

**VOLUME NO. 36****Opinion No. 55**

**SCHOOL DISTRICTS — Consolidation, annexation, Social Security coverage; Sections 75-6506 and 75-6507, Revised Codes of Montana, 1947.**

**HELD: The merger of two third class school districts, neither of which contains a high school, cannot be considered an annexation conducted pursuant to section 75-6507, R.C.M. 1947 for purposes of administration of the federal Social Security Act.**

February 11, 1976

Mr. Lawrence P. Nachtsheim, Administrator  
Public Employees Retirement Division  
Department of Administration  
1712 Ninth Avenue  
Helena, Montana 59601

Dear Mr. Nachtsheim:

You have requested my opinion on the following question:

Whether the merger of two third class elementary school districts, neither of which contains a high school, can be considered an annexation for purposes of administration of the federal Social Security Act?

You advise that School Districts No. 42 and No. 59 in Chouteau County were merged and that this merger was conducted pursuant to section 75-6506, Revised Codes of Montana 1947, which deals with consolidations, rather than section 75-6507, which deals with annexations, because neither district contains a high school.

The regional attorney for the U.S. Department of Health, Education and Welfare advises me that this merger appears to be a consolidation. The consequence of this determination is that the new school district, created from the merged School Districts No. 42 and No. 59, must conduct a referendum to provide social security coverage. If, on the contrary, the merger could be considered an annexation, then such a referendum would not be prerequisite for coverage.

The Social Security Act and the regulations promulgated thereunder are silent as to the meaning attributed to the terms "annexation" and "consolidation". Thus, I concur with the practice of the regional attorney's

office for the Department of Health, Education and Welfare to define these terms according to the law of the state in which the merger is conducted. Therefore, reference must be made to chapter 65, Title 75, Revised Codes of Montana 1947, to decide whether the merger of School Districts No. 42 and No. 59 was a consolidation or an annexation.

In this regard, section 75-6507 states the conditions prerequisite for an elementary school district to annex another district. Section 75-6507 provides in pertinent part:

An elementary district may be annexed to another elementary district located in the same county when:

- (1) a third class district where a high school is not located is annexed to a third class district where a high school is located...

It is evident that section 75-6507 precludes two third class school districts from merging when a high school is located in neither the annexing nor annexed district. Therefore, the plain meaning of section 75-6507 precludes the merger of School Districts No. 42 and No. 59 in Chouteau County by annexation.

It has been suggested that despite the plain meaning of section 75-6507, an annexation has in fact occurred in the instant situation because School District No. 59 Knees was not abolished but continued, at least in name. I must reject this suggestion.

An annexation can only occur when the statutory authority therefore exists (2 McQuillin, **Municipal Corporations**, section 7.10, p. 309 (1966 Revised Volume); **Morin v. San Jose**, 109 C.A.2d 268, 240 P.2d 688 (1952)). Since section 75-6507 precludes merger by annexation of two third class school districts when a high school is located in neither the annexing nor annexed districts, I must conclude that School Districts No. 42 and No. 59 in Chouteau County merged by consolidation and not by annexation.

**THEREFORE, IT IS MY OPINION:**

The merger of two third class school districts, neither of which contains a high school, cannot be considered an annexation conducted pursuant to section 75-6507, R.C.M. 1947 for purposes of administration of the federal Social Security Act.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General