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OPINION	:	No. 79-522
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of	:	<u>August 9, 1979</u>
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SUBJECT: LAPSATION OF ELEMENTARY SCHOOL DISTRICT—On lapsation of an elementary school district, which is a component of a joint union high school district, the county board of supervisors has the power to annex the lapsing elementary school district to an adjoining district outside of the joint union high school district.

The Honorable James B. Lindholm, Jr., County Counsel of San Luis Obispo County, has requested an opinion on the following question:

When an elementary school district, which is lapsing, is a component of a joint union high school district, does the County Board of Supervisors have the power to annex the lapsing elementary school district to another district outside of the joint union high school district, thus automatically withdrawing the elementary school district as a component of the joint union high school district, or must the lapsing elementary school district be annexed to another elementary school district within the same joint union high school district?

CONCLUSION

On lapsation of an elementary school district, which is a component of a joint union high school district, the county board of supervisors has the power to annex the lapsing elementary school district to an adjoining district outside of the joint union high school district.

ANALYSIS

Under the “lapsation” article of the Education Code¹ (art. 8 (§§ 35720–35725), ch. 3, pt. 21, div. 3, tit. 2) the existence of a school district, which has been organized for more than three years is to be terminated, or in the terms of the statute, “lapsed,” if the district has less than six registered electors or if the district’s average daily attendance in the elementary grades is less than six or less than eleven in the high school grades. (§ 35720.)²

The procedures specified in these “lapsation” provisions require that:

“Within 30 days after the close of each school year the county superintendent of schools shall report to the county board of supervisors the name of any school district under his jurisdiction wherein the number of registered electors is less than six or the average daily attendance during the school year has been less than the numbers specified in Section 35720. The county superintendent shall at the same time recommend to the board of

¹ All section references herein are to the Education Code.

² As set out in full, section 35720 provides:

“Any school district which has been organized for more than three years shall be lapsed as provided in this article if the number of registered electors in the district is less than six or if the average daily attendance of pupils in the school or schools maintained by the district is less than six in grades 1 through 8 or is less than 11 in grades 9 through 12, except that for any unified district which has established and operates at least one senior high school grade for all of the pupils of the district in the grade and continues to establish and operate at least one additional senior high school grade each year for all of the pupils of the district in the grade, the board of supervisors shall defer the lapsation of the district for one year upon a written request of the governing board of the district and written concurrence of the county committee. The board of supervisors shall make no more than three such deferments.”

Under certain circumstances not pertinent to the present inquiry, the governing board of an elementary school district can by resolution avoid lapsation even though the district lacks the requisite number of electors or pupils. § 35725.

supervisors the district or districts to which the territory may best be annexed after the district has been lapsed.” (§ 35722.)

With respect to the procedures subsequent to the county superintendent’s report and recommendations, section 35723 provides:

“When the county board of supervisors receives the report of the county superintendent as provided in Section 35722 it shall order the district or districts to be lapsed. It shall also either order the territory of the lapsed district annexed to one or more adjoining districts as the county superintendent has recommended or it shall order a public hearing to be held on the question. If a public hearing is ordered the board shall fix the time thereof and shall provide that a notice be sent by registered mail at least 10 days before the hearing to each member of the governing boards of each of the districts which adjoin the lapsed district and to the persons who were members of the governing board of the lapsed district immediately prior to its lapsation. After the hearing the board of supervisors shall order the territory of the lapsed district annexed to one or more adjoining districts as seems to the board to be in the best interests of the adjoining districts and of the residents of the lapsed district.”

Thus under section 35723, the county board of supervisors has two duties when it receives the county superintendent’s report indicating that the district lacks the necessary number of electors or pupils. The first duty is to issue an order lapsing the district.³ The second duty requires the board to take the necessary action to have the territory of the lapsed district annexed to one or more adjoining districts. In performing this second duty the board of supervisors has two options. It may issue outright an order annexing the territory as recommended by the county superintendent, or it may order a public hearing on the matter and then order the annexation of the territory pursuant to its own determination.

The present inquiry relates to the lapsing of an elementary school district which is a component of a joint union high school district.⁴ The question raised is whether in

³ This duty is mandatory. See 10 Ops. Cal. Atty. Gen. 227, 229 (1947); 4 Ops. Cal. Atty. Gen. 54 (1944).

⁴ A “union high school district” is one comprising two or more elementary school districts, that are all within one county. (§ 86.) If such a union district lies in more than one county, it is a joint” union high school district. (§ 87.) An elementary school district “which is included in a high school district is a “component district.” (§ 4003 (a).) See section 35850 expressing the legislative policy that “all elementary school districts shall be included in a high school district or in a unified school

determining which adjoining district the territory at the lapsed district is to be annexed to, the board of supervisors is limited to selecting only those elementary districts that are in (components of) the same high school district that the lapsed district was in.

