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JUSTICE BUILDING, LITTLE ROCK 72201

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OPINION NO. 85-69

March 5, 1985

HAND DELIVERED

The Honorable Allen Gordon
State Senator
State Capitol
Little Rock, Arkansas 72201

Dear Senator Gordon:

This is in response to your opinion request wherein you posed the following inquiries:

1. Does §5 of Act 64 (First Extraordinary Session) give permanent isolated status to school districts designated as isolated prior to the passage of Act 64?
2. Does §5 of Act 64 not exempt the isolated school districts that were designated as such prior to the passage of Act 64 from the provisions of §4 thereof?
3. Do these previously designated isolated school districts have to meet the educational standards since they were funded under Act 34, §6 and may not come under Act 64 special funding?

Pertinent to your inquiry is §3 of Act 445 of 1983. Under that section, the State Board of Education had the authority to designate on an annual basis school districts which in its subjective opinion were isolated. School districts designated as such were impliedly not subject to the provisions of Act 445 of 1983 and the standards developed thereunder.

In the First Extraordinary Session of 1983, however, the Legislature passed Act 64. Section 1 of Act 64 establishes

five objective criteria, four of which a school must meet in order to be designated an "isolated school district." Sections 4 and 5 of Act 64 are relevant to your inquiries and provide as follows:

SECTION 4. In order to be eligible for special assistance provided for in this Act, after June 1, 1987, isolated districts must meet the minimum standards for accreditation of public schools prescribed by law and regulation.

SECTION 5. All school districts designated as isolated districts on the effective date of this Act shall continue to be designated isolated districts and shall be eligible for the special assistance provided for herein even though such districts may not be isolated school districts as defined in Section 1 hereof.

Section 6 of Act 64 contained a general repealing clause. Repeal by implication occurs when the Legislature takes up the whole matter anew and covers the entire ground under the subject matter of a former statute and evidently intends it as a substitute, although there may be in the old law provisions not embraced in the new. Smith v. Bentley, 493 F. Supp. 916 (E.D. Ark. 1980). Even if the terms of the two Acts are not expressly repugnant, the latter Act will operate as a repeal of the earlier Act if the latter Act covers the whole subject of the first and embraces new provisions plainly showing that it was intended as a substitute for the first Act. Id. 923. Presumptions are also indulged against any absurd consequences. C. J. S. §316.

In response to your first inquiry, §5 of Act 64 (First Extraordinary Session) does extend a "grandfather status" to school districts designated as isolated prior to the passage of Act 64.

Your second and third inquiries can be answered together inasmuch as they both question whether grandfathered isolated school districts must meet the educational standards developed under Act 445 of 1983. For the following reasons this Office must conclude that grandfathered isolated school districts are not exempt from meeting the minimum standards for accreditation of public schools.

Under Act 445 of 1983, the State Board of Education, utilizing subjective criteria, was charged with designating isolated

school districts. By Act 64 of the 1983 First Extraordinary Session, the General Assembly provided objective criteria for determining isolated status. Realizing that some previously designated schools might lose their isolated status, §5 of Act 64 appears to have been included to avoid such a result. Section 4 of Act 64, however, makes clear that the Legislature intended for isolated school districts to meet the minimum standards for accreditation of public schools in contrast to §3 of Act 445 of 1983 which did not contain such a requirement. Thus, this Office must conclude that Act 64 of 1983 (First Extraordinary Session) specifically and impliedly repealed §3 of Act 445 of 1983.

If an attempt were made to read both statutes together, the result would be absurd. There would be one class of isolated schools designated under §3 of Act 445 of 1983 which did not have to meet minimum standards for accreditation but would be eligible for special funds under both Act 64 and Act 34, Section 6(d) of 1983 (First Extraordinary Session). There would also be a class of isolated schools designated as such under Act 64 which would be required to meet minimum standards but yet only eligible for Act 64 special funds. Hence, this Office must conclude that it was the intent of the General Assembly by Act 64 to repeal §3 of Act 445 of 1983 and require all isolated schools to meet minimum standards for accreditation.

The foregoing opinion which I hereby approve was prepared by Assistant Attorney General C. Randy McNair, III.

Sincerely,



STEVE CLARK
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