

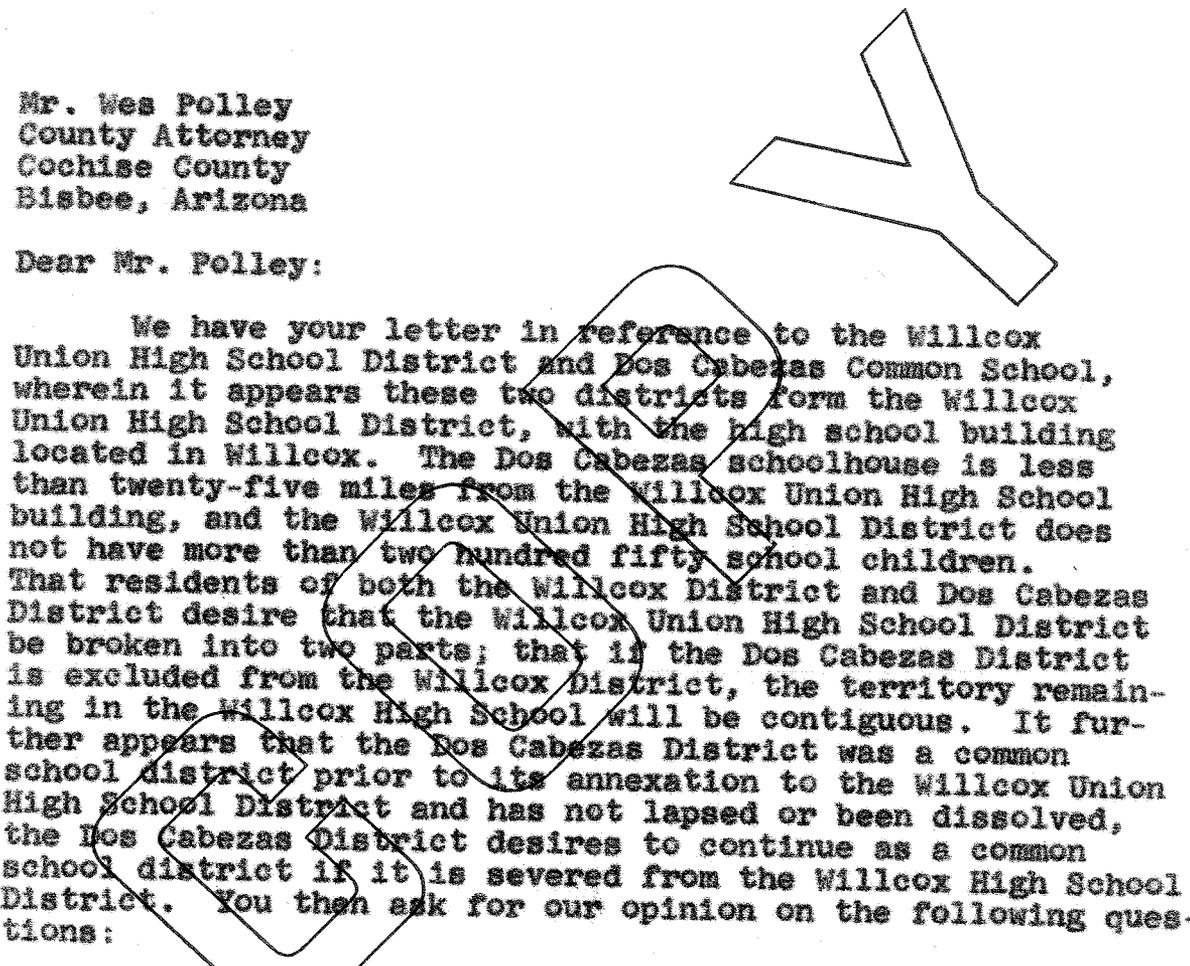
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August 12, 1950

50-200

Mr. Wes Polley  
County Attorney  
Cochise County  
Bisbee, Arizona

Dear Mr. Polley:



We have your letter in reference to the Willcox Union High School District and Dos Cabezas Common School, wherein it appears these two districts form the Willcox Union High School District, with the high school building located in Willcox. The Dos Cabezas schoolhouse is less than twenty-five miles from the Willcox Union High School building, and the Willcox Union High School District does not have more than two hundred fifty school children. That residents of both the Willcox District and Dos Cabezas District desire that the Willcox Union High School District be broken into two parts; that if the Dos Cabezas District is excluded from the Willcox District, the territory remaining in the Willcox High School will be contiguous. It further appears that the Dos Cabezas District was a common school district prior to its annexation to the Willcox Union High School District and has not lapsed or been dissolved, the Dos Cabezas District desires to continue as a common school district if it is severed from the Willcox High School District. You then ask for our opinion on the following questions:

"A. Can Section 54-402 be used under the above facts to accomplish the desire of the people \* \* \* ?

