



**STATE OF ARKANSAS**  
Office of the Attorney General

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Opinion No. 94-266

August 30, 1994

The Honorable Jim von Grep  
State Representative  
P.O. Box 866  
Bentonville, Arkansas 72712-0866

Dear Representative von Grep:

This is in response to your request for an opinion on the following questions:

1. Does a County Board of Education have the authority, pursuant to Arkansas Code Annotated § 6-12-109(b)(2) to alter a boundary between two (2) school districts by taking an area comprised of several city blocks from one school district and placing it in an adjacent district?

2(a) If the answer to question number 1 is "yes," then what is the procedure "in accordance with the law" that the County Board must follow to accomplish such a boundary change?

(b) Would the boards of the two (2) school districts involved be required to approve, or in any way act upon, the boundary change?

(c) How must such a boundary change be initiated--by petition? If so, what are the legal requirements for such a petition?

(d) What other procedures would the County Board be required to follow?

3. If the answer to question number 1 is "no," is there a procedure to effect such a boundary change? If so, what is the procedure?

It is my opinion, in response to all three of your questions above, that a county board of education does not have the authority to effect a "boundary change" by removing territory from one district and placing it into another at its will. Such an action would in all likelihood be deemed an "annexation" of territory and must be accomplished in compliance with A.C.A. §§ 6-13-1201 to -1208 (Repl. 1993).

The statute you reference, A.C.A. § 6-12-109, provides in subsection (b) that county boards of education have the authority:

(b)(2) To form local school districts, change boundary lines of school districts, dissolve school districts and annex the territory of such districts to another district, create new school districts, and perform all other functions regarding changes in school districts, in accordance with the law. [Emphasis added].

This section was originally enacted in 1931. In 1991, the laws governing the consolidation, annexation and formation of school districts were "clarified" by Act 966 of 1991. This act is now codified at A.C.A. §§ 6-13-1201 to -1208. In 1993, many of the former laws governing annexation and consolidation were repealed by Act 294 of 1993. Subchapter twelve of chapter thirteen of title six now provides the relevant law with regard to annexation.

Thus, the "law" with regard to annexation and consolidation of school districts is now found in A.C.A. §§ 6-13-1201 to -1208. At some point, the change of a "boundary line" of a school district will amount to an annexation of territory of one district by another. This was recognized as early as 1932, in *School District No. 10 v. County Board of Education*, 185 Ark. 328, 47 S.W.2d 606 (1932), where the court held that a county board of education is without jurisdiction to take a

substantial part of one school district and annex it to another district under the guise of adjusting the boundaries, where no petition of a majority of the qualified electors of the former district was filed and no election on the question was held authorizing the change of boundaries, as was required by the law at that time. This principle was recognized as recently as 1978, in *Genoa Central School District No. 1 v. Board of Education*, 263 Ark. 393, 565 S.W.2d 129 (1978), where the court, in response to frustration over the failure of the legislature to provide any statutory guidance over the definition of a "substantial amount of territory" held that the proper procedure to be followed in all cases involving boundary changes made for the purpose of transferring territory from one district to another is by the procedures provided in former Ark. Stat. Ann. 80-404 (later A.C.A. § 6-13-201, now repealed), which required consent of a majority of the electors. (The County Board purported to proceed under former Ark. Stat. Ann. 80-412, later A.C.A. § 6-13-213 (now repealed), which granted the county boards certain authority to change boundary lines.)

Thus the latest Arkansas case on the question of when a "boundary change" becomes an "annexation of territory" for purposes of applying statutory requirements attendant thereto, states that any time territory is taken from one district and placed in another, the annexation laws apply. Although the statutes have changed since the handing down of the *Genoa* decision, in my opinion the principle set out in that case, which was originated some forty years earlier in the *School District No. 10* case, is still sound. A county board of education may not, under the guise of a "boundary change" pursuant to A.C.A. § 6-12-109(b)(2), move a portion of territory from one district to another without complying with the statutory requirements for annexation. This conclusion is buttressed, with reference to A.C.A. § 6-12-109, by that statute's reference to the fact that the boundary change must be accomplished "in accordance with the law." This law, in my opinion, is now A.C.A. §§ 6-13-1201 to -1208. I have enclosed a copy of this law which should answer each of the questions you have posed with regard to the proper procedure to be followed to effect this "boundary change."

