



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

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STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-179

August 6, 1985

The Honorable Nancy Balton
State Representative
P. O. Box 67
Wilson, Arkansas 72395

Dear Representative Balton:

This is in response to your opinion request wherein you posed the following facts and attendant question.

In May, pursuant to resolutions from the board of directors of Etowah School District #36 and South Mississippi County School District #57, the Mississippi County School Board called an election to consider the question of consolidation of Etowah School District #36 and South Mississippi County School District #57 pursuant to a pre-consolidation agreement executed by the respective boards of directors. That election, which was held the last week in June, was defeated by a vote of approximately 94 to 150 against.

Subsequent to the election a petition was filed with the Poinsett County Board of Education and the Mississippi County Board of Education. The petition has been certified to contain a majority of the qualified electors in the Lepanto School District and 168 of 338 qualified electors in the Etowah District. The figures on the Etowah School District are as supplied by the County Clerk of Mississippi County, Arkansas. The petition requested the consolidation of Etowah School District and Lepanto School District.

Subsequent to the filing of that petition a resolution from the Etowah School Board was filed with the Mississippi County School Board requesting that the upper four grades in the Etowah School District be joined with the South Mississippi County [District] pursuant to provisions of Act 61 of 1983 (First Extraordinary Session). The Etowah School District will remain as a sole and separate entity for grades K-8.

As I had indicated above, I would appreciate the opinion of your office in this matter regarding the legal duty of the Mississippi County Board of Education.

Subsection 1(b) of Act 61 of 1983 (First Extraordinary Session) provides in pertinent part as follows:

Between June 1, 1984, and June 1, 1987, any school district in this State shall have the option to petition the county board of education of the county in which such district is administered to combine the district's top four (4) grades or top six (6) grades with an adjoining district which operate (sic) a high school program which meets minimum accreditation standards or which will likely meet such standards by June 1, 1987. Upon receipt of such petition, the county board of education shall order the combination of the high school program of such district with an adjoining district for purposes of operation of the top four (4) or top six (6) grades. Any school district directed by order of the county board of education to participate in such a combination is hereby mandated to accept the students transferred to such district. (Emphasis added.)

Enclosed for your consideration is an opinion (No. 85-80) previously issued by this Office to Senator Nick Wilson. Although that opinion dealt with §1(c) of Act 61 of 1983 (First Extraordinary Session) the rationale employed therein is applicable to the instant situation. That is, both §§ 1(b) and 1(c) use mandatory language in the form of the word "shall" which removes any discretion on the part of the Mississippi County Board of Education to not act in accordance with the resolution with which it has been presented.

The fact that the patrons of the district have previously voted down the question of total consolidation of Etowah with South Mississippi County provides no basis for a legal bar to the action requested in the school board resolution. Furthermore, the petition of the Etowah electors requesting consolidation with the Lepanto School District does not represent a majority and therefore has no bearing on the actions of the Mississippi County Board of Education.

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

Encl.