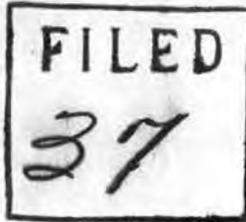


SCHOOLS: In election to vote on forming enlarged school district County Board of Education may designate
ELECTIONS: ~~only~~ one voting place. Majority vote of members of board of directors of receiving school district is all that is required to complete annexation of an adjoining district wherein the voters have voted for said annexation.



July 13, 1951

7-18-51

Honorable C. D. Hamilton
State Representative
New London, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department, which, in part, reads:

"Some men came to see me last night, asked that I write you regarding the following matter:

"Because of the redistricting of the schools, there has been a six man Board to supervise this matter. They decided to close all voting precincts, leaving one open, Perry. They state Greenlawn and Hutchinson has always been open to the public for voting purposes. They state, not only are they bitterly opposed to this action, but many in that community, and in these two precincts. They would like your opinion if they have a right to close free and open precincts.

"They would like to also know if the law is still in effect when it is necessary to vote themselves out of their district into another, then if it is right for that district to vote them into their district."

Pursuant to our request for additional information your letter of July 11 was received, which, in part, reads:

"The type of election is - there is, or has been a movement to merge many of the country schools into one district, this election is to vote for this to be done. Many of the

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country schools are not in favor, so what they wanted to know is whether or not this six man Board elected to supervise all of the needs of the county had authority to close all precincts except Perry. These men decided it was cheaper to have one precinct, however these country people want to vote in the precincts where they have always voted. This Board has ordered all precincts closed, compelling all to go to Perry to vote. They are anxious for this to be defeated, feel there may be certain influences used to persuade people to vote a certain way. Plainly, what they want to know as to the second paragraph of my letter is, 'Is it against the law for these precincts to be closed, and, does this Board have the powers to do it?'

"The third paragraph you have the right interpretation - Is it legal for school districts to vote to become annexed to another district, then would the school district receiving this annexed district or districts have to receive them by vote on their part."

In connection with your first question we assume that the six-man board to which you refer is the County Board of Education, and we further assume that the type of election to which you refer is an election called by the County Board of Education to vote upon the proposition of forming an enlarged school district within the county.

Hereinafter the statute references appearing in this opinion will be those contained in the Revised Statutes of 1949.

Section 165.657 provides for the formation of a County Board of Education and for the subsequent election of members thereof. The statute reads as follows:

"There is hereby created in each county of Missouri a 'County Board of Education.' Within sixty days after sections 165.657 to 165.707 take effect each county superintendent shall call a meeting of the members of the boards of education and boards of directors of the various school districts in his county in accordance with the provisions of sections 165.033 and 167.110, RSMo

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1949. The meeting shall organize by the election of one of its members as chairman. The county superintendent of schools shall serve as secretary of the meeting. Each member of every school board within the county shall be entitled to one vote.

"When organized as above provided the meeting shall proceed to elect a county board of education of six members. Initially two members shall be elected for a term to expire on the second Tuesday of April, 1952, two for a term to expire on the second Tuesday of April, 1951, and two for a term to expire on the second Tuesday of April, 1950. After the expiration of the initial terms, members elected shall serve for terms of three years. Each person so elected shall be a citizen of the United States and of the state of Missouri, a resident householder of the county, and shall be not less than twenty-four years of age. Not more than three members of such board shall reside in any county court district and not more than one member of said board shall be chosen from the same municipal township or school district, except that if there be less than three municipal townships or school districts in any county court district, such district shall have as many members of the board as it may contain municipal townships or school districts and the remainder of such board shall be elected at large but shall reside in said county court district.

"In 1949 and annually thereafter each county superintendent of schools shall call a meeting of the members of the boards of education and boards of directors of the various school districts in his county in accordance with the provisions of sections 165.033 and 167.110, RSMo 1949, to be held at ten o'clock a.m. on the second Tuesday in April, and such meeting shall fill all existing vacancies in the county board of education.

"In the election of the first county board, nominations shall first be made from the floor to fill one of the longest terms, and each

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office to be filled shall be voted upon separately. Election of each board member shall be by majority vote by ballot."

Under Section 165.673 the County Board of Education is required to make a comprehensive study of the school districts of the county and prepare a plan of reorganization. After its completion the plan of reorganization must be submitted by the County Board of Education to the State Board of Education for examination and approval.

