

SCHOOLS: Districts — Conditions upon annexation.

The board of education of the annexing school district is without lawful authority to impose as a condition for its consent to proposed annexation that the school district seeking annexation under Sec. 431, Act 269, P.A. 1955, as amended, first be politically annexed to the area comprising the annexing school district.

No. 4258

February 20, 1964.

Hon. Roy H. Brigham
State Representative
Capitol
Lansing, Michigan

You have requested my opinion on the following question:

Can a local school board legally establish a policy requiring political annexation before school annexation can take place if the local school board is partly financed by state aid shared funds?

Since the land area of a school district is also a part of a political subdivision, by political annexation, I assume that you mean annexation for governmental purposes; for example, requiring the land area of the annexed school district to be politically annexed to a city for governmental purposes, in which the annexing school district is located, in whole or in part.

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.

Section 431 of the School Code of 1955, as amended by Act 97, P.A. 1962, authorizes any school district to become annexed to another school district whenever the board of education of the annexing district shall by resolution consent to the proposed annexation, and a majority of the qualified school electors of the district becoming annexed vote favorably to approve annexation.

The legislature has prescribed certain conditions precedent that may be imposed by the board of education of the annexing district in giving its consent to proposed annexations of school districts and unless the conditions are satisfied the annexation does not become effective.

Pursuant to Sec. 433 of the School Code of 1955, the annexing district may require that the annexation of a school district shall be effective only upon the qualified school electors of the annexing district voting a tax limitation increase to pay for the bonded indebtedness of the school district to be annexed, and the school tax electors of the annexing school district approve the assumption of such bonded indebtedness.

Consent to a proposed annexation may be given by the board of education of the annexing district on condition that the school tax electors of the district to be annexed assume the bonded indebtedness of the annexing district, and where necessary the school electors of the district to be annexed vote an increase in the tax limitation for the same amount and for the same years as is still in effect in the annexing district to pay for the bonded

indebtedness so assumed, as set forth in Sec. 435 of the School Code of 1955, as amended.

Consent to a proposed annexation may be given by the board of education of the annexing district, subject to mutual assumption of debt by the school tax electors of both the annexing district and the district to be annexed, with necessary increases in limitation on taxes to be also voted where both the annexing school district and the school district to be annexed have bonded indebtedness outstanding, in accordance with Sec. 437 of the School Code of 1955, as amended.

Finally, such proposed annexation may also be made subject to favorable vote in the district to be annexed to increase the tax limitation for either building and site or general fund purposes for the same amount and years as still in effect in the annexing district, to be binding in the annexed district as provided in Sec. 445 of the School Code of 1955, as amended.

Thus, these portions of the School Code of 1955, as amended, make it abundantly clear that the legislature has expressly prescribed the conditions which may be imposed by the board of education of the annexing district in giving its consent to a proposed annexation in accordance with the law. The School Code of 1955, as amended, does not contain the provision that consent to a proposed annexation be made conditional upon political annexation to the area comprising the annexing school district before school annexation can take place.

It must be concluded, therefore, that the power to condition consent to a proposed annexation has been explicitly enumerated by the legislature and the power specifically conferred by statute cannot be extended by inference. *Sebewaing Industries, Inc. v. Village of Sebewaing*, 337 Mich. 530 (1953).

To read the provisions of the School Code of 1955 to authorize a board of education of the annexing district to consent to a proposed annexation conditioned upon political annexation is to set a limitation into the statute which has not been placed there by the legislature. *Detroit Edison Company v. East China Township School District No. 3*, 366 Mich. 638 (1962).

The law is well settled in Michigan that education is not a part of local self-government of a municipality except as the legislature may choose to make it such. Control of the public schools is a state matter vested in the state legislature by the Constitution. Thus, it is the policy of the state to control the school systems under state laws by local state agencies organized with power to fulfill the functions given them by the legislature. *School District of the City of Lansing v. State Board of Education*, 367 Mich. 591 (1962).

Therefore, it is my opinion that a board of education of a school district has not been granted authority by the legislature to require political annexation as a condition for its consent to a proposed annexation under the provisions of the School Code of 1955, as amended, and is without authority to establish a policy requiring political annexation as a condition to its consent to a proposed school annexation.

FRANK J. KELLEY,
Attorney General.