



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

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STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-111

May 23, 1985

Hon. N. B. "Nap" Murphy
South Main Street
Hamburg, Arkansas 71646

Dear Representative Murphy:

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

1. Section 3 of Act 349 directs the State Board of Education to set tentative boundaries and it identifies criteria to be followed. Do Sections 4, 5 and 6 impose the same criteria on the State Board as the process goes from tentative boundaries to actual formation of the new Education Service Cooperatives? In other words, can the State Board in June of 1985 authorize the establishment of an Education Service Cooperative with 10 counties included, or one county, or 36 local school districts?

2. Transition: Describe the powers of an existing Executive Committee of the Board of Directors of a Pilot Cooperative with respect to a yet-to-be-created Education Service Cooperative for essentially the same school districts. May an existing Executive Committee (whose power was denied in C.R. McNair's draft opinion of June 1, 1984) operate legally under Acts 103, '83 or 860 of '81? If so, can it bind a new agency's operation after July 1, 1985? (Note Section 20 of Act 349.) Specifically, could this Committee legally sign a contract April 8, 1985 with a person to direct the new Cooperative even before 75% of the local districts have requested it be created and before the June action of the State Board of Education responds to the requests? What is the legal status of such a contract? (It has been signed.)

Section 3 of Act 349 directs that by April 1st, 1985 "the State Board of Education shall establish tentative boundaries

for the system of Cooperatives authorized by this Act."
This section goes on to list criterion (a) through (e) with which the boundaries of the Cooperatives must comply, to-wit:

SECTION 3. By April 1, 1985, the State Board of Education, shall establish tentative boundaries for the system of Cooperatives authorized by this Act. These Education Service Cooperatives will be established so that (a) they include at least three (3), but no more than nine (9) counties; (b) they include at least ten (10), but no more than thirty-five (35) local school districts; (c) they include at least twenty thousand (20,000) pupils in K-12 Average Daily Membership (ADM); (d) they include at least one (1) post-secondary education institution; and (e) there is no more than fifty (50) miles distance or approximately one (1) hour driving time to the area's main offices for ninety percent (90%) of the local school districts. The State Board of Education may make adjustments in the boundaries when criteria such as minimum ADM and maximum driving distances conflict; however, no more than four (4) of the areas formed may contain fewer than twenty thousand (20,000) students. In no case shall any Cooperative be established with fewer than twelve thousand (12,000) pupils.

Section 4 addresses the procedure by which a Cooperative will come into existence, specifically requiring in pertinent part as follows:

The State Board of Education in 1985 shall establish Education Service Cooperatives that meet the criteria in Section 3 of this Act when the resolutions of seventy-five percent (75%) of local boards of education in the Education Service Cooperative's area are filed with the Director of General Education by June 1, 1985. (Emphasis added.)

Section 5 provides for the subsequent alteration of boundaries but, again, uses the terminology "consistent with the provisions of Section 3 of this Act" on two occasions.

Section 6, on the contrary, authorizes the State Board of Education to dissolve Cooperatives after 1990, "the provisions of Section 3 of this Act notwithstanding."

Hence, in response to your first inquiry, it is the opinion of this Office that at least until 1990 the boundaries of Education

Service Cooperatives must comply with the criteria contained in Section 3 of the Act.

Dispositive of your second inquiry is Section 5 of Act 860 of 1981, Ark. Stat. Ann. § 80-474 (Supp. 1983) which provides as follows:

Each cooperative will be governed by a board of directors consisting of one representative of the school board of each cooperating school district. The board shall be empowered to hire a director and other employees and to contract for services, supplies and equipment. Policies for the operation of the Cooperative will be developed by the board of directors and be filed with the State Department of Education as required by law of school districts generally. The Cooperatives will abide by all laws and regulations of the State Department of Education which apply to school districts generally, and will make all reports as required by law and regulation which apply to school districts generally to the State Department of Education.

As is obvious from a reading of Section 5 of Act 860 it is the board of directors of each Cooperative that is empowered to hire a director. No such authority is vested in an Executive Committee. Hence, it is the opinion of this Office that the actions of the Executive Committee as described in your fact situation are void.

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

Sincerely,



STEVE CLARK
Attorney General

JSC:CRM:jk