

## **Opinion No. 60-22**

February 10, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Victor C. Breen District Attorney Tenth Judicial District Tucumcari, New Mexico

### **QUESTION**

#### QUESTIONS

1. Can School District No. 33, Nara Visa, be consolidated with San Jon?
2. Can School District No. 33, Nara Visa, be affiliated with another school district without consolidation?
3. Can School District No. 33, Nara Visa, be annexed to Union County as a school district?
4. Can School District No. 33, Nara Visa, be consolidated with Tucumcari School District No. 1?

#### CONCLUSIONS

1. Yes.
2. No.
3. No. (Consolidation may effect this result however.)
4. Yes.

### **OPINION**

#### **{\*367} ANALYSIS**

The statute which controls the answers to your questions is Sec. 73-20-3, N.M.S.A., 1953 Comp. (P.S.), which gives the State Board of Education the power to consolidate any combination or class of school districts upon recommendation from the County Board of Education.

1. The answer to your first question is clear. The Nara Visa and San Jon districts are contiguous and in the same county. These two districts may be consolidated under Sec. 73-20-3, supra, notwithstanding the fact that to reach San Jon from Nara Visa one

must pass through Logan. Such conditions exist in at least one presently consolidated district.

2. There is no provision in the law which permits two school districts to affiliate without consolidation. Since school districts are purely creatures of statute and no authority to affiliate is contained in the statutes it is our view that such procedure is not permissible.

3. The answer to your third question is based upon the same reasoning. There is no provision made in the statutes for annexing a school district in one county to another county. Since the statutes do not give this right, such action would be invalid. It should be noted, however, that school districts in different counties may be consolidated pursuant to Sec. 73-20-5, N.M.S.A., 1953 Comp.

4. Your fourth question asks in substance whether one district can be consolidated with another which is not contiguous to it. Sec. 73-20-3, supra, reads in relevant part as follows:

". . . The State Board of Education may order the consolidation of all classes of school districts pursuant to this act including rural, rural independent, municipal, union high school and prior consolidated districts or any combination thereof upon the resolution of each of the governing boards affected by such consolidation."

It should be noted that this statute does not require that districts be contiguous to be eligible for consolidation as does Sec. 73-20-2, N.M.S.A., Comp., dealing with mandatory consolidation. It is, therefore, our opinion that two districts which do not border each other can be consolidated. The propriety of such action is, however, not for determination by this office.

By: Boston E. Witt

Assistant Attorney General