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February 12, 1975

H. Sawin Millett, Jr., Commissioner

Educational and Cultural Serv.

John W. Benoit, Jr., Deputy

Attorney General

School Union #76

This is a reply to your interdepartmental memorandum dated January 23 posing eight questions relating to School Union #76. The situation giving rise to your request for an opinion is as follows: School Administrative District #73 dissolved in the summer of 1973 and four^{1/} of the five towns that comprised the District, thereafter "formed" School Union #76.^{2/} In October of 1973, two of the reference four towns, Deer Isle and Stonington, formed a community school district. Community school districts are authorized to employ a superintendent of schools. 20 M.R.S.A. § 359. The provisions of 20 M.R.S.A. § 151, sub-§ 4, provide that if a community school district has fewer than 35 teachers, the Commissioner of Educational and Cultural Services may combine the district with other administrative units for the purpose of employing a superintendent of schools.^{3/} The Deer Isle-Stonington Community School District has more than 35 teachers.

At a recent meeting of the membership of School Union #76, a vote was taken on the question whether the present Superintendent should be rehired, and the Committee voted 8 to 4 not to rehire him. At this point, four of the six members of the School Union #76 Committee representing the community school district board, stated their opinion that because the community school district employed the majority of the teachers (in the union towns) and paid more than half of the Superintendent's salary that the community school district board could exercise a veto power in regard to the 8 to 4 vote. These circumstances have resulted in the presentment of several questions which will be answered in the order stated in your memo.

1. "Did the formation of the Community School District of Deer Isle and Stonington invalidate School Union #76?"

For the purposes of this question, we assume School Union #76 was formally created. Of course, if School Union #76 was not formally created, then formation of the reference community school district

1/ Brooklin, Deer Isle, Sedgwick, Stonington.

2/ Although request was made of the Department of Educational and Cultural Services for formal evidence as to the creation of School Union #76, none has been found.

3/ Before doing so, the Commissioner must obtain the approval of the community school committee as well as the approval of the school officials of the other administrative units involved.

did not "invalidate" the Union. Since the Deer Isle-Stonington Community School District employed more than 35 teachers, it qualified to employ a superintendent of schools. 20 M.R.S.A. § 151, sub-§ 2. Also, see the provisions of 20 M.R.S.A. § 359 authorizing a community school committee to select a superintendent of schools. Following creation of the Deer Isle-Stonington Community School District, action should have been taken either by the Commissioner of the Department of Educational and Cultural Services pursuant to the provisions of 20 M.R.S.A. § 151 or by the community school committee pursuant to the provisions of 20 M.R.S.A. § 359 to reconstitute the school union for purposes of employing a superintendent of schools. To the extent that the union was not reconstituted, and again assuming that the union was formally created in the first place, we doubt that School Union #76 existed following creation of the Deer Isle-Stonington Community School District.

2. "Can a community school district, which employs more than 35 teachers, and several single towns be a legally constituted school union?"

Title 20, Section 359 authorizes a community school committee to employ its own superintendent for the community school or schools.

"The superintendent of the community school or schools shall be selected by the community school committee and shall have the same duties, power and responsibilities with respect to said school or schools and their committee as are prescribed by law for public school superintendents."

The provisions of 20 M.R.S.A. § 151, sub-§ 1, specify that existing supervisory unions employing over 35 teachers shall not be regrouped unless the proposed regrouping shall have first been approved by a majority of the school committee members in the administrative units involved. Moreover, the provisions of 20 M.R.S.A. § 151, sub-§ 4, specify that when existing community school districts employ less than 35 teachers, the Commissioner may order a combination of types of administrative units for the purpose of forming a supervisory unit provided such combination is approved by the community school committees and the school officials of the other administrative units involved.

Thus, a community school district which employs more than 35 teachers may be combined with other administrative units provided there is approval of such combination by all the school systems involved.

3. "Who decides that such a union shall be so constituted? The Commissioner? The school committee members of each administrative unit? Or both?"

By use of the words "such a union," we assume you mean one comprised of a community school district and separate municipalities. According to the provisions of 20 M.R.S.A. § 151, it is the duty of the Commissioner of Educational and Cultural Services to "adjust the grouping of school administrative units within the state" into supervisory unions in accordance with statutory criteria, subject to approval of the school systems involved. Therefore, the answer to this question is that the decision rests upon affirmative action by the Commissioner in conjunction with affirmative action by the school officials of the school systems involved.

4. "If a community school district does not meet the requirements of Section 151 for the formation of a supervisory union, must it be joined with other towns for the purpose of hiring a superintendent?"

The question uses the word "must," viz, must the community school district be joined with other towns if the district does not meet the requirements of 20 M.R.S.A. § 151 respecting the number of teachers it employs. The provisions of 20 M.R.S.A. § 151, sub-§ 4 control.

"Where School Administrative Districts or community school districts exist and they employ less than 35 teachers, the commissioner may order the combination of any type of administrative units to form a supervisory unit, if such combination as is proposed is approved by the school committees, community school committees and school directors involved."

Whenever a community school district does not meet the requirements of § 151, the Commissioner of Educational and Cultural Services may combine the district with other school systems provided the community school committee involved and the school officials of the other administrative units involved approve the combination. Whether such a combination "must" be realized is a decision for both the Commissioner and appropriate local school officials.

5. "If a community school district meets all requirements for the formation of a supervisory union, may its directors elect to form a union with other towns?"

This question appears to be another way of stating question #2. The answer to question #2 equally applies to this question.

6. "If a community school district decides to employ its own superintendent of schools, what is the status of the two towns no longer included in the supervisory union with the community school district?"

The two towns would not be a part of a supervisory union. In such instances, the school officials of the two municipalities should contact the Commissioner of Educational and Cultural Services, requesting him to exercise his statutory authority in 20 M.R.S.A. § 151.

7. "What alternatives are available to these two towns under the law?"

In the first instance, this question involves an administrative matter for the Commissioner and the local school officials involved. The next step, whether proposed alternatives are available in light of 20 M.R.S.A. § 151, is a question of law we would entertain when facts are known.

8. "If School Union #76, consisting of Brooklin, Sedgwick, and the Community School District of Deer Isle-Stonington, is a legal entity, does the Community School District have veto power in the election of a superintendent of schools by virtue of employing more than half of the teachers and paying more than half the salary of the superintendent?"

In light of the answers given to the first question, no answer is required respecting this question.

JOHN W. BENOIT, JR.
Deputy Attorney General

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