

Opinion No. 57-112

May 27, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Hon. Georgia L. Lusk, Superintendent of Public Instruction, Department of Education, State of New Mexico, Santa Fe, New Mexico

QUESTIONS

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1. What is the statutory authority and outline of procedure to be followed in selecting the interim board members of a newly formed consolidated school district?
2. Is it appropriate or necessary that a majority of the five member consolidated board be selected from either the predecessor county board of education or the predecessor municipal board of education?
3. Who selects the interim board?

CONCLUSIONS

1. See opinion.
2. It is not necessary that a majority of the new board be selected from either of the old boards. As to the appropriateness of selections, such is a matter of public policy to be determined by the State Board of Education.
3. The State Board of Education.

OPINION

ANALYSIS

Governing boards of consolidated school districts have the same powers as do the governing boards of municipal school districts. Section 73-20-6, N.M.S.A., 1953 Comp., 1955 Supplement. The outline of procedure to be followed in selecting a newly consolidated board is found in § 73-20-4, N.M.S.A., 1953 Compilation, 1955 Supplement. The fourth paragraph of this section reads as follows:

"When a municipal school district or a rural independent district is consolidated with one or more rural districts, the municipal school board or the rural independent board shall be the governing board for the consolidated district until the next regular school election,

at which time successors to board members whose terms shall have expired shall be elected by the electors of the consolidated district in the same manner as members of boards of education in municipal school districts are elected."

We do not believe that this particular paragraph governs the proposed consolidation which prompted your inquiries. In the instance at hand the proposed consolidation will be between the McKinley County School District No. 2, which is the one district over which the McKinley County Board of Education has jurisdiction, with School Districts Nos. 3 and 4 of Gallup, New Mexico, over which the Gallup Municipal School Board has jurisdiction. It is our opinion that the above quoted paragraph is only applicable to the situation where a district having a governing board is consolidated with a district which does not have its own governing board.

On the other hand, we believe that the following paragraph of Section 73-20-4, supra, governs this matter:

"When a municipal school district is consolidated with one or more rural districts and one or more municipal, rural independent, union high school district, or any combination thereof, or when a rural district is not involved and the consolidation is composed of school districts each of which has an independent governing board, the state board shall appoint a school board for such consolidated district, consisting of five members to serve until the next regular school election, at which time all board members shall be elected by the electors of the consolidated district in the same manner as municipal school board members are elected. In the first election one member shall be elected for a term of two years, two members for four years, and two for six years. Subsequent elections shall be for a term of six years or for the unexpired term in case of vacancies."

You will notice that the paragraph quoted immediately above is concerned, among other things, with proposed consolidations between two or more districts, each of which has its own governing board. In our opinion this would include the situation of the proposed consolidation of the areas now under the jurisdiction of the McKinley County Board of Education and the Gallup Municipal Board of Education, respectively.

As you will observe from the statutory paragraph quoted immediately above, the interim board is to be appointed by the State Board of Education, and shall consist of five members to serve until the next regular school election. There is no statutory requirement that the new consolidated board, which serves until the next regular school election, is to be selected from either of the previous boards or from both the previous boards. If the consolidation in question is approved by the State Board of Education, it could select the five members from the former county and municipal boards, or the State Board of Education could choose the consolidated board without appointing any member of the two former boards. In short, this is a matter of public policy, to be determined by the State Board of Education, and on which this office has no right to express itself.