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WHITING  
N. Green  
Turner

May 20, 1955  
Opinion No. 55-128

REQUESTED BY: ~~The~~ Honorable D. L. Greer  
Apache County Attorney,  
St. Johns, Arizona

OPINION BY: Robert Morrison, The Attorney General  
Norman H. Whiting, Assistant Attorney General

QUESTION: Where an annexation proceeding is had, pursuant to the provisions of Section 54-405, ACA, 1939, and regularly conducted in the manner provided by the above quoted statute, what happens to the assets of the school district so annexed, including buildings, grounds, supplies on hand and money on hand budgeted by said school district?

CONCLUSION: All of the assets of the school district, including buildings, grounds, supplies on hand and money on hand budgeted by said school district, can be transferred to the annexing district on July 1, if all proceedings for annexation were complete on April 1.

Some of our school statutes were written in the horse and buggy days, and to make them operative for present day conditions, it is necessary to construe them in view of other legislative acts passed at a later date.

"54-405. Annexation of districts.--A school district may annex itself to another district, when a majority of the school electors of the said district present a petition to the trustees of the 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 the said board of trustees thereon to the county superintendent of schools, who shall, if no petition to prevent such annexation, signed by a majority of the school electors representing the district to which annexation is to be made has been received by said superintendent within fifteen (15) days after such transmittal, make his records of boundaries to conform to said petition and so notify the board of supervisors, and on and after the first day of July

following, said district shall become a part of the district to which it petitioned to be annexed."

This section on annexation is poorly written, for several reasons. First, it states: "When a majority of the school electors of the said district present a petition to the Trustees of the district to which they desire to be annexed \* \* \* " This statement does not define the time at which the number of electors shall be determined. The number of electors at the time the petition is first circulated might not be the same as on the day the petition is presented to the trustees of the annexing district.

However, Section 54-408, ACA, 1939, on annexation of common school districts to high school districts, using the same language, ("a majority of school electors") was amended in 1954 to read "upon the petition of as many electors of the common school district as may be equal to a majority of the number of electors voting at the last preceding school election."

Although Section 54-405 was not so amended, we think it should be construed to be the intent of the Legislature that this system of determining the number of electors, for the purposes of Section 54-405, is the one to be used.

Section 54-405 does not state what becomes of the assets of a district annexed to another, or what becomes of its obligations. Section 54-406, ACA, 1939, clearly sets out what shall become of assets and liabilities of districts consolidated. A part of Section 54-406 is set out below:

"The property of the several districts shall become the property of the newly formed district; all balances or deficits in the funds of the several districts consolidated shall become the balance or deficit of the new district, and all bonded indebtedness of the several districts consolidated shall become the bonded indebtedness of the new district."

For Section 54-405 to be operative, it is necessary that some disposition be made of both the assets and the liabilities of the district to be annexed.

An annexation, for all intents and purposes, has the same effect as a consolidation of schools, except that in consolidation, new trustees are elected for the consolidated district, while in annexation, the trustees of the annexing district remain the trustees of the enlarged district.

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A long line of cases is cited in 121 A.L.R. 826, holding that under annexation and consolidation, the assets and liabilities of districts are transferred to and remain in the final district.

It therefore, seems clear, that all assets and liabilities of an annexed district will go to the annexing district.

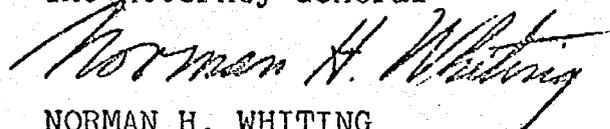
As to the time that assets and liabilities are transferred, the statute (Section 54-405) clearly states that the annexation shall be complete on July 1 following the annexation procedure.

Pursuant to the provisions of Section 54-403, ACA, 1939, as amended, the County School Superintendent should file with the Board of Supervisors and the Assessor, a transcript of the boundaries of the districts in his county, on or before the first day of April, and since there will be a change of boundaries upon an annexation, all the proceedings toward an annexation should have been completed by April 1.

The annexation is not complete until July 1, so on this date the assets and liabilities will pass to the new district.

The new district will not be able to use any of the assets of the annexed district before this date, but any funds transferred on July 1, which are under the control of the new district, can be used to decrease the district tax levy for the new fiscal year.

ROBERT MORRISON  
The Attorney General



NORMAN H. WHITING  
Assistant Attorney General

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