

Opinion No. 46-4912

June 20, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. Raymond Huff, President State Board of Education Santa Fe, New Mexico

{*239} You have asked our opinion on the following question: Has the State Board of Education power to order the consolidation of two school districts when schools have been conducted in each district during the preceding year?

Sec. 55-1903 of the 1941 Compilation is as follows:

"Whenever any county board of education shall determine by resolution that substantial economies can be effected and standards of education improved by the consolidation of any two (2) or more rural school districts within the county and shall furnish a copy of such resolution to the state board of education, the state board of education may order the consolidation of such districts; and likewise, **when the state board of education shall determine and make definite findings at the conclusion of any survey made under the provisions of this act (Secs. 55-1901 to 55-1904) that substantial economies can be effected and the educational standards raised by the consolidation of any two (2) or more school districts, said board may order the consolidation of such districts.**" (Emphasis ours).

Sec. 55-1904 first provides for the consolidation of school districts where no school was conducted during the previous year; and then provides as follows:

"* * * in all other cases where consolidations are ordered by the state board of education, the state board of education {*240} shall determine after such hearing as may be prescribed by the state board, the district or districts to which such consolidated areas are to be annexed and the boundaries of the consolidated districts. * * *"

In view of the foregoing, it is my opinion that the County Board of Education may recommend the consolidation of two school districts.

As an alternative procedure, the State Board of Education is vested with the discretion to order the consolidation of two school districts. However, certain conditions precedent must be made before the State Board of Education can order such consolidation: (1) The State Board of Education must find that substantial economies can be effected and that the educational standards will be raised by the consolidation of the school districts; (2) These findings can be made only after the survey provided for by Sec. 55-1901, as amended by Chap. 38, Laws of 1945, since such findings are required to be made "at the conclusion of any survey, etc."

Having ordered the consolidation of a particular district or districts, the State Board of Education may then determine the district to which such consolidated areas are to be annexed, after conducting such hearing as the State Board may prescribe.

I want to call your attention to the fact that what has been said above applies only in the event schools have been conducted in the district to be consolidated, a different procedure being provided in the event that no school has been conducted in a particular district due to the transportation of pupils.

You also ask our opinion as to whether a consolidation, such as outlined above, would be valid even though the survey provided by Sec. 55-1901, as amended, was not conducted until after April 1st of any year.

While this section provides for a survey to be made each year prior to April 1st, it does not appear to me that this provision is mandatory since it could not have been contemplated by the Legislature that the State Board of Education caused the survey to be made each year in each school district in the state.

Further, under the provision for consolidation, no time is specified for effecting the consolidation, the only requirement being that it be based upon a survey.

Therefore, it is my opinion that if the survey is actually conducted and the consolidation based upon the facts disclosed by such survey, the same would be valid.

I am not, however, at this time deciding when the consolidation would be effective for budgetary tax and other purposes. There is no doubt that because of these factors the Legislature provided for the survey to be held prior to April 1st.

By ROBERT W. WARD,

Asst. Atty. General