



STATE OF KANSAS

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Curt T. Schneider,
Attorney General

July 15, 1976

ATTORNEY GENERAL OPINION NO. 76-216

Merle R. Bolton
Commissioner of Education
Kansas State Department of Education
Kansas State Education Building
120 East 10th Street
Topeka, Kansas 66612

Re: Schools--State Board of Education--Transfer of
School District Territory

Synopsis: The word "substantially," as used in K.S.A. 72-7108 relative to the transfer of territory between unified school districts, must be defined to be the equivalent of a majority of the physical acreage. In other words, the state board of education is prohibited from considering or receiving a petition for transfer of territory if more than half of the territory sought to be transferred in the later petition has been considered in another petition for transfer by the state board within the preceding two years.

It would be entirely proper for the State Board of Education to enact an administrative regulation defining the word "substantially" upon such terms, factors, or conditions as deemed appropriate, in accordance with this opinion.

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Dear Commissioner Bolton:

The transfer of territory between unified school districts is governed by K.S.A. 72-7108 which provides in pertinent part:

" . . . Whenever a petition for transfer of territory has been denied by the state board of education, no peititon for transfer of substantially the same territory shall be received or considered by the state board of education for a period of two (2) years."

The factual history of the matter under consideration here reveals the following facts. In 1975 a petition for transfer of territory was presented to the state board by Unified School District No. 462, Cowley County, Kansas (Central of Burden) for ninety (90) sections of land situated in Unified School District No. 282, Elk County, Kansas (West Elk). The state board transferred only forty (40) sections of the land petitioned leaving fifty (50) sections with West Elk.

Unified School District No. 285, Chautauqua County, Kansas (Cedar Vale) has petitioned for twelve (12) of said fifty (50) sections that were not transferred to Central of Burden. West Elk, which has the land, is opposed to the transfer. Thus, the crucial question becomes what meaning is to be attributed to the phrase " . . . substantially the same territory."

The power to effectuate changes in boundaries between school districts is an exclusive perogative of the Legislature. Unified School District No. 335 v. State Board of Education, 206 Kan. 229, 478 P.2d 261 (1970). The plenary power to regulate the transfer of school district territory may be delegated to an administrative agency. School District v. Wolf, 78 Kan. 805, 98 P.2d 805 (1908). K.S.A. 72-7108 contains such a delegation to the Kansas State Board of Education. However, in the exercise of such delegated authoirty, the Board acts as the agent of the Legislature, and thus, the statute vesting the authority also imposes limits on the power. 68 Am. Jur. 2d., Schools, § 24. (2nd Ed. 1973).

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The Legislature has not in any manner undertaken to provide an indicator as to the intended definition to be applied to the word "substantially" as it is used in K.S.A. 72-7108. Arguably, the word could be construed to connote a certain specified minimum percentage of assessed valuation or acreage of the territory under consideration for transfer. In the absence of any clear legislative intent as to the questioned phrase's meaning, I am constrained to conclude that the word "substantially", as used in K.S.A. 72-7108 relative to the transfer of territory between unified school districts, must be defined to be the equivalent of a majority of the physical acreage. In other words, the State Board of Education is prohibited from considering or receiving a petition for transfer of territory if the territory which is sought to be transferred in the later petition represents more than half of the territory which has been considered in another petition for transfer by the State Board within the preceding two years. The limitations in K.S.A. 72-7108 are placed solely upon the transfer of territory. The fact that the interested school districts in the later petition may differ from those in the earlier petition does not alter the rule. As applied to the factual setting prompting your request, the twelve sections sought to be transferred by Unified School District No. 285, Chautauqua County, Kansas do not constitute a majority of the fifty sections of land denied to another school district in an earlier petition and accordingly, may be considered and approved or disapproved by the Board.

In response to your further verbal inquiry, K.S.A. 72-7514 provides:

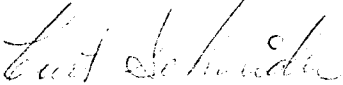
"The state board is hereby authorized to adopt rules and regulations not in conflict with law on any and all matters within its jurisdiction, except as is otherwise specifically provided by law."

K.S.A. 72-7108 requires the board to determine whether ". . . substantially the same territory . . ." is involved prior to considering the actual merits of the proposed transfer.

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Thus, it would be entirely proper for the State Board of Education to adopt an administrative regulation defining the word "substantially" upon such terms, factors, or conditions as deemed appropriate, subject, of course, to substantial compliance with the foregoing.

Very truly yours,


CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv