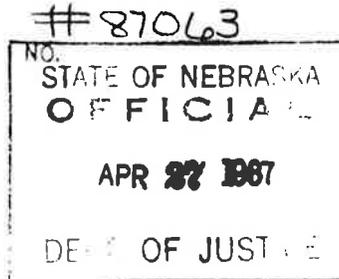


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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Attorney General  
A. EUGENE CRUMP  
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DATE: April 24, 1987

SUBJECT: Pursuant to amendment 0744 to LB 444, whether an existing school district when reorganized into a new consolidated school district may elect by a majority of the legal voters to form a new subdistrict of the reorganized school district.

Pursuant to the above stated amendment, whether the reorganized school district can have two elections, one by the new subdistrict voters for a governing body and one as part of the larger new school district for its governing body.

REQUESTED BY: Senator W. Owen Elmer  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
Harold Mosher, Assistant Attorney General

Subsection (1) of section 1 of LB 444 of the Ninetieth Legislature, First Session, would amend Neb.Rev.Stat. §79-402 (Supp. 1986) and authorize, subject to certain conditions precedent, the county superintendent of schools to create a new school district from other school districts or change the boundaries of any school district "upon petitions signed by over fifty per cent of the legal voters of each school district affected and approved by both the state and county committees for school district reorganization." Amendment 0744 to LB 444 states as follows:

1. On page 2, line 4, before "The" insert "(1)"; and after line 21 insert:

(2) When a Class I school district is affected by the creation of a new school district or a change in the boundaries of an existing school district, the legal voters of the affected or changed Class I school district may elect to operate the affected or changed Class I school district as a subdistrict of the new or changed school district. If the legal voters of the affected or changed Class I school district elect to so operate, such voters shall elect a subdistrict school

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board of five members and shall be entitled to cast their ballots in the election of the school board of the new or changed school district. At the first meeting of the subdistrict school board, the elected members of such board shall select one of its members as chairperson. A subdistrict created under this subsection shall have the same powers and duties as a school district operating an elementary school.

The legal voters of the subdistrict shall have the power at any annual or special meeting (a) to direct the purchasing or leasing of any appropriate site and the building, hiring, or purchasing of a schoolhouse, teacherage for the purpose of providing housing facilities for the school employees of the district, or other school buildings, (b) to determine the amount necessary to be expended for such purposes in the succeeding year, and (c) to vote a tax on the property of the subdistrict for the payment of the same for their elementary school children. Persons in the subdistrict shall pay the annual taxation levy set by the new or changed school district for operation and maintenance of the high school portion of such school district.

If a Class II or III school district is affected by the creation of a new school district or a change in boundaries of an existing school district, the legal voters of the Class II or III school district may elect, by either an election or petition of over fifty per cent of the legal voters of such school district, to be excluded from the new or changed school district or operate an elementary school as pursuant to this subsection.

Conceptually, we are unable to generalize a particular instance whereby the above quoted amendment would operate on a Class I school district as the result of the creation of a new school district or the change in the boundaries of an existing school district pursuant to Neb.Rev.Stat. §79-402 (Supp. 1986), as amended by this legislative bill. The creation of a new school district or the change in the boundaries of an existing school district pursuant to subsection (1) of section 1 of this legislative bill can only be initiated "upon petitions signed by over fifty per cent of the legal voters of each school district affected." If less than "fifty per cent of the legal voters of each school district affected" failed to sign the petitions in the first instance the creation or change could not occur and the above quoted amendment would have nothing to operate on. If "over fifty per cent of the legal voters of each school district

Senator W. Owen Elmer  
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affected" signed the petitions in the first instance the change would occur if all other conditions were met and again the above quoted amendment would have nothing to operate on.

Perhaps a few additional comments are in order in the event we have overlooked an instance whereby the above quoted amendment could be operational. Specifically, we note that it does not contain a time or a date whereby the legal voters of the affected or changed Class I school district may elect to operate as a subdistrict or how the election is to be called or who is to conduct the election. The amendment does state:

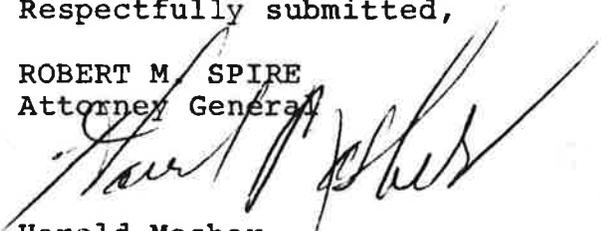
If a Class II or III school district is affected by the creation of a new school district or a change in boundaries of an existing school district, the legal voters of the Class II or III school district may elect, by either an election or petition of over fifty per cent of the legal voters of such school district, to be excluded from the new or changed school district or operate an elementary school pursuant to this subsection.

The amendment, however, does not state the date or time such election is to be held or who is to determine the sufficiency of the petitions or who is to conduct the election.

In summary, it appears to us that the above quoted amendment would not permit an existing school district, when reorganized into a new consolidated school district, to form a new subdistrict of the reorganized school district. Nor would the above quoted amendment permit the reorganized school district to have two elections, one by the new subdistrict voters for a governing body and one as part of the larger new school district for its governing body.

Respectfully submitted,

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HM/bae

cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED BY:

  
Attorney General