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STATE OF NEBRASKA
OFFICIAL
FEB 4 1998
DEPT. OF JUSTICE

DATE: February 3, 1998

SUBJECT: Educational Service Unit Mergers; Effective Date of Merger Authority

REQUESTED BY: Douglas D. Christensen
Commissioner of Education

WRITTEN BY: Don Stenberg, Attorney General
Lauren L. Hill, Assistant Attorney General

You have requested an opinion from this office regarding the extent of the State Board of Education's authority to approve a pending merger application of two educational service units. Specifically, you have asked us to determine whether Neb. Rev. Stat. § 79-1202, § 79-1203, and § 79-1209 permit the State Board of Education to approve the merger petition with an effective date prior to July 1, 1998.

The merger petition now before the State Board of Education was submitted by Educational Service Unit ["ESU"] #12 and ESU #13 pursuant to Neb. Rev. Stat. § 79-1207 (Supp. 1997), which permits ESU boundaries to be changed by petitioning the State Board of Education. The two ESUs seek to merge into a new ESU. ***See*** Neb. Rev. Stat. § 79-1209(4) (Supp. 1997). In order to facilitate planning and staffing decisions, the ESUs seek to have the merger become effective as of March 1, 1998.

Pertinent Statutes

Statutes governing your inquiry are set forth in Nebraska's "Educational Service Units Act," Neb. Rev. Stat. § 79-

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1201 to § 79-1239 (1996 & Supp. 1997). During the 1997 legislative session, several of the statutes in the Act were amended to read as follows:

> Nineteen educational service units are established. The official name of such units shall be Educational Service Unit No. ... of the State of Nebraska, and the individual number of each unit shall be determined by the State Board of Education as provided in this section and section 79-1203. **For [ESUs] existing on July 1, 1998, the number of the unit shall remain the same. For [ESUs] created by merger after July 1, 1998, the number of the unit shall be the number of one of the [ESUs] dissolving into the new [ESU].** For all other [ESUs] created after July 1, 1998, the number shall be any number not otherwise assigned to an existing [ESU].

Neb. Rev. Stat. § 79-1202 (Supp. 1997) (emphasis supplied). The statute specifically enumerating, and setting boundaries for, the existing 19 educational service units, was also amended and now provides that

> [u]ntil July 1, 1998, the number of the educational service units established pursuant to section 79-1202 shall be [as set forth in the statute].
>
> ...
>
> On and after July 1, 1998, the identification numbers of the educational service units shall be as provided in this section unless the boundaries of [ESUs] are changed pursuant to a reorganization under sections 79-1206 to 79-1211.[1] The number of a reorganized [ESU] shall be determined under 79-1202.

Neb. Rev. Stat. § 79-1203 (Supp. 1997).

Standard of Review

In construing the applicable statutes, we follow several well-established rules of statutory construction. First, we must determine and give effect to the Legislature's purpose and intent as ascertained from the entire language of the statute in its plain and ordinary meaning. ***Nickel v. Saline County School Dist. No. 163***, 251 Neb. 762, 559 N.W.2d 480 (1997). Next, resort to the legislative history of the statutes is not required when the

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[1] Neb. Rev. Stat. § 79-1206 to § 79-1211 establishes the "statutory framework" for the ESU reorganization process. ***See*** Neb. Rev. Stat. § 79-1206 (1996). That process has been available since January 1, 1989.

statutory text is plain, direct, and unambiguous. ***Metropolitan Util. Dist. of Omaha v. Balka***, 252 Neb. 172, 560 N.W.2d 477 (1997). Finally, statutes relating to the same subject matter are to be construed together as if they were one law, with effect being given to every provision. ***In re Interest of Aaron K.***, 250 Neb. 489, 550 N.W.2d 13 (1996); ***Slagle v. J.P. Theisen & Sons, Inc.***, 251 Neb. 904, 560 N.W.2d 758 (1997).

Analysis

Construing the related statutes, we find that § 79-1202 and § 79-1203 clearly and unambiguously establish that 19 ESUs shall exist through July 1, 1998. The numbers and boundary lines of both ESU #12 and ESU #13 are specifically set forth in § 79-1203 (Supp. 1997) and, by the terms of that statute, are to exist at least "[u]ntil July 1, 1998."