When the territory of one district is annexed to another, it is merged into and becomes part of the annexing district (§ 35760; 27 Ops. Cal. Atty. Gen, 148, 149 (1956)). When territory is thus annexed to an elementary school district, such territory also becomes part of the high school district in which the annexing elementary district is located (§ 35831). Thus if the territory of a lapsed elementary school district which was the component of one high school district were to be annexed to an elementary district which is a component of a different high school district, such annexed territory, becoming part of this different high school district, would of necessity be excluded from the first high school district (see section 35830 providing that the territory of a high school district is coextensive with the territory of its component districts). Consequently the first high school district would lose any revenue benefits it derived from that former component of its territory. It has therefore been suggested that upon the lapsing of a component elementary school district its territory must be annexed to another component district within the same high school district.

We are, however, unable to discern any such limitation upon the power of the board of supervisors in the lapsation statutes.

In evaluating these statutes we note initially that the “power of the legislature over school districts is plenary . . .” It may divide, change or abolish such districts at pleasure and may delegate to boards of supervisors powers of annexation under certain conditions.” (*Worthington S. Dist. v. Eureka S. Dist.* (1916)173 Cal. 154, 156; article IX, section 14 of the California Constitution; see also *San Carlos Sch. Dist. v. State Bd. of Education* (1968) 258 Cal. App. 2d 317, 322; 10 Ops. Cal. Atty. Gen. 227, 228 (1947); 29 Ops. Cal. Atty. Gen. 82, 83–84 (1957).)

With respect to the board of supervisors’ “powers of annexation’ under the lapsation statutes we note the broad language in which such power is framed: “After the hearing the board of supervisors shall order the territory of the lapsed district annexed to one or more adjoining districts *as seems to the board* to be in the best interests of the adjoining districts

district.” See also 29 Ops. Cal. Atty. Gen. 82, 83–84 (1957).

In the factual situation giving rise to the present question we are informed that all of the territory of the lapsed district and the adjoining districts are located within one county. Most of the joint union high school district in question also lies in the same county. Thus the special procedures applicable when lapsation involves territory in more than one county are not involved. (See §§ 1253, 4001, 4040–4045.)

and of the residents of the lapsed district.” (§ 35723; emphasis added.)

Thus the discretion of the board of supervisors to determine which district the territory of the lapsed district should be annexed to is guided only by the requirement that the annexing district be an “adjoining district[]” and by what the board determines “is in the best interest of the adjoining districts and of the residents of the lapsed district.” (§ 35723.)

Since the power of the board of supervisors to make this choice is otherwise unqualified under the statute, we conclude that the board may annex the lapsed district’s territory to any adjoining district including those in another high school district.⁵

This conclusion is persuasively confirmed by the fact that prior to 1963 the lapsation statutes contained a special restriction on the board of supervisors’ authority to annex the territory of a lapsed elementary school district to a component district that was not in the same high school district as was the lapsed district. Former section 1877 provided:

“When all the area of a county is located within three union or joint union high school districts, one of which contains more than three-fourths of the area of the county and four times the average daily attendance, and seven times the assessed valuation, of any other high school district located in whole or in part in the county, *the board of supervisors of such county may not annex the territory of any suspended or lapsed elementary school district to an elementary school district in a high school district other than that in which such elementary school district is located except by the unanimous vote of all the members of the board of supervisors.*” (Stats. 1959, ch. 2, § 1, p. 685; emphasis added.)

This restriction upon the board of supervisors’ annexation powers was deleted from the lapsation statutes upon the repeal of section 1877 in 1963. (Stats. 1963, ch. 629, § 3, p. 1565.)

“Where the Legislature undertakes to amend existing law by deleting an express provision in the previous statute, it is presumed the Legislature intended a change in the law” (*People v. Schmel* (1975) 54 Cal. App. 3d 46, 51; see also *Wallace v. Department*

⁵ “In construing the statutory provisions a court is not authorized to insert qualifying provisions not included and may not rewrite the statute to conform to an assumed intention which does not appear from its language” (*Vallerga v. Dept. Alcoholic Bev. Control* (1959) 53 Cal. 2d 313, 318; see also *Taylor v. McKay* (1975) 53 Cal. App. 3d 644, 651–652; Code Civ. Proc. § 1858.)

of Motor Vehicles (1970) 12 Cal. App. 3d 356, 361.)

In the present situation the action of the Legislature in placing express limitations upon annexations outside of the lapsed district's high school district, and then removing such limitations, affords a clear manifestation of legislative intent not to limit the board of supervisors' authority to annex a lapsed district to those adjoining districts which are in the same high school district.
