

N.D.A.G. Letter to Torkelson (March 30, 1990)

March 30, 1990

Ms. Merle A. Torkelson
McLean County State's Attorney
Box 86
Washburn, ND 58577

Dear Ms. Torkelson:

Thank you for your letter of January 5, 1990. You ask a question which was presented to you by Mr. Hy C. J. Schlieve, superintendent of the reorganized Garrison Public School District No. 51. You ask whether it is possible, under North Dakota state law, for lands which are presently under Lake Sakakawea and were part of the original school districts, to be added to a reorganized school district.

N.D.C.C. chs. 15-27.1, 15-27.2, 15-27.3, and 15-27.4 deal with the annexation, reorganization, and dissolution of school districts. After extensive review of these chapters, I have come to the conclusion that, not only do these chapters not address or contemplate this particular problem, there is also no reasonable manner in which these statutes can be construed to apply.

As you indicated in your letter, N.D.C.C. ch. 15-27.4 dealing with dissolution allows a county committee to hold a hearing to "dissolve a school district and attach the territory to other school districts" when the county committee has received notice that "[t]here exists territory not organized into a school district." N.D.C.C. § 15-27.4-01(l)(b).

The largest obstacle in applying this statute is that the hearing is required to be held "within forty-five days after voter approval of the school district reorganization proposal." N.D.C.C. § 15-27.4-01(2). The voters approved the reorganization creating the Garrison Public School District No. 51 on May 11, 1959. It is not possible to construe this statutory provision to allow lands which are presently under Lake Sakakawea to be attached to the Garrison Public School District over 30 years after the voters approved the reorganization.

Another obstacle in applying this section or other sections of N.D.C.C. ch. 15-27.4 is that when these statutes refer to the omission of territory from a reorganized school district, the territory referred to is understood to be above water level.

In sum, North Dakota law does not address the manner in which lands which are presently under Lake Sakakawea and were part of the original school districts may be added to a reorganized school district. I suggest that Mr. Schlieve work with his local legislators to draft a bill to introduce in the 1991 legislative session which addresses this Particular Problem.

I hope this information is useful to you.

Sincerely,

Nicholas J. Spaeth

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