B. Can Section 54-404 be used under the above facts to accomplish the desire of the people as set forth in Number 4 above?

C. Does Section 54-901 prevent the use of the above-mentioned sections?

D. Is there any other method provided by the school law of Arizona to accomplish the desire of the people as set forth in Number 4 above?"

When the Dos Cabezas Common School District was taken into the Willcox Union High School District, the Dos Cabezas District did not lose its separate identity as a common school district. Boyd v. Bell, 203 P. 2d 618 (Ariz.); Glendale, etc. v. Peoria, etc., 51 Ariz. 478, 78 P. 2d 141; County School Board v. Wilson, 5 S.W. 2d 805; Dyer v. Consolidated School District, 22 S.W. 2d 712.

To questions A. and B., our answer is "No". To question C., our answer is "Yes". In answer to question D., we do not know of any other method provided by the laws to accomplish the desire of the people of the two districts other than to follow the procedure set forth in Section 54-901 ACA 1939.

Section 54-402 ACA 1939 deals with the formation of new districts and inasmuch as the Dos Cabezas District did not lose its identity by its annexation to the high school district, it is still in existence and there is no necessity for the formation of a new district, as provided in Section 54-402.

If Section 54-404 ACA 1939 were the only statute we have dealing with the change of boundaries of school districts we would say proceedings could be had under this section to accomplish the wishes of the people of the two districts; the pertinent part of Section 54-404 reads as follows:

"Change of boundaries.-- When ten (10) or more qualified school electors residing in any district desire that the boundaries of said district be changed they shall present a petition to the county school superintendent, setting forth the change of boundaries desired, and the reasons therefor. When such petition is filed with the superintendent, he shall approve or disapprove and transmit the same to the board of supervisors, whose action shall be final; \* \* \*"

This section deals with the procedure to be followed when a district desires to change its boundaries, generally by the inclusion or exclusion of territory, but the Legislature has specially provided in Section 54-901 for the procedure to be

followed when an entire common school district in a high school district desires to be excluded from a high school district and we think this last mentioned section provides the exclusive method to be followed in such cases. This position is strengthened when we consider the history of the legislation embraced in Sections 54-404 and 54-901. Section 54-404 appeared in the 1928 Code as Section 999 and the first part of Section 54-901 appeared in the same Code as Section 1068. Under those two sections, as they appeared in the 1928 Code, the method prescribed by the present Section 54-404 was the exclusive method for changing the boundaries of a school district, except perhaps by annexing one district to another. In 1931 the Legislature amended Section 1068 of the 1928 Code, now Section 54-901, by adding that part of Section 54-901, which reads as follows:

" \* \* \* A school district embraced within a union high school district may petition the county superintendent of schools for exclusion therefrom. If the superintendent finds that the school house of the school district seeking exclusion is more than twenty-five (25) miles distant, by the usually traveled route, from the high school building, and that, if such school district were excluded, the remaining territory of the high school district would be contiguous, and that the petition for exclusion contains the bona fide signatures of the heads of not less than two-thirds of all families within such school district having children eligible for admission to the high school, and in no event less than twenty-five (25) such signatures, he shall transmit the petition to the board of supervisors, together with a statement of the essential facts, and it shall thereupon become the duty of the board to exclude the said school district as prayed for, provided, that such exclusion shall not be construed nor act to relieve the excluded school district of liability for bonded indebtedness incurred while it was a part of such union high school district."

thereby providing the exclusive procedure to be followed when a common school district is excluded from a high school district.

Evidently the Legislature believed that when a common

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school district desired to withdraw from a high school district a different and more onerous method of procedure should be followed from that prescribed for reshaping the boundaries of a district, and added the Act of 1931 to our present Section 54-901; otherwise, there was no necessity for the additional legislation contained in the Act of 1931 because a remedy was already provided by Section 54-404.

If the residents of the two districts hereinbefore mentioned cannot come within the provisions of Section 54-901, we are unable to find any remedy for them under existing statutes.

Very truly yours,

FRED O. WILSON  
Attorney General

EARL ANDERSON  
Assistant Attorney General

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