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The foregoing opinion, which I hereby approve, was prepared by Deputy Attorney General Elana C. Wills.

Sincerely,

A handwritten signature in black ink that reads "Winston Bryant". The signature is written in a cursive style with a large, sweeping initial "W".

WINSTON BRYANT  
Attorney General

WB:ECW/cyh

**6-13-1105. Funds.**

Any state minimum foundation aid which would heretofore be given to the participating school district shall be paid to the model rural school consortium for each child within that district's boundaries who attends school at the model rural school consortium. Any local moneys attributable to that child shall remain with the original school district.

**History.** Acts 1989, No. 886, § 5.

**6-13-1106. Criteria — Contingency.**

(a)(1) The State Board of Education shall adopt and publish criteria setting forth the application process to be followed by any educational consortium, and said board shall have the authority to limit the number of applicants.

(2) The State Board of Education shall also determine which applications are accepted in accordance with its published criteria.

(b) Implementation of the provisions of this subchapter shall be contingent upon appropriation and funding necessary to allow the State Department of Education and the State Board of Education to carry out the duties assigned to the board and the department in this subchapter.

**History.** Acts 1989, No. 886, §§ 6, 8.

### SUBCHAPTER 12 — CLARIFICATION OF LAWS CONCERNING CONSOLIDATION, ANNEXATION, AND FORMATION

## SECTION.

- 6-13-1201. Definitions.  
6-13-1202. Conditions under which annexation may begin.  
6-13-1203. Special election.  
6-13-1204. Effective date.  
6-13-1205. Board of directors — Composition — Term — Election.  
6-13-1206. Creation of a district —

## SECTION.

- Where part of a district taken.  
6-13-1207. Annexation or consolidation not to negatively impact state-assisted desegregation.  
6-13-1208. Notice of boundary changes.

**A.C.R.C. Notes.** References to "this chapter" in subchapters 1-11 may not apply to this subchapter which was enacted subsequently.

**Effective Dates.** Acts 1991, No. 966, § 11: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that confusion has arisen concerning the laws on consolidation and annexation of school districts; that current laws are difficult to implement due to the un-

certainty of which law should be applied; that this act will assist school districts in this state by providing a clear procedure for seeking and implementing consolidation or annexation; that the failure to make this act effective immediately might prevent a school district from seeking consolidation or annexation until the school election in 1992. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace.

health and safety shall be in full force and effect upon its passage and approval."

### 6-13-1201. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Affected district" means a school district which gains or loses territory or pupils as a result of annexation or consolidation;
- (2) "Annexation" means the joining of a school district or territory of a school district with a receiving district;
- (3) "Consolidation" means the joining of two (2) or more school districts or territories from two (2) or more school districts to create a new single school district;
- (4) "Controlling county board" or "controlling county board of education" means the county board of education of the county in which the district is administered;
- (5) "Receiving district" means the school district or districts which receives territory or pupils, or both, under an annexation; and
- (6) "Resulting district" means the school district created under the annexation or consolidation.

History. Acts 1991, No. 966, § 2.

### 6-13-1202. Conditions under which annexation may begin.

(a)(1) Annexation of a school district may begin under the following conditions:

(A) Upon petition signed by a majority of the qualified electors of the district;

(B) Upon a vote in an election on the question by a majority of those voting in the election; or

(C) Upon resolution adopted by the district board of directors that the district no longer meets or cannot continue to meet the minimum standards for accreditation, or their successor.

(2) Consent to annexation of a school district by the receiving district shall be evidenced by:

(A) Resolution adopted by the receiving district board of directors;

(B) A petition signed by a majority of the qualified electors of the receiving district; or

(C) Vote in an election on the question by a majority of those voting in the election.

