

OFFICIAL OPINION NO. 97-01, School Board Member Residence and Representation Area Requirements

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OFFICIAL OPINION NO. 97-01

School Board Member Residence and Representation Area Requirements

Dear Mr. Kaufman:

On behalf of a school board, you have requested an opinion of the Office of Attorney General regarding the following facts:

FACTS:

School A is a reorganized school district pursuant to SDCL ch. 13-6. The Reorganization Plan, approved by the Department of Education and Cultural Affairs, and by the voters of the two school districts involved in the reorganization, specified the manner in which board members of the newly reorganized school district would be selected.

The Reorganization Plan states:

Number of Board Members: 5

Five (5) elected at large:

Two (2) board members will be elected from the former #1 school district;

Two (2) board members will be elected from the former #2 school district;

One (1) board member will be elected at large.

The Reorganization Plan imposes residency requirements for four of the five school board members (i.e., two from each of the former school districts) and one board position, which may be held by anyone residing in the newly reorganized district. The Reorganization Plan also provides that regardless of which board member position is up for election, all voters within the newly reorganized school district have the right to vote for the candidate of their choice.

Based upon the above, you have asked the following questions:

QUESTIONS:

1. Does the current school board have the authority to dissolve the board member residency requirement and representation areas, which were required under the Reorganization Plan?
2. Does the Board have the authority to refer the question of dissolving the board member residency requirements and representation areas to the voters?
3. May the public submit a petition requiring a public vote on whether the board member residency requirement and representation areas should be dissolved?
4. If the answers to Questions 1, 2, and 3 are no, what is required in order for all board positions to be held by persons residing anywhere within the reorganized district and not tied to residency within one of the former school districts?
5. May the school board designate only one polling place within the school district regardless of the number of board member representation areas?

IN RE QUESTION NOS. 1 AND 2:

School districts and the corresponding school boards are authorized by statute and have such authority and responsibilities as provided by statute. SDCL §§ 13-5-1 and 13-8-1; *Moran v. Rapid City Area School District No. 51-4*, 281 N.W.2d 595 (S.D. 1979). Your cited facts state that former school districts No. 1 and No. 2 have met all the requirements for reorganization as specified in SDCL §§ 13-6-5 through 13-6-9.3. Thus, there is now one school district with one school board. There is no statutory authority for the school board to independently dissolve the board member residency requirements and representation areas nor to bring such issues to public vote. Thus, the answer to Question Nos. 1 and 2 is "No."

IN RE QUESTION NOS. 3 AND 4:

SDCL 13-8-3, which was amended this last session, effective July 1, 1997, now provides:

The voters of any school district may increase the number of board members to seven or to nine, or establish school board representation areas, by a majority vote of all voters voting at an election called and held as hereinafter provided. If a petition signed by ten percent of the registered voters of any school district, based upon the total number of registered voters at the last preceding general election, is presented to the board requesting that an election be called for the purpose of voting upon the question of the change of number of board members, or the establishment of school board representation areas, the board shall call an election. The question shall be submitted to the voters at an election to be held not less than forty-five nor more than sixty days from the date of the filing of such petition with the business manager. If such a petition is filed less than one hundred twenty days prior to the next annual election, the question shall be submitted at the annual election. Such election shall be held upon the same notice and conducted in the same manner as provided by chapter 13-7. Any increase or decrease in the number of board members shall be implemented at the next succeeding annual election.

This statute as newly amended addresses and answers your remaining questions. If ten percent of the registered voters in the "new" or reorganized school district present a petition to the school board calling for an election to change the representation areas, the board shall call an election. If the representation areas are changed, the residency requirements would also be changed, effective in succeeding annual elections. Thus, the answer to Question No. 3 is "Yes," and the answer to Question No. 4 is that the procedures to be followed are found in SDCL 13-8-3.

IN RE QUESTION NO. 5:

Again, the answer to this question can be found in SDCL 13-8-3, as amended. The relevant portion of this provision states: "Such election shall be held upon the same notice and conducted in the same manner as provided by chapter 13-7." SDCL 13-7-11 provides that "The number and place of voting precincts shall be determined by the school board." Therefore, the answer to Question No. 5 is "Yes."