

MAINE STATE LEGISLATURE

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Kermit S. Nickerson, Commissioner

Education

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Addition to School Administrative Districts

FACTS:

Six Penobscot County Towns have indicated an interest in joining School Administrative District #25. The State Board of Education favors the enlargement of this District, but, up to this time, refused approval of a vote due to the fear that the District might not be willing to accept all six communities and that one or more of the Towns might be left in an isolated and educationally unsound position. The State Board would favor the additions if assured that all would join and be accepted. The State Board of Education is charged by statute with the responsibility of drafting the agreement upon which the Towns and the District may vote. R. S., c. 41, § 111-P. One of the Towns has suggested to the State Board that the agreement specify that all six Towns be treated as a single unit; that an affirmative vote in each Town be required as a condition precedent to the presentation of the question to the District; and that the District be required to accept all or none of the Towns.

The applicable provision of law is set forth below.

"Sec. 111-P. Additions to and dissolution of School Administrative Districts. The residents of and the territory within any municipality not originally in an administrative district may be included by proceeding as follows: The school committee of the municipality wishing to join with an existing School Administrative District may file an application with the School District Commission on a form to be prepared by the commission. The School District Commission shall receive the application, make a study of the necessity for joining this municipality with an existing School Administrative District and recommend an agreement by which the municipality may become a member. This agreement shall be forwarded to the secretary of the School Administrative District and to the clerk of the municipality desiring to join the district.

Within 45 days after receipt of said agreement by the clerk of the municipality desiring to join the district, said municipality, at a regular or special town meeting or city election, shall vote on the agreement in the following form:

"Article _____: To see if the municipality will vote to join School Administrative District No. _____ as a participating municipality of the district under the following terms and conditions: (Set forth agreement recommended by the Maine School District Commission.)

"The town clerk of the municipality desiring admission shall send a certified copy of the results of the vote to the secretary of the School Administrative District. If the board of directors finds that the vote was in the affirmative the directors shall call a district meeting in accordance with section 111-F to vote upon the following article:

"Article _____: To see if the district will vote to admit the municipality of _____ into School Administrative District No. _____ as a participating municipality of the district under the following terms and conditions: (Set forth agreement recommended by the Maine School District Commission.)

"The clerks of all the municipalities voting on the above questions shall forward to the School District Commission a certified report of the total number of affirmative and negative votes cast on the above questions. Upon receipt of the results of the voting from all municipalities, the commission shall meet, compute and record the result of the voting and shall notify by registered mail the town clerk of the municipality seeking to join the School Administrative District and the secretary of the School Administrative District of the results of said vote. If the commission finds that a majority of the voters voting on the question in the district and a majority of the voters voting

on the question in the municipality desiring to join the district favor admission of the municipality into the district, the commission shall make a finding to that effect and record the same upon its records. The commission shall, after making its findings, issue an amended certificate for School Administrative District No. _____ which shall be filed in the same manner as the original certificate. The issuance of said amended certificate by the School District Commission shall be conclusive evidence of the admittance of that municipality to the School Administrative District."

R. S., c. 41.

QUESTION:

Whether R. S., c. 41, § 111-F authorizes the State Board of Education to draft an agreement specifying, inter alia, that the subject municipalities shall be treated as a single unit by the municipalities and the District in their respective actions (voting) upon the question of district expansion?

ANSWER:

No.

REASON:

On the subject of District enlargement, the State Board of Education possesses only those powers as have been delegated by the Legislature.

"The legislature may delegate to officers, boards, or other subordinate agencies the power to create, organize, or alter school districts and other local school organizations, (here citing a Constitutional law reference) and such subordinate agency so designated or established has such powers, and such only, with respect to the creation, establishment, and alteration of school districts and organizations as may be conferred upon it by statute. . . ." (Parenthesis supplied) 78 C.J.S., Schools & School Districts, § 27, (b) (1).

The reference statute authorizes singular action of the material municipality (or municipalities) and the material district upon the subject of district enlargement. Note that Section 111-F does not permit the filing of a single application embracing plural municipalities. Note also that each municipality votes upon its own question of participation. Too, note that a district's vote is given respecting each municipality which has favored a merger with the entity. Further elaboration will serve no useful purpose.

Although the State Board of Education is authorized to "recommend an agreement by which the municipality may become a member," that agreement must not contain provisions which are in conflict with the general law of this State. Further, statutory expression covering points of procedure need not be made a part of the agreement.

Your memorandum states that: "This idea (joint treatment) is somewhat in accord with the principle enunciated in the law for formation of a district." (Parenthesis mine.) R. S., c. 41, § 111-F. There is a difference of "mechanics" in the original formation of a district and the enlargement of an existing district. The former requires a plural participation of municipalities, the latter does not.

"Sec. 111-F. School Administrative Districts.
The residents of the territory within 2 or more municipalities may form a School Administrative District. . . ." R. S., c. 41.

"Sec. 111-F. Additions to . . . School Administrative Districts. The residents of and the territory within any municipality not originally in an administrative district may be included. . . ." R. S., c. 41.

APPENDIX

Where enlargement of school district is proposed, there should be separate elections in the district and in the territory to be added. - Chambers v. Housel, 233 N.W. 502, 211 Iowa 314.

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