You have noted that the reorganization process, which allows ESUs to petition the State Board of Education for approval of boundary changes via mergers, became operative on September 13, 1997, and contains no mention of delaying, until July 1, 1998, action on a petition. The reorganization process, itself, however, cannot be examined without consideration of the underlying boundaries which have been explicitly set forth in both § 79-1202 and § 79-1203. Both statutes clearly contemplate that existing ESUs will remain in effect through July 1, 1998, and that educational service units may be created by merger at any time after that date.

To conclude that ESU mergers could become effective prior to the date set forth in § 79-1202 and § 79-1203, we would have to ignore the reference to the "July 1, 1998," effective date which is contained in both of those statutes. As the Nebraska Supreme Court has directed, we must give effect to all parts of these statutes -- without omission of any sentence, clause, or word. ***State v. Kelley***, 249 Neb. 99, 541 N.W.2d 645 (1996); ***Omaha Public Power Dist. v. Nebraska Dep't of Revenue***, 248 Neb. 518, 537 N.W.2d 312 (1995). The statutory inclusion of "July 1, 1998," signifies that, until the date, there shall exist 19 educational service units. After that date, the State Board of Education may authorize merger, dissolution, or creation of ESUs as authorized by the "Educational Service Units Act."

Since we have concluded that the language of § 79-1202 and § 79-1203 is plain and direct, there is no need to resort to the legislative history of these statutes' enactment in order to construe their meaning. ***See Metropolitan Util. Dist. of Omaha v. Balka***, 252 Neb. 172, 560 N.W.2d 795 (1997). If we had deemed the language of the statutes to be ambiguous, and, therefore, resorted

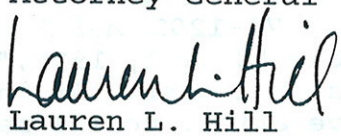
to the history of their enactment[2] for interpretation, our opinion would remain the same.

In several instances, the Legislature's intent to retain the existing 19 ESU boundaries through until July 1, 1998, is evident. Reference to ESU boundary changes was contained in both LB 419 (1997) and LB 806 (1997). The Education Committee's bill summary and Committee Statement of LB 419 declared that, as proposed in the bill, "[t]he statutory ESU boundaries will remain in effect until July 1, 1998. After that date, new ESU's [sic] may be formed and ESU's [sic] may reorganize." ***Committee Records on LB 419***, 95th Neb. Leg., 1st Sess. (February 24, 1997). The Education Committee's Statement on LB 806 also indicates that "[t]he statutory specifications of ESU boundaries in 79-1203 will remain in effect until July 1, 1998." ***Committee Records on LB 806***, 95th Neb. Leg., 1st Sess., § 52 at p. 14 (February 10, 1997).

Construing § 79-1202 and § 79-1203, either by reliance upon the statutes' plain language or upon the history of their enactment, we conclude that ESU boundaries may not be altered by merger, or otherwise, until July 1, 1998. Our conclusion does not preclude the State Board of Education from considering, and approving, the pending ESU #12 and ESU #13 merger petition prior to July 1, 1998, so long as the Board's final order is clear that the merger is not effective until July 1, 1998.

Sincerely,

DON STENBERG
Attorney General



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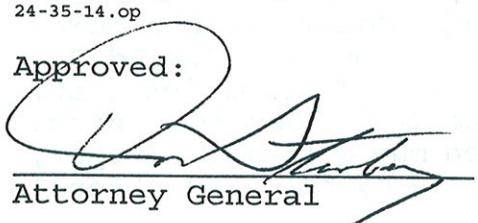

Attorney General

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[2] We reviewed the history of two 1997 bills pertaining to ESU boundary changes, LB 419 and LB 806. Portions of LB 419 and LB 806 were advanced to the Legislature as Committee amendments (AM1204 and AM1205, respectively). Following debate, relevant provisions of LB 419 were amended into LB 806 by the adoption of floor amendment #193 (FA 193) on May 15, 1997.