

## **Opinion No. 60-83**

May 5, 1960

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

**TO:** Walter R. Kegel District Attorney First Judicial District County Court House Santa Fe, New Mexico

### **QUESTION**

#### **FACTS**

Prior to February 26 of this year the Santa Fe Municipal Board of Education and the Santa Fe County Board of Education adopted resolutions requesting that rural school districts Nos. 2, 5, 6, 7, 10, 12, 23 and 26 of the County of Santa Fe be consolidated with the City Schools. On February 26, the State Board of Education took the action reflected in the following excerpt from its meeting:

"Mr. Henry made the following motion:

I move that the State Board of Education, with the concurrence of the Boards of Education of the City of Santa Fe and the County of Santa Fe, consolidate rural school districts Nos. 2, 5, 6, 7, 10, 12, 23 and 26 of the County of Santa Fe with the Santa Fe Municipal School District No. C-CA to take effect for school purposes July 1, 1960. The motion was seconded by Mr. Langley and unanimously carried."

The Santa Fe Municipal Board of Education now proposes to submit the question of the issuance of school bonds at an election to be held on May 26. It is necessary that the Board of Education know whether the valuation of these outlying districts may be considered in determining the bonding capacity of the district, and whether the people of these outlying districts are entitled to vote on the question of the issuance of bonds.

#### **QUESTION**

In view of Sec. 73-20-6, N.M.S.A., 1953 Comp. (P.S.), is the consolidation of the Santa Fe Municipal School District No. C-CA with rural school districts Nos. 2, 5, 6, 7, 10, 12, 23 and 26, Santa Fe County, now complete for bonding purposes?

#### **CONCLUSION**

Yes.

### **OPINION**

{\*445} **ANALYSIS**

Section 73-20-6, N.M.S.A., 1953 Comp. (P.S.), as pertinent to your question reads as follows:

"For the purpose of voting bonds for the purchase of grounds and erection and furnishing of school buildings, such consolidation shall be complete from the time such order is signed by the county board of education as aforesaid, or the state board of education, as the case may be."

In the case of consolidations of municipal school districts with any other school districts, such consolidation may be ordered by the state board of education upon resolution of each of the governing boards affected by such consolidation pursuant to Sec. 73-20-3, N.M.S.A., 1953 Comp. (P.S.). As stated in the statement of facts set forth above, both the Santa Fe Municipal Board of Education and the Santa Fe County Board of Education have adopted resolutions requesting the consolidation of the school districts concerned. The question therefore becomes whether the motion on February 26 of the State Board of Education duly seconded and unanimously carried may be considered an order of the State Board as contemplated by Sec. 73-20-6, making consolidation complete for the purpose of voting bonds.

In our opinion, the action of the State Board of Education on February 26 must be construed as such an order. True, there is not a formal order signed by the State Board. However, a close reading of the motion which was unanimously carried shows that upon the motion being carried, the school districts concerned were consolidated. The concurrence of the Boards of Education of the City of Santa Fe and the County of Santa Fe had already been made by means of the resolutions previously adopted.

The only proviso in the motion was that the consolidation take effect for school purposes July 1, 1960. While this language is admittedly somewhat ambiguous, we construe it to mean that the actual administrative change from separate school districts to a consolidated district will take effect on July 1. We must presume that the State Board of Education was aware of Sec. 73-20-6, cited above, making consolidation for bonding purposes complete upon the approving order of the State Board. Further, it appears from the language of the motion as carried that such motion was intended to be such an order.

We know of no New Mexico case directly in point. However, in the case of **Harriett v. Lusk, et al.**, 63 N.M. 383, 320 P. 2d 738, 1958, the Supreme Court held that a **resolution** of the State Board of Education, on February 5, 1954, was effective for school consolidation and the fact that court action against consolidation required another resolution of the State Board in July of 1955 to make the consolidation complete did not invalidate the 1954 resolution. Although the precise question in the **Harriett** case was different from the one before us (in the **Harriett** case the question became one of whether the school consolidation act prior to 1955 was or was not to be applied), the Supreme Court indicated that a resolution of the Board was an effective board action without the need of a formal order.

{\*446} Since a resolution is merely an indication of desire that certain action be taken, a motion unanimously carried directing certain action would certainly appear to have at least as much effect and be considered as an "order" of the State Board of Education.

By: Philip R. Ashby

Assistant Attorney General