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April 24, 1953
Opinion No. 53-81

To: Mr. Barry DeRose
County Attorney of Gila County
Globe, Arizona

Re: Annexation of an established common school district to an existing high school district pursuant to Section 54-408, A.C.A. 1939.

Question: What procedure should be followed in order to comply with the law relative to giving electors of the high school district the opportunity to protest? Is an election necessary in order to comply with the requirements of Section 54-408, A.C.A. 1939.

This is in reply to your letter requesting our advice concerning the procedure to be followed in the annexation of an established common school district to an existing high school district.

As was indicated in LOND v. HELL, (1949) 68 Ariz. 166, 174, the governing statute in this matter is Section 54-408, A.C.A. 1939, which reads as follows:

> "54-408. Annexation of common school district to high school district.--A common school district contiguous to any high school or union high school district, may annex itself to such district, when a majority of the school electors of the common school district present a petition to the trustees of the high school district to which they desire to be annexed, setting forth the boundaries of said district to be annexed. Said petition, if approved by the board of trustees of the district to which the annexation is to be made, shall be transmitted with the

> indorsement of said board of trustees thereon, to the county superintendent of schools. The electors of the high school district have sixteen (16) days thereafter, to make and file a protest against such annexation; if a majority of such electors file such protest, the annexation shall not be made; if a protest is not so made and filed, the county superintendent of schools shall make his records of the boundaries of the high school district conform to the petition of the electors of the common school district and notify the board of supervisors thereof ,and on and after the first day of July following said district shall become a part of the high school or union high school district to which it petitioned to be annexed." (Emphasis supplied)

In interpreting the requirements of the above cited section our court, in SOUTHERN PACIFIC CO. v. MARICOPA COUNTY, (1940) 56 Ariz. 247, 107 P. 2d 212, specifically set forth those requirements in the following language, l. c. 251:

> "* * *When, as in the present case a high school district already exists, the only way in which a common school district may become a part of the high school district is set forth in section 1003 (Section 54-408, A.C.A. 1939), supra. A petition must be filed representing a certain proportion of the voters of the district, and the petition must show specifically the boundaries of the district annexed. Thereafter an election must be held to determine whether the union high school district shall be formed. If the election approves, the new union high school district is established, but it is established with definite boundaries consisting of the two or more districts as they exist at the time of the election. If another common school district desires thereafter to annex itself to the high school district, another petition must be filed and the same proceeding taken. It is clear to us that the statutes contemplate that whenever additional territory

> is added to a union high school district, the voters of both the annexed territory and the existing high school district must have a chance to be heard thereon, either by an election or by a protest, as set forth in section 1003, supra. * * *" (Parenthetical matter supplied)

This ruling was adopted without question in the later case of MARICOPA COUNTY v. SOUTHERN PACIFIC CO., (1944) 61 Ariz. 269, 148 P. 2d 824, involving the same set of facts as in the earlier SOUTHERN PACIFIC CO. case, supra.

However, in BOYD v. BELL, supra, the Supreme Court reviewed the entire question of the proceedings necessary for the establishment and enlargement of high school districts. After setting forth the quotation above cited and noting that the language therein unfortunately ascribed to Section 54-403, A.C.A. 1939, supra, requirements which did not appear therein, the court said, l. c. 176:

> "There is no provision in the Educational Act relating to boundaries of school districts requiring an election to be held except under section 54-406 providing for the consolidation of two or more common school districts, and section 54-901, supra, providing for the initial establishment of high school districts * * *"

We therefore conclude in view of this last pronouncement on the matter, that no election is authorized or required in order to comply with Section 54-403, A.C.A. 1939.

With reference to the matter of protest, the statute is quite clear. If the Board of Trustees of the high school district approves the annexation, upon transmission of its decision to the County Superintendent, each elector in the high school district has the opportunity to make and file a protest with the Superintendent. If within fifteen days a majority of the electors of the high school district do file a protest with the Superintendent, the matter is at an end and the annexation may not be made.

We feel that the adoption of the procedure outlined above

with reference to protest will completely satisfy the requirements of Section 54-408, A.C.A. 1939.

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