

N.D.A.G. Letter to Torkelson (Mar. 19, 1991)

March 19, 1991

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

Dear Ms. Torkelson:

Thank you for your March 7, 1991, letter requesting an opinion as to whether a petitioner for annexation may include federal land so that the petitioner's land is "contiguous" to the school district to which the petitioner seeks to annex.

N.D.C.C. § 15-27.2-01 states:

Annexation of contiguous territory to school district - Petition. Territory contiguous to a public school district, whether in the same county or in another, may be annexed to the school district by the county committee after a public hearing upon written petition signed by two-thirds of the qualified electors in the contiguous territory. . .

Thus, a petitioner may seek to annex territory to another school district if the territory is "contiguous" to that school district. N.D.C.C. § 15-27.1-01(2) defines "contiguous" as "two or more tracts of land which are in actual contact with each other at a common point." This definition makes no distinction regarding whether the land is federally, state, or privately owned. Thus, it appears that federal land may be annexed to another school district via a petition for annexation.

The federal land at issue in this particular case is land which abuts on Lake Audubon. The argument has been made that if federal land running along the lake may be annexed to another school district, any resident owning land adjacent to the federal land may also attempt to be annexed to the school district contiguous to the federal land. The argument has also been made that if the federal land may be annexed to another school district, the school district where it is currently located would lose federal impact aid money and in-lieu-of-tax money associated with that federal land. These scenarios are indeed possible outcomes of a petition for annexation which includes federal land. Whether an annexation petition which would have such outcomes should be approved, is a matter left to the discretion of the county committee for the reorganization of school districts and the State Board of Public School Education.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

jfl