

OFFICIAL OPINION NO. 69-51, Schools and School Districts; Reorganization, continuation of school in operation, assignment of students, closing elementary school, and rights of residents of former common school district who are now residents of a different

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

June 13, 1969

Dr. Gordon A. Diedtrich, State Superintendent
Department of Public Instruction
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 69-51

Schools and School Districts; Reorganization, continuation of school in operation, assignment of students, closing elementary school, and rights of residents of former common school district who are now residents of a different independent district which has no jurisdiction over such elementary school.

Dear Dr. Diedtrich:

The situation presented is as follows:

"Assumed situation-Common school district 'A' was reorganized and became a part of independent school districts 'B' and 'C.' The 'A-1' portion of common school district 'A' became a part of independent school district 'B,' and the 'A-2' portion of common school district 'A' became a part of independent school district 'C.' The county board of education authorized the county superintendent of schools to issue the order establishing such reorganization on January 8, 1969, making the effective elate of such reorganization July 1, 1969, and the county superintendent of schools issued such order on January 10, 1969."

ILLUSTRATION

B independent sch. district

A-1

*indicates an elementary school which was in operation on December 5, 1968

Aa common school district

A-2

C independent sch. district

SPECIFIC QUESTIONS-The questions asked will be answered in the order as given.

"1. Must the school board of the 'B' independent school district assign all of the elementary children who reside in the 'A-1' area to attend the '*' elementary school who wish to attend such school district as long as it is operated?"

The answer to this question is YES. Section 15.2005(2), as amended by Chapter 38 of the Session Laws of 1967 (effective December 5, 1968) provides as follows:

"The school board of an independent school district shall continue to operate any elementary school in operation as of the effective date of this Act, until such time as only the resident voters of the area which operated said elementary school shall vote to cease operating said school or schools . . . (emphasis added), Such election shall be called by the school board of the independent school district by resolution or upon a petition by 20% of the electors residing in such area and shall be conducted in accordance with the laws governing elections in independent school districts, provided, however, that the provisions of this subsection shall not apply to any elementary school which by its continued operation would make the district ineligible for state aid under the provisions of SDC 1960 Supp. 15.2246 as amended."

The wishes of the patrons of the school must be respected by the school board under the enactment as quoted in full above. This section is mandatory and in our opinion expresses the clear intention of the Legislature to assure the patrons and the resident electors that the reorganization made mandatory by Chapter 38 of the Session Laws of 1967 did not intend to close any elementary schools, the operation of which was otherwise necessary and so desired by the resident voters of the area which operated said elementary school.

"2. If a child who resides within the 'A-1' area wishes to be assigned to a school operated within the 'B' independent school district which is located outside of the 'A-1' area of such 'B' school district, may the school board of the 'B' school district make such assignment?"

The answer to this question is YES. SDCL 13-28-15 provides as follows:

"Assignment of elementary students within district-Factors considered.-Every school board shall have the power and duty to make assignment and distribution of all elementary students with school residence within the district. The board shall take into consideration in assigning and distributing students its duty to provide equal educational facilities, the wishes of the patrons, and the best interests of the students in the district."

It is our opinion that it was not the intention of the Legislature by that portion of Chapter 38 of Session Laws of 1967 as quoted at length above, to repeal SDCL 13-28-15, or to take any rights away from the board with respect to the assignment to other schools.

The board cannot, on its own initiative and volition, assign such students, but upon application of the parents of the child consideration of such reassignment can be given by the board and the board has authority to make such assignment if the same is deemed advisable.

This immediately gives rise to another question, that is-suppose sufficient parents request the board to assign their children to other schools so that the continued operation of the school would make the district ineligible for state aid under the provisions of SDC 1960 Supp. 15.2246, as amended. In that case the board would be authorized to close the school. In making this statement we are not unmindful of the provisions of SDCL 13-13-15 wherein it is possible that a one teacher rural school with an average daily membership of five or less pupils, not within five miles by publicly traveled road, of any other elementary school in operation during the previous school fiscal year would still be required to be operated by the board.

For other Attorney General opinions covering the question of the authority of a school board to assign students to other schools within or without the district, see the opinion of December 6, 1968 to Mr. John J. Simpson, State's Attorney, Tripp County, Winner, South Dakota, and Attorney General's opinion in 1965-66 AGR, p. 201, 279 and 289.

"3. Must the school board of the 'C' independent school district assign all children who reside within the 'A-2' area of such 'c' independent school district to attend the elementary school located within the 'A-1' area of the 'E' independent school district, or does such school board have the privilege of assigning them to a public school located within or outside of the 'c' independent school district?"

In our opinion, the school board of the "C" independent school district may assign the children who reside within the "A-2" area of such "C" independent school district to such school or schools as they desire within the provisions of SDCL Section 13-28-15, and pay tuition. Therefore, the answer to the first part of this question is NO, and the answer to the latter part of your question is YES.

"4. Can the electors who reside in the 'A' area legally hold an election to close the '*' school prior to July 1, 1969, and conduct such election under the provisions of SDC 1960 Supp. 15.3015 subsequent to January 10, 1969, and prior to July 1, 1969, and would a majority vote in favor of closing the school under such circumstances remove the school board of the 'E' independent school district from its obligation to operate such school subsequent to July 1, 1969?"

In our opinion, when the electors in 'A-2' voted to become a part of 'C' independent school district, they lost their rights with respect to the school located in the "A-1" district. The electors in "A-1" may vote to close such school. This answer applies only to the school term subsequent to the one ending June 30, 1969 and after the effective date of the reorganization.

"5. Must an election to close the '*' school subsequent to January 10, 1969, and prior to July 1, 1969, ' . . . be called by the school board of the independent school district 'B' by resolution or upon a petition by 20% of the electors residing in . . .' area 'A' or area 'A-1'?"

In our opinion, the electors residing in "A-1" are the only electors that now have the right to close the school effective as of July 1, 1969. This is by a petition of 20% of the electors residing in area "A-1" and an election to close such school must be called by the school board of the independent school district wherein the school located is attached.

"6. Must an election to close the '*' school subsequent to July 1, 1969, be voted upon only by the electors who reside in the area 'A-1' or must it be voted upon by the electors who reside in the area 'A'?"

It must be voted upon by the electors who reside in area "A-1" only. (See No.5 above.)

"7. Does a vote by the electors qualified to vote to close the '*' school require the school to be closed against the wishes of the 'B' independent school district board or can such board

legally continue to operate such school until such board considers it advisable to close such school?"

In our opinion, a vote by the electors in "A-1" to close the "*" school would be binding upon the "B" independent school district for the period of the next fiscal year. (See Section 3, Ch. 45, Laws of 1968.)

Respectfully submitted,

Gordon Mydland
Attorney General