(3)(A) Except as provided in subdivision (3)(B) of this section, the controlling county board of education shall order an annexation upon consent of the receiving district.

(B)(i) If annexation begins under subdivision (a)(1)(C) of this section, the controlling county board of education shall publish notice of a public hearing on the petition.

(ii) The public hearing shall occur no sooner than twenty (20) days and no later than thirty (30) days following receipt of the petition.

(iii) The date, time, place, and purpose of the public hearing shall be clearly stated in a newspaper of general circulation in the affected districts once a week for two (2) consecutive weeks.

(iv) Following the public hearing, upon a finding that the annexation would be in the best interests of the students in the district, the controlling county board of education may order the annexation of the district with the receiving district.

(b) Consolidation of a school district may begin under the following conditions:

(1) Upon petition signed by a majority of the qualified electors of the resulting district;

(2) Upon a vote in an election on the question by a majority of those voting in each district; or

(3) Upon resolution adopted by the board of directors of each school district to the county board to seek an election on consolidation.

(c)(1) The county boards of education shall not merge, add, or annex any territory or district to, or consolidate any territory or district with, another school district or districts which are not geographically contiguous unless granted permission to do so by the State Board of Education under the limited circumstances as provided in this subsection.

(2) The county boards of education may petition the State Board of Education for permission to merge, annex, or consolidate school districts which are noncontiguous geographically. The State Board of Education may grant permission for noncontiguous school districts to be merged, annexed, or consolidated if the county board seeking permission can provide evidence that the merger, annexation, or consolidation will:

(A) Result in the overall advancement of the level of the educational curriculum for all the school districts involved; or

(B) Provide a significant advantage in transportation costs or travel to all the school districts involved.

**History.** Acts 1991, No. 966, § 3; 1993, No. 294, § 7.

**Amendments.** The 1993 amendment added (c).

### **6-13-1203. Special election.**

(a)(1) An election on the question of annexation or consolidation shall be held at a special election called by the controlling county board of education.

(2) The controlling county board of education shall prepare the form of ballot for any election on the formation of school districts and the dissolution thereof or the annexation of territory as herein provided.

(b) Upon receipt of a resolution by the district board of directors for annexation or consolidation of the school district, or upon petition of at least ten percent (10%) of the qualified electors of the district, the

controlling county board of education shall call a special election on the question of annexation or consolidation.

(c)(1) All petitions shall be filed with the county clerk of the county in which the largest portion of the resulting district shall lie, who shall, within fourteen (14) days of receipt, certify the signatures on the petition and notify the county board of education.

(2) Any elector signing the petition may have his name stricken from the petition, upon written demand, at any time prior to the final action of the county board upon the petition.

(d)(1) Upon receipt of the certified petition, the controlling county board of education shall consider whether the petition is signed by the requisite number of electors. For the purpose of determining whether the petition contains a majority of the qualified electors of each district, a majority shall be determined as of the date the petition is considered by the controlling county board of education.

(2) Upon receipt of the certified petition, the controlling county board of education shall set a date for the election and file notice of such election with the county clerk, and shall publish notice of same, clearly stating the date and purpose, once a week for three (3) weeks, the last date not more than five (5) days prior to the election, in a newspaper having general circulation in the resulting district.

(e) Any action for the formation of a new school district or a change of the boundaries of existing school districts shall be accompanied by a map showing the proposed changes.

**History.** Acts 1991, No. 966, § 4; 1993, No. 294, § 7.

**Amendments.** The 1993 amendment inserted (a)(2), (c)(2), and (d)(1); redesignated former (d) as (d)(2); deleted "or, if

the petition is received prior to sixty (60) days before the annual school election, may appear on the ballot of the annual school election of the district" from the end of (a)(1); and added (e).

**6-13-1204. Effective date.**

(a) Unless an agreement is reached to the contrary, the effective date of the annexation or consolidation shall be the July 1 following the order of the controlling county board directing the annexation or the consolidation.

