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June 1, 1955  
Opinion No. 55-138

REQUESTED BY: The Honorable Ruskin Lines, Graham County Attorney  
Safford, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General  
William S. Reed, Special Assistant  
Attorney General

QUESTION: When a common school district which is a component  
of a union high school district is lapsed and an-  
nexed to an adjacent common school district out-  
side the union high school district, what is the  
legal position of the lapsed district territory  
and of the union high school district?

CONCLUSION: The lapsed district ceases to exist as a legal  
entity, though its area remains subject to any  
existing bonded indebtedness of the union high  
school district. Upon the annexation of its  
area to an adjacent common school district it is  
merged therein; if the district to which it is  
annexed is outside the union high school district,  
the territory of the union district will be re-  
duced accordingly.

In 1923 Fort Thomas Union High School District was formed in  
Graham County Arizona, including within its boundaries Coon Common  
School District No. 28. In 1925 the County School Superintendent  
notified the Graham County Board of Supervisors that Coon Common  
School District No. 28 should be declared lapsed and its territory  
annexed to Eden District No. 11. The Board did this, Eden District  
No. 11 being outside the boundaries of Fort Thomas Union High School  
District.

The key to the legal effect of these transactions is to be found  
in the provisions of Section 54-610, ACA, 1939:

"Lapsing of school districts.--If in any common  
school district there has been an average daily  
attendance of less than eight (8) pupils between  
the ages of six and twenty-one years for three (3)  
months during the school year, the county superin-  
tendent may at once suspend the district and report  
the fact to the board of supervisors at their next  
meeting. The board may declare the district lapsed,  
and attach the territory thereof to one or more of  
the adjoining school districts, dispose of the  
property of the lapsed district and place the

proceeds to the credit of the lapsed district. Thereupon the county superintendent shall determine all unbonded indebtedness of said lapsed district, and shall draw his warrant, on proper vouchers, on the county treasurer in payment thereof. Any balance remaining after such payment shall be transferred to the county school fund."

and Section 54-901, ACA, 1939:

"Formation and establishment of district--Exclusion from district.--Any school district having an average daily attendance of not less than two hundred (200) pupils, or an assessed valuation of not less than one million five hundred thousand dollars (\$1,500,000), may, by a majority vote of the qualified school electors thereof, establish and maintain a high school; or two (2) or more adjoining school districts having one of the above requisites jointly, may unite and form a union high school district at the expense of such union high school district. No such union high school district shall be formed of territory already embodied in a union high school district, unless the remaining territory of the original district shall be contiguous and shall have an assessed valuation of not less than three million dollars (\$3,000,000). When a new district shall be formed from territory already included in a union high school district, such territory shall no longer be included in such original high school district. The state board of education may establish a high school district in any district not meeting the requirements hereof should a majority of the electors residing in such district petition said board therefor. 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 trans-

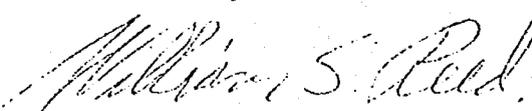
mit the petition to the board of supervisors, together with a statement of the essential facts, and it shall thereupon become the duty of the board to exclude the said school district as prayed for; provided, that such exclusion shall not be construed nor act to relieve the excluded school district of liability for bonded indebtedness incurred while it was a part of such union high school district."

The Arizona Supreme Court made it plain in Boyd v. Bell, 68 Arizona 166, 203 P2d 618, that the territorial components of a union high school district are the component common school districts as such and not merely the territory they contained at the time of the formation of the union high school district.

Section 54-610, supra, provides that a lapsed district shall be annexed to another district, thereby becoming merged therein. Where such lapsed district is annexed to another common school district in the same union district, no territorial change occurs to the union district. But where the supervisors annex the lapsed district to a common school district outside the original union district it ceases to be a part of said union district, the territory of which is thereby diminished. Should the common school district to which the lapsed district is annexed be a component of a second union high school district, its territory would, of course, be thereby increased. Boyd v. Bell, supra.

It follows that the Fort Thomas High School District is coterminous geographically with Fort Thomas School District No. 7 and that Eden School District No. 11 includes all of former Coon District No. 28 and is at liberty, if not organized into a high school district, to enter into the organization of a high school district, or to join any contiguous high school district through the statutory method.

ROBERT MORRISON  
The Attorney General



WILLIAM S. REED  
Special Assistant  
Attorney General