherwise provided in Section 73-9-13 hereof, cities, towns and villages, including territory annexed thereto for school purposes, shall be known as municipal schools and districts."

Under this provision by operation of law, the area within a municipality and annexed thereto for school purposes in 1923, automatically became a municipal school district.

§ 73-10-7, N.M.S.A., 1953, which was enacted in 1937, provides in part as follows:

"Hereafter, upon incorporation of any city, town, or village, a petition bearing the signatures of not less than 10% of the qualified electors of the municipality and the territory annexed thereto for school purposes may, at any time after such incorporation, be presented to the county board of education asking that an election be held to permit the qualified electors of the municipality and the territory annexed thereto for school purposes to vote upon the question as to whether the school or schools of such district shall become a municipal school, schools, or school district. The county board of education shall, within ten (10) days from the filing of such petition, meet and determine the sufficiency of the petition and the genuineness of the signatures and upon approval of such petition shall order an election to be held for such purpose. Such election shall be ordered, called, held, conducted and canvassed in substantially the same manner as is provided for school bond elections."

Section 73-10-11 of the 1953 Compilation, provides that all municipal schools or school districts in existence prior to the first day of January, 1937, are hereby validated. It is thus apparent that up until 1937 Section 73-10-1 could be used as the basis for declaring the area in municipalities and annexed thereto, to be municipal school districts. However, since the Legislature specifically provided a procedure for creating municipal school districts in newly incorporated municipalities pursuant to § 73-10-7, it is apparent that this procedure only must be followed to accomplish such purpose.

The Supreme Court recognized the necessity for calling and holding an election in order to create a municipal school district in a newly organized municipality, in the case entitled, **Green vs. Curry County Board of Education**, 44 N.M. 116.

It is therefore our opinion that § 73-10-7 of the 1953 Compilation, should be followed in connection with this matter, and that § 73-10-1 has been superseded to that extent.

By:

C. C. McCulloh

Assistant Attorney General