

it is not denied or taken away by anything in the Constitution of the United States, including the amendments thereto."

It would seem that the statute would not violate either the equal protection or the due process clauses of the Constitution of the United States or of the State of Michigan. It would further seem that the requirements of the Michigan Constitution of 1963 as contained in Article I, § 20, would be satisfied by the proposed bill.

FRANK J. KELLEY,
Attorney General.

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SCHOOLS: Districts – Annexation and Consolidation.

Act 269, P.A. 1955, as amended, authorizes the consolidation and annexation of noncontiguous school districts upon approval of the superintendent of public instruction and the electors as provided by law.

No. 4193

February 5, 1964.

Hon. David F. Upton
State Representative
Capitol
Lansing, Michigan

You have requested my opinion on the following question:

May a school district consolidate with or become annexed to another school district, which is not contiguous to it?

Act 269, P.A. 1955, as amended, being C.L.S. 1961 § 340.1 et seq.; M.S.A. 1959 Rev. Vol. § 15.3001 et seq., is known as the School Code of 1955.

Chapter 3, Part 2 of the School Code of 1955, as amended by Act 248, P.A. 1963, provides for the consolidation of school districts.

Sec. 401 thereof states in part:

"Any 2 or more school districts, except districts of the first and second class, in which the total number of children between the ages of 5 and 20 years, is 75 or more, may consolidate to form a single school district as hereinafter provided."

The legislature has made provision for the annexation of one school district to another in Chapter 4, Part 2 of the School Code of 1955.

In Sec. 431 of the Chapter, as last amended by Act 97, P.A. 1962, the legislature has specified that "any school district shall become annexed to another school district whenever the board of the annexing district shall have by resolution so determined and a majority of the qualified school electors of the district becoming annexed, voting on the question at an annual or special election shall have approved such annexation."

Before the electors of any school district desiring to become consolidated can vote upon consolidation, the proposed consolidation must be approved

by the superintendent of public instruction under Sec. 402 of the School Code of 1955. The superintendent of public instruction must likewise approve a proposed annexation before any election for annexation shall be held under Sec. 431, School Code of 1955. Thus, the statute vests discretionary power in the superintendent of public instruction to approve proposed consolidation or annexation of school districts. Such discretionary power was upheld by the Michigan Supreme Court in *Bridgheampton School District No. 2 v. Superintendent of Public Instruction*, 323 Mich. 615 (1949).

A reading of the provisions of Chapters 3 and 4 of Part 2 of the School Code of 1955 fails to reveal any requirement that only contiguous school districts may consolidate into a single school district under Chapter 3 and only a contiguous school district may annex to another school district pursuant to Chapter 4.

The word "any" as appearing in a statute was construed by the Michigan Supreme Court to mean "every" in *Hopkins v. Sanders*, 172 Mich. 227 (1912).

Legislative intent is determined by examining the whole statute and comparing one section with another, particularly those sections of the statute in the immediate connection in which it occurs. *In re Corby's Estate*, 154 Mich. 353 (1908).

In Chapter 5, Part 2 of the School Code of 1955, the legislature has authorized the transfer of territory between school districts, but "only territory contiguous to a district may be transferred" under Sec. 461 of the Chapter.

It must follow that the legislature in authorizing the consolidation of school districts under Chapter 3, Part 2 of the School Code of 1955 and annexation of one school district to another district as specified in Chapter 4, Part 2 of the School Code of 1955, did not impose any requirements of contiguity of school districts.

Through the process of consolidation or annexation the number of Michigan school districts in existence at the time of the adoption of the School Code of 1955 has been reduced from 3858 to 1499 as of the time of writing of this opinion. Some of the annexations and consolidations that have been approved by school electors represent school districts that were noncontiguous. Such annexation or consolidation of noncontiguous school districts was effected only after approval of the proposed consolidation or annexation of noncontiguous school districts by the superintendent of public instruction.

Courts will give due consideration to the construction of a statute by those in charge of the administration of the statute. *Wyandotte Savings Bank v. State Banking Commissioner*, 347 Mich. 33 (1956).

Therefore, it is my opinion that the School Code of 1955 authorizes the consolidation of noncontiguous school districts and the annexation of a school district to a noncontiguous school district upon approval of the superintendent of public instruction and the electors as provided by law.

FRANK J. KELLEY,
Attorney General.