

TOWN LAW, ART 5-B, §§ 79-b, 79-d, 79-g.

The town board of each town proposing to consolidate must act to submit a proposition to consolidate to the electors of the town. There is no authority for a petition by the electors to submit a proposition for consolidation to the electors of the town for approval.

November 2, 1998

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Informal Opinion
No. 98-46

Dear Mr. Retchless:

In a telephone conversation on September 23, 1998, you explained your request for an opinion of the Attorney General concerning the consolidation of the Towns of Canadice and Richmond. Your concern is the procedure for conducting a referendum on the proposed consolidation of these towns. You defined consolidation as the combination of the two towns into a single town.

The consolidation of towns is governed by Article 5-B of the Town Law. "Consolidation" is defined as "a physical combination of two or more towns into a single town, in which each such town ceases to exist as a governmental entity and is replaced by the single town." Town Law § 79-b(1). The process of consolidation begins with action by the town boards of the towns proposing to consolidate. "The town boards of the several towns in the same county may submit a proposition for consolidation at a general or special election." The proposition must be approved by a majority of the electors of each of the towns. Id., § 79-d(2). Prior to the election on the proposition to consolidate, the town boards of the towns are required to hold a joint public hearing on notice of at least ten, but not more than twenty days, published in the official newspaper of each of the towns or, if there is no official newspaper, in a paper having general circulation within the town. Id., § 79-g.

It is clear under this procedure that the first step in consolidation is for the town board of each town to pass a resolution to submit a proposition for consolidation to the electors of the town. Upon such action by each town board and

after a public hearing, the proposition to consolidate must be approved by a majority of the electors of each of the towns. There is no authority for a petition by electors of a town to submit a proposition for consolidation to a referendum. The referendum may be held only if the town board of each town proposing to consolidate authorizes submittal of the proposition to consolidate to the electors of the town. Therefore, if the town board of one of the two towns proposing to consolidate does not approve the submittal of a proposition to its electors, the process of consolidation ends.

We conclude that the town board of each town proposing to consolidate must act to submit a proposition to consolidate to the electors of the town. There is no authority for a petition by the electors to submit a proposition for consolidation to the electors of the town for approval.

The Attorney General renders formal opinions only to officers and departments of State government. This perforce is an informal and unofficial expression of the views of this office.

Very truly yours,

JAMES D. COLE
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In Charge of Opinions