

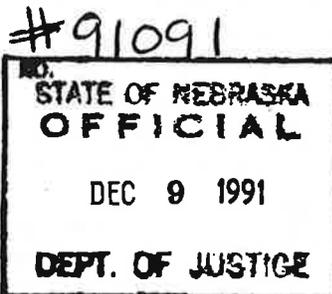


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DATE: November 27, 1991

SUBJECT: A State agency has no authority to promulgate an administrative rule which changes the meaning of a word or phrase defined by statute.

REQUESTED BY: Joe E. Lutjeharms, Commissioner of Education

WRITTEN BY: Don Stenberg, Attorney General
Harold Mosher, Senior Assistant Attorney General

Two years ago, the Legislature established an Enrollment Option Program to enable any Nebraska student to attend a school in a Nebraska public school district in which the student does not reside subject to certain conditions. See Neb.Rev.Stat. §79-3401 (Supp. 1989) et seq. Subsection (2) of section 3 of LB 207 of the Ninety-Second Legislature, First Session (1991), amended Neb.Rev.Stat. §79-3403 (Supp. 1990) to read in part as follows: The program shall not apply to "(b) any student who resides in a district which contracts or has contracted in either or both of the two prior school years with another district or districts in such student's grade level pursuant to section 79-486. . . ."

You have enclosed with your inquiry a proposed draft of regulations which are designed to implement the Enrollment Option Program, Title 92, Nebraska Administrative Code, Chapter 7. Section 003.02B of the proposed regulations contains the identical language quoted above from LB 207. You have also enclosed an alternate section 003.02B to the proposed regulations which states that ". . . school districts which have affiliated shall be considered to have created a new district composed of the affiliated districts." You inquire if this office would approve the alternate draft to section 003.02B of the proposed regulations to implement the Enrollment Option Program.

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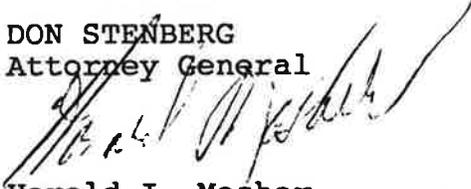
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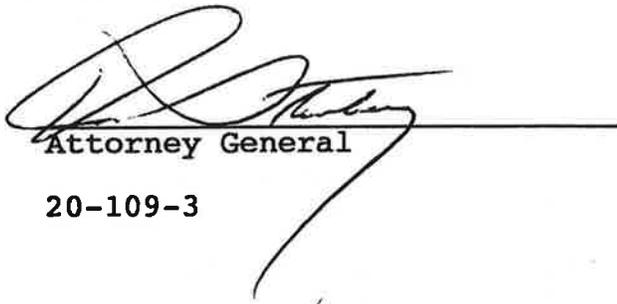
Obviously, a school district may "affiliate" with other school districts for certain educational purposes while retaining its own identity as a school district for other educational purposes. See, Neb.Rev.Stat. §79-402 (Supp. 1990) et seq. However, alternate section 003.02B of the proposed regulations would literally turn the statutory definition of a school district on its head by also including within the meaning thereof the affiliated territory under the jurisdiction of two or more boards authorized by Chapter 79. That we cannot approve. Neb.Rev.Stat. §79-101(1) (Reissue 1987) states that a "school district shall mean the territory under the jurisdiction of a single board authorized by Chapter 79." (Emphasis added.) An agency of government simply "has no authority to rewrite the statutory scheme by means of regulations." University of Texas v. Camenisch, 451 U.S. 390, 399 (1981). Consequently, we could not approve the alternate section 003.02B to the proposed regulations to implement the Enrollment Option Program.

Respectfully submitted,

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APPROVED BY:


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20-109-3