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SCHOOLS AND SCHOOL DISTRICTS:
Withdrawal from Special
Education Agreements

Joseph M. Cronin
State Superintendent of Education
Illinois Office of Education
100 North First Street
Springfield, Illinois 62707

Dear Mr. Cronin:

This responds to your letter concerning whether school districts may withdraw from special education cooperative agreements without petitioning county boards of school trustees. The requirement that districts petition the county boards before their withdrawal from special education agreements was created by P.A. 76-1553, effective September 22, 1969. Prior to the enactment of P.A. 76-1553, districts could

Joseph M. Cronin - 2.

withdraw according to the terms of their agreements. You ask whether school districts that entered into special education agreements prior to the effective date of P.A. 76-1553 may now withdraw from these agreements without petitioning the county boards of school trustees.

Section 10-22.31 of The School Code (Ill. Rev. Stat. 1975, ch. 122, par. 10-22.31) authorizes school districts to enter into joint agreements to provide special education services. Prior to the enactment of P.A. 76-1553 section 10-22.31 provided in pertinent part as follows:

"§ 10-22.31. To enter into joint agreements with other school boards to establish programs for children of the type described in Section 14-1, to provide the needed special educational facilities, and to employ a director and other professional workers for such program. The director may be employed by one district and such district shall be reimbursed by other districts that are parties to the agreement on a mutually agreed basis. Such agreements may provide that one district may supply professional workers for a joint program conducted in another district.

* * *

Section 10-22.31 now reads in pertinent part as follows:

"§ 10-22.31. To enter into joint agreements with other school boards to provide the needed special educational facilities and to employ a director and other professional workers as defined in Section 14-1.10 and to establish facilities as defined in Section 14-1.08 for the types of children described in Sections 14-1.02 through 14-1.07. The director and other professional workers may be employed by one district which shall be reimbursed on a mutually agreed basis by other districts that are parties to the joint agreement. Such agreements may provide that one district may supply professional workers for a joint program conducted in another district. Such agreement shall be executed on forms provided by the Superintendent of Public Instruction and shall include, but not be limited to, provisions for administration, staff, programs, financing, housing, transportation and advisory body and provide for the withdrawal of districts from the joint agreement by petition to the county board of school trustees. Such petitions for withdrawal shall be made to the county board of school trustees of all counties having jurisdiction over one or more of the districts in the joint agreement. Upon receipt of a petition for withdrawal, the county boards of school trustees having jurisdiction over the cooperating districts shall publish notice of and conduct a joint hearing on the issue as provided in Section 7-6. No such petition may be considered however, unless in compliance with Section 7-8. If approved by a 2/3 vote of all trustees of those county boards, at a joint meeting, the withdrawal takes effect as provided in Sections 7-9, 7-15, 7-17 and 7-18 of this Act.

* * *

(emphasis added.)

Joseph M. Cronin - 4.

A school district derives its existence and powers wholly from the General Assembly. It has no inherent powers. (Goedde v. Community Unit School Dist. No. 7, 21 Ill. App. 2d 79.) The powers granted to a school district by the legislature are subject to amendment. In Board of Education v. Nickell, 410 Ill. 98, a petition requesting that territory be detached from one school district and annexed to another was made to the county superintendent of schools. The county superintendent's order permitting the detachment and annexation was appealed to the State Superintendent of Public Instruction. While the appeal was pending, the statutory procedure for the alteration of school boundaries was amended. The amendments transferred the authority to pass upon petitions for changes in boundaries from the county superintendent of schools to the county judge, and provided an appeal to the circuit court in lieu of an appeal to the Superintendent of Public Instruction. The court in Nickell held that as a result of the amendments the jurisdiction of the Superintendent over the boundary change proceedings was terminated; the petition for detachment and annexation had to be submitted

Joseph M. Cronin - 5.

to the county judge according to the amended procedure. The court explained that the legislature's plenary power over school districts meant that there was no vested right in following the old boundary change procedure once the amendment was passed. At page 103 the court stated as follows:

"* * * No vested right is here involved. With or without the consent of the inhabitants of a school district, over their protest, even without notice or hearing, the State may take the school facilities in the district, without compensation, and give them to other districts or agencies, and may divide, contract or expand the area of a district or unite it with another district or even abolish it at the will of the legislature. (People v. Deatherage, 401 Ill. 25.) We conclude that the amendments are applicable to the proceedings in this case.

* * *

Section 16 of article I of the Illinois Constitution prohibits the legislature from passing laws that impair the obligations of contracts. This prohibition protects only vested rights (People v. Lindheimer, 371 Ill. 367). As explained in the Nickell case, a school district has no vested right to its statutory authority. Hence, a district's authority to withdraw from a special education agreement according to the terms of the agreement without necessarily

Joseph M. Cronin - 6.

petitioning the county board of trustees was subject to amendment. Agreements entered into before the enactment of P.A. 76-1553 are thus not immune from the Act's requirement that a district must petition the relevant county boards of school trustees in order to withdraw.

Because school districts retained no authority to withdraw from special education agreements without petitioning the relevant county boards once P.A. 76-1553 became effective, it is my opinion that school districts that entered into these agreements before the effective date of P.A. 76-1553 may not now withdraw without petitioning the county board of school trustees of all counties having jurisdiction over one or more of the districts in the joint agreement.

Very truly yours,

A T T O R N E Y G E N E R A L