

December 12, 2005

Mr. Ken W. Hoversland  
Daniels County Attorney  
102 Second Avenue East  
P.O. Box 455  
Scobey, MT 59263-0455

Re: High School Annexation Procedure Opinion Request

Dear Mr. Hoversland:

You have requested an opinion from the Attorney General regarding a question arising from Mont. Code Ann. § 20-6-317. Specifically, you asked the Attorney General to determine whether the county superintendent has the authority to order the trustees of two separate school districts to call an election where the trustees involved do not agree on the issue of joint assumption of bonded indebtedness. Because the uncertainty of the former high school district annexation procedure has been alleviated by subsequent action of the legislature, it has been determined that a letter of advice rather than a formal opinion is appropriate in response to your question.

The legislature repealed Mont. Code Ann. § 20-6-317 during its 2005 regular session, developing several new statutes in its place. In pertinent part, the legislature developed Mont. Code Ann. § 20-6-422, which targets district annexation. Of importance to the issue you presented, subsection three states the following:

Before ordering an election on the [annexation] proposition, the county superintendent of the county where the district to be annexed is located must first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of

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bonded indebtedness. **Without agreement, the annexation proposition may not be considered further.**

Mont. Code Ann. § 20-6-422(3) (emphasis added).

A reading of this statute shows that before a county superintendent can order an election regarding an annexation proposition--as was done in Scobey--that county superintendent must first receive a resolution from the trustees. This resolution must state whether the annexation is to be done with or without assumption of bonded indebtedness. And, both the annexing district and the district to be annexed must agree on the issue of joint assumption of bonded indebtedness before the county superintendent can go forward with an election of the annexation proposition.

Therefore, it would be my opinion that the statutes developed during the 2005 regular legislative session regarding district annexation effectively answered the question you posed to the Attorney General, and those statutes became effective July 1, 2005.

This letter of advice may not be viewed as a formal opinion of the Attorney General.

Sincerely,

JOSLYN M. HUNT  
Assistant Attorney General

jmh/jym