



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

March 25, 1985

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ATTORNEY GENERAL

DEPARTMENT OF EDUCATION
(208) 334-3300

Honorable Terry Sverdsten
Idaho State Senate
Box 51, Route 1
Cataldo, ID 83810

Re: School discontinuance procedure

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION, AND IS
PROVIDED ONLY FOR LEGAL GUIDANCE

Dear Senator Sverdsten:

You recently addressed a letter to the Attorney General's Office concerning the proper procedures for the discontinuance of a school.

The procedure for discontinuing a school is set forth in Idaho Code § 33-511 3. I am attaching a copy of the statute for your convenience. The procedures outlined therein can be summarized as follows:

1. The board of trustees must give notice of a proposed discontinuance not later than the first of July preceding the date of discontinuance.
2. Upon petition of five or more qualified school electors filed not later than the first day of August following the notice of the proposed discontinuance, the board shall order an election to be held within fourteen days.

Honorable Terry Sverdsten

March 25, 1985

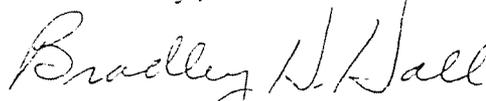
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3. The board must then give notice of election, stating the date and place of the election, etc., and describing the area of attendance unit and the school proposed to be discontinued. The ballot shall provide an opportunity to vote for or against discontinuance.
4. If 2/3 of the qualified voters vote against discontinuance, the school may not be discontinued.

In your letter you referred to an upcoming bond election in the district. I am unable to find any law or case that would prohibit a bond election when a discontinuance proposal is pending. Additionally, you asked whether the law had been tested. In Wellard v. Marcum, 82 Idaho 232 (1960), the Idaho Supreme Court held that the notice provisions of the statute are mandatory when a school meeting the definition of the statute is to be discontinued.

I hope this answers your questions. Please feel free to contact me if you need further clarification.

Sincerely,



BRADLEY H. HALL
Deputy Attorney General
State Department of Education

BHH:sj
Enclosure

Collateral References. or record of meeting of school board. 12 A.L.R.
Necessity, sufficiency, and effect of minutes 235.

33-511. Maintenance of schools. — The board of trustees of each school district shall have the following powers and duties:

1. Each elementary school district shall maintain at least one (1) elementary school, and each other school district shall maintain at least one (1) elementary school and one (1) secondary school;

2. To employ necessary help and labor to maintain and operate the schools of the district;

3. To discontinue any school within the district whenever it shall find such discontinuance to be in the best interests of the district and of the pupils therein. For the purposes of this section, discontinuing a school shall mean no longer maintaining a school of any kind, at the same location, except in the case of secondary units as herein provided.

When any school proposed to be discontinued is one which was operated and maintained by a former district now wholly incorporated within the boundaries of the district operated by said board of trustees, and, immediately following reorganization and the dissolution of said former district such school has been continuously operated and maintained at the same location by the presently organized district, the board of trustees must first give notice of such proposal not later than the first day of July next preceding the date of the proposed discontinuance. Such notice shall be posted, and published once, in the manner provided in section 33-401, Idaho Code, and shall identify the school proposed to be discontinued.

If, not later than the first day of August following the posting and publishing of the notice of discontinuance, five (5) or more qualified school district electors residing within the school district shall petition the board of trustees for an election to be held within the school district on the question of discontinuance of that school, the board of trustees shall forthwith order an election to be held within fourteen (14) days of the date of said order, and shall give notice of the election.

Notice of such election shall be posted at or near the main door of the school proposed to be discontinued and at or near the main door of the administrative offices of the school district, and shall also be published in one (1) issue of a newspaper printed in the county in which is situate the school proposed to be discontinued. The notice shall state the date the election is to be held, the place of voting, and the hours between which the polls shall be open. In addition, the notice of election shall describe the area of the particular attendance unit of the school district and shall identify the school proposed to be discontinued; and it shall state that only qualified school district electors residing within the school district may vote on the question of discontinuing the school.

The election shall be held within the school district and there shall be submitted to the electors a ballot containing the proposal:

For discontinuing the school located at _____,

Against discontinuing the school located at _____.

If two-thirds ($\frac{2}{3}$) of the qualified electors, hereinabove defined and voting in the election, shall vote against discontinuing that school, then said school shall not be discontinued; and no proposal to discontinue the same school shall be made by the board of trustees of the district within nine (9) months after the date of the election.

If a secondary unit which the trustees of a district propose to close is more than thirty (30) miles by all-weather road from the attendance unit to which it is proposed to transfer such students, then, notwithstanding other provisions of this section, five (5) electors residing within the attendance area of the unit proposed to be closed may, as provided by this section, petition the board of trustees requesting an election to determine whether or not such attendance unit, or any portion of it, shall be closed. The board shall forthwith call and hold an election as herein provided. However, for the purpose of this section relating to the secondary attendance unit thirty (30) miles or more distant from another secondary attendance unit, only the patrons resident in this attendance area shall be eligible to vote. The election shall be deemed passed and the unit shall not be closed if two-thirds ($\frac{2}{3}$) of those voting in the election vote in favor of retaining the attendance unit. [1965, ch. 13, § 61, p. 27; am. 1967, ch. 366, § 1, p. 1057; am. 1973, ch. 5, § 1, p. 10.]

Cross ref. Transfer of real or personal property to another unit of government. §§ 67-2322 - 67-2325.

Removal of Grades.

Where board of trustees moved the high school grades of a school elsewhere and

retained the seventh and eighth grades, the school was not discontinued and notice was not required as provided in this section. Lang v. Board of Trustees, 93 Idaho 79, 455 P.2d 856 (1969).

DECISIONS UNDER PRIOR LAW

ANALYSIS

- Approval of electors.
- Closing of school.
- Constitutionality.
- Costs of suit.
- Holding elections.
- Mandamus.
- Procedure.
- Purpose of 1949 amendment.
- Removal of grades.

Approval of Electors.

The trustees of an independent or joint independent school district had power to purchase and acquire sites for school buildings of any and all types and erect buildings thereon and change the attendance of pupils by grades or classes from one building to another and sell or otherwise dispose of such sites and buildings without an election by the qualified electors of the district. Hovenden v. Class A School Dist. No. 411, 71 Idaho 4, 224 P.2d 1080 (1950).

Closing of School.

Notice of proposed closing of school was required. Wellard v. Marcum, 82 Idaho 232, 351 P.2d 482 (1960).

In order to establish capriciousness or arbitrariness on part of board in closing school there had to be more than conjecture or assumption but it had to be clearly shown, it being presumed that public boards do not abuse their discretion or act from improper motives. Wellard v. Marcum, 82 Idaho 232, 351 P.2d 482 (1960).

Subsection (b) of former section was not violative of the Const., art. 1, § 21 as depriving the people of the state of home rule of public schools. Cameron v. Lakeland Class A School Dist. No. 272, 82 Idaho 375, 353 P.2d 652 (1960).

Where elementary school at one locality was discontinued and pupils transferred to other schools, but junior high schools were discontinued in other localities and the abandoned elementary school was made into a junior high school and pupils from other localities transported there was no