(b)(1) The boards of directors of the affected districts may enter into an agreement, executed by the president and secretary of each district, prescribing the date of the annexation to the receiving district or the formation of the new district.

(2) Such agreement may contain the number of members of the board of directors of the resulting district and prescribe the number of directors of the district who shall reside in territory contained in the affected districts.

(3) An executed copy of the agreement shall be filed with the county clerk of each county which contains territory or a portion of the territory of each affected school district.

History. Acts 1991, No. 966, § 5.

**6-13-1205. Board of directors — Composition — Term — Election.**

(a) Unless the boards of directors agree otherwise, the members of the board of directors of the affected districts shall continue to serve as and constitute the board of directors of the resulting district until the next regular school election.

(b)(1) Unless the boards of directors agree otherwise, the board of directors of the resulting district shall be composed of nine (9) members following annexation or consolidation, and the term of a member of the board of directors shall not exceed five (5) years.

(2) The boards by agreement may establish a board of directors composed of five (5) or seven (7) members.

(3) The establishment of a board of directors with an even number of members following annexation or consolidation is hereby prohibited.

(c)(1) Unless an agreement is reached between the boards of directors of the affected districts, the board of directors of the resulting district shall be elected from single-member zones of substantially equal population based upon the most recent census information and from which racial minorities may be represented on the board in proportions reflected in the district as a whole.

(2) Any agreement between the boards of directors of the affected districts, regarding the board of directors of the resulting districts must provide for the eventual election of board members by zones within a reasonable time.

(d) At the first meeting of the board, the members shall determine their terms by lot so that no more than two (2) members' terms expire during any one (1) year.

(e) Any vacancy on the board shall be filled in the manner provided by law.

History. Acts 1991, No. 966, § 6.

**6-13-1206. Creation of a district — Where part of a district taken.**

(a) Any resulting district created under this section shall succeed to the property of the district dissolved, shall become liable for the contract and debts of such district, and may sue and be sued therefor.

(b) Where territory less than the entire district is annexed or consolidated to a district, the receiving district shall take the property of the district from which the territory was taken, as the county board of education shall deem proper, and shall be liable for that part of all indebtedness of the district from which the territory was taken as shall be assigned to them by the county board of education unless otherwise approved by majority vote of the affected school district boards of directors.

History. Acts 1991, No. 966, § 7.

**6-13-1207. Annexation or consolidation not to negatively impact state-assisted desegregation.**

(a) No county board of education shall order any annexation or consolidation under this subchapter or any other act, or combination under any act, which hampers, delays, or in any manner negatively affects the efforts of the State of Arkansas to assist a district or districts in this state in the desegregation of the public schools of this state.

(b) Prior to the entry of any order hereunder, the county board of education shall seek an advisory opinion from the Attorney General concerning the impact of the proposed annexation or consolidation on the effort of the state to assist a district or districts in desegregation of the public schools of this state.

(c) Any order of annexation or consolidation or combination which violates the provisions of this section shall be null and void.

(d) Notwithstanding other provisions of state law granting immunity from suit or liability, members of a county board of education which fail to comply with the requirements of this section shall be subject to personal liability for such action.

History. Acts 1991, No. 966, § 1.

**6-13-1208. Notice of boundary changes.**

(a) On the change of any boundaries of school districts, notice:

(1) Shall immediately be given to the State Board of Education and mailed to the president of the board of directors in each district affected; and

(2) Shall be filed with the county board of education or the board's designee.

(b) It shall be the duty of the controlling county board to immediately make such changes in the maps of the school districts of the county to properly show the changes of boundaries.

History. Acts 1993, No. 294, § 7.

**CHAPTER 14  
SCHOOL ELECTIONS**

SECTION.

6-14-101. Applicability of general election laws.

6-14-102. Annual school election date.

6-14-103. [Repealed.]

6-14-104. Special election called by county board of education.

6-14-105. Special election on petition of

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school district board of directors.

6-14-106. Polling places.

6-14-107. [Repealed.]

6-14-108. Voter qualifications.

6-14-109. Notice of elections.

6-14-110. Secret ballot.