

Opinion No. 57-59

March 22, 1957

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

TO: Mr. Homer W. Heathman, Jr., Educational Budget Auditor, P. O. Box 668, Santa Fe, New Mexico

QUESTIONS

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A county board of education had certain real estate used for school purposes. The real estate was in a rural school district under the jurisdiction of the county board of education, Subsequently the rural school district was consolidated with a municipal school district. At present, a consolidated school district board has taken charge of the new consolidated district. The county board of education did not deed the property either to the municipal board or to the new consolidated board. The specific questions under these facts are two:

1. Does the municipal school district board of education have the right to dispose of the real estate?
2. Does consolidation of districts automatically change ownership of real estate within the consolidated district to the governing board?

CONCLUSIONS

1. No.
2. No.

OPINION

ANALYSIS

Our statutes on consolidation of school districts, § 73-20-1 et seq., N.M.S.A., 1953 Compilation and 1955 Supplement, make no mention of the means of transferring title from an old district to the new consolidated district. Or in other words, there is nothing in the statutory language to indicate that the consolidation ipso facto works a conveyance from the old to the new district. It is to be borne in mind that there is a distinction between general ownership of public school property and legal title thereto. While legal title is in the school district boards, the general or beneficial ownership of the school property remains in the state or public, and transfers

between districts have no effect upon the general or beneficial ownership which remains constant absent a conveyance to private parties. See 78 C.J.S., Schools and School Districts, page 1199.

Our review of the authorities discloses that they are hopelessly in conflict on the questions presented. In many states, statutes govern the situation. Unfortunately, this is not true in New Mexico. In **Lovejoy v. School District No. 46**, 289 P. 2d. 1067 (Colo.), School District No. 68, by consolidation, became a part of School District No. 46. There was no conveyance of school lands from No. 68 to No. 46. The Supreme Court of Colorado, perhaps by way of dicta, stated that it did not follow that title vested in District No. 46 by consolidation without a conveyance for the reason that the Colorado statutes on school district consolidation contained no provision for the acquiring of lands by one district from another in instances of this nature. To the same effect as the **Lovejoy case**, supra, is **School Board etc. v. Edwards**, 87 P. 2d 962 (Okla.). On the other hand, **School District etc. v. School District etc.**, 102 S.W. 2d 909 (Mo.), reached a different conclusion, the statute providing that title to school sites shall be vested in the district in which the property was located. Our research has disclosed no case by the Supreme Court of New Mexico which rules one way or another on these questions. It is impossible to predict with certainty what such holding or holdings would be, and consequently, we can give no conclusive answers to either of your two questions. However, keeping in mind the decision of the **Love-Joy case**, supra, rendered by the Supreme Court of a sister state, and under a similar statutory situation, to-wit, absence of governing statutes on the subject, and also bearing in mind that we are dealing with title to real estate, we are constrained to advise that in school district consolidation, it is necessary that a chain of title be established by proper deeds.

Section 73-8-14, N.M.S.A., 1953 Compilation, recognizes that the title to school property is vested in boards of education of the various districts. It requires that disposition be made for cash or its equivalent. We feel that the phrase ". . . its equivalent . . .", for the present purposes, means consideration. In this case, a sufficient consideration would be the education of the children by the new consolidated board, and the giving up of that right by the county board. Your attention is also directed to the fact that disposition of school property must be upon the written consent of the superintendent of public instruction. Section 73-8-14, supra.

County boards of education are given power to dispose of school property. Section 73-9-1, N.M.S.A., 1953 Compilation. In accordance with our foregoing reasoning, the deed to the real estate in question should be executed and delivered by the county board of education. Inasmuch as there now is a new consolidated board having jurisdiction over the real estate in question, the grantee should be the consolidated school board, and not the municipal school board. By the same token, the municipal board would have no authority to dispose of the property, but instead the subsequent disposition, if any, should be made by the consolidated board after it has acquired record legal title from the county board. Boards of consolidated school districts have power to dispose of school real estate. See § 73-20-6, N.M.S.A., 1953 Compilation, 1955 Supplement, which gives boards of consolidated school districts the same powers as municipal

school boards, and § 73-10-2, giving municipal school boards the same powers as county boards of education.