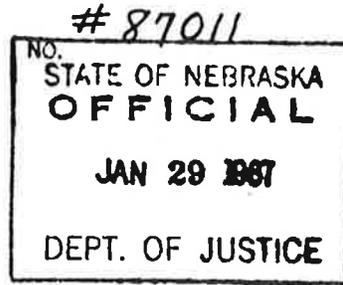


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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ROBERT M. SPIRE
Attorney General
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Deputy Attorney General

DATE: January 28, 1987

SUBJECT: Procedures for Merger of a Village Fire Department
and a Rural Fire District

REQUESTED BY: Mark Behm
Cedar County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
Dale A. Comer, Assistant Attorney General

Neb.Rev.Stat. §§35-530 et seq. (Reissue 1984) provide for a procedure whereby the fire department of a village or of city of the second class may be merged with a rural fire protection district. Under those statutes, the merger procedure is initiated by a petition process where 60% or more of the electors who own real or personal property assessed for taxation in the territory to be merged sign a petition requesting the merger. Upon receipt of such a petition, the county clerk in the pertinent county is required to forward the petition and various other materials to the board of directors of the fire district and to the village board affected by the merger. Those governing bodies, in turn, transmit the petition and other materials to the proper county board accompanied by a report in writing either approving or disapproving the merger proposal contained in the petition. Section 35-534 specifically provides, in pertinent part, "If the report of the board of directors and the village board, required under section 35-533, disapproves the proposal, the petition shall be rejected." You now ask whether §35-534 requires a halt to the merger process if either the board of directors of the rural fire district or the village board disapproves the merger proposal. In our opinion, the answer to your question is yes, and disapproval of the proposed merger by either governing board will stop the merger process.

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The statutes establishing the procedures for merger of a rural fire protection district and a village fire department grew out of LB 907 passed by the Legislature in 1978. The legislative history of LB 907 does not shed a great deal of light upon the question which you have posed. However, one witness before the Government, Military and Veteran's Affairs Committee of the Legislature did indicate, at the public hearing on LB 907, that the bill would require approval of both the rural fire district board and the village board. Specifically, Mr. David Chambers appeared before the Government, Military and Veteran's Affairs Committee of the Legislature on January 27, 1978, on behalf of the Nebraska League of Municipalities, and stated, in response to a question concerning conflicts between the rural fire district and the village as to implementation of a merger:

It takes 50% to get the petition going, and then it takes approval of both that rural board, fire board, that's not the people, and it takes the village board's approval. If anything falls flat, it isn't going to go. I really don't think, and I could be wrong Senator Nichol, I don't think you are going to see this used if you don't have a general approval of the idea.

Hearing on LB 907 before the Legislature's Committee on Government, Military and Veteran's Affairs, January 27, 1978, page 10. This testimony supports the notion that the intent of LB 907 was to require approval of both the board of directors of the rural fire district and the village board affected by a merger prior to implementation of the merger itself. If the approval of both governing bodies is required prior to the merger, it necessarily follows that disapproval by one of the governing bodies would stop the merger process.

We would also note that §35-534 states that "if the report of the board of directors and the village board . . . disapproves the proposal, the petition shall be rejected." (emphasis added) This emphasized language is singular even though it mentions both the board of directors and the village board. In Nebraska, our courts will, when necessary to effectuate the obvious intention of the Legislature, construe conjunctive words as disjunctive. State ex rel. City of Grand Island v. Union Pacific Railroad Company, 152 Neb. 772, 42 N.W.2d 867 (1950). Given the singular language used in the noted portion of §35-534, it is our view that that statute should be construed to read "if the report of the board of directors or the village board disapproves the proposal, the petition shall be rejected."

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We have been unable to discover any Nebraska statutes or Nebraska case law which deal further with the question which you have raised. Consequently, based upon the legislative history and legislative intent discussed above, it is our opinion that disapproval of the merger procedure by either the board of directors of the rural fire district or the village board will stop the merger process.

Sincerely,

ROBERT M. SPIRE
Attorney General



Dale A. Comer
Assistant Attorney General

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3/04

APPROVED:



Attorney General