Thereafter, an election must be held to vote upon the proposition of forming proposed enlarged school districts as contained in the reorganization plan approved by the State Board of Education. Thus Section 165.680, in part, provides:

"Within sixty days after receipt of approval by the state board of education of the reorganization plan, the secretary of the county board of education shall call an election in each proposed enlarged school district that lies wholly within the county or has been designated by the state board of education as belonging to the county. The notices of such election shall be by written or printed notices, signed by the president and secretary of the county board of education. Such notices shall be posted in at least three public places within each school district affected by the proposal and shall also be published at least two times in at least one newspaper of general circulation in the county or counties affected by said proposed enlarged district, the last published notice not less than six days prior to the date of election. The county board of education shall select and designate the voting place or places in each proposed enlarged school district and shall, also, select and appoint three judges and two clerks of such elections for each polling place, all such persons to be residents of the proposed enlarged school district. * * * All qualified voters resident in the proposed enlarged school district shall have the right to cast their ballots for or against the proposal. The ballot shall be in the following form:

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- For the proposed enlarged district
- Against the proposed enlarged district

Check with cross mark (X) in the square desired.

The judges and clerks of the election shall certify to the secretary of the county board of education the total votes for and the total votes against the proposed enlarged district. A majority affirmative vote of the total votes cast shall be required for adoption of the proposed enlarged district."
(Emphasis ours.)

As we read your first question, you desire to know the number of voting places which must be established in a proposed enlarged school district at the time the election is held, as provided for in the above section.

In this connection your attention is directed to the underscored portion of the above-quoted statute, which vests the authority in the County Board of Education to select and designate the voting place or places in each proposed enlarged district when the election is held. We believe the language of the statute is clear and unambiguous in giving this power to the County Board of Education, and under the statute said board has the power to designate one or several voting places. Consequently, in the election to which you refer we believe that the County Board of Education by law has the authority to select and designate only one voting place or precinct within the proposed enlarged district, the formation of which is voted on by the people residing therein.

In the case of *Armantrout v. Bohon*, 162 S.W. (2d) 867, the Supreme Court of Missouri was considering the validity of an election wherein the county superintendent of schools of Marion county was elected. The election had been attacked on the ground that the Hannibal School Board had only selected one voting place for the election. In ruling on the question the court, at l.c. 871, said:

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" * * * The quoted statute (Sec. 10483, R.S. Mo. 1939, Mo. R.S.A. Sec. 10483) says the voting shall be 'at such convenient place or places * * * as the board may designate.' It may 'at the option of the board' be held at the same time and place as city elections are held in certain counties. But none of these provisions may be construed as mandatory. It does not appear that any city elections were being conducted at the time. There are times conceivably, when one voting place in Hannibal would be adequate for the submission of school matters to the voters of the district, although we doubt that to be the case when there is a contest over the office of county superintendent. But even so, we cannot say that the board's designation of only one voting place in that district was a violation of any mandatory provision of the law, even though it did not provide places easily accessible and convenient to the voters. The board may not have used the best judgment in selecting voting places but that only one place was designated, in this instance and under the circumstances, is not such an abuse of their discretion, or disregard of the election laws that the election may be invalidated for this reason. * * *"

Under the authority of the above case it might constitute an exercise of better judgment for the County Board of Education to select more than one voting place within the proposed enlarged district, but we believe that said board would have authority to select only one voting place.

In your second question you inquire about the action to be taken by a receiving school district when an adjoining school district has voted to become annexed to it.

In this connection your attention is directed to Section 165.300, which, in part, provides:

"Whenever an entire school district, or a part of a district, whether in either case it be a common school district, or a city, town or consolidated school district, which adjoins any city, town, consolidated or

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village school district, including districts in cities of seventy-five thousand to five hundred thousand inhabitants, desires to be attached thereto for school purposes, upon the reception of a petition setting forth such fact and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting or special election for said purpose by giving notice as required by section 165.200; provided, however, that after the holding of any such special election, no other such special election shall be called within a period of two years thereafter.

"Should a majority of the votes cast favor such annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said city, town or village school district; whereupon the board of such city, town or village district shall meet to consider the advisability of receiving such territory, and should a majority of all the members of said board favor such annexation, the boundary lines of such city or town school district shall from that date be changed so as to include said territory, and said board shall immediately notify the clerk of said district which has been annexed, in whole or in part, of its action. * * *"

You will note in reading the above section that, after the school district which desires to become annexed to an adjoining district has voted in favor of the annexation by a majority of the votes cast being in favor thereof, the secretary of the annexing school district must then certify such fact to the board of directors of the adjoining school district. Thereafter, the board of directors of the adjoining or receiving school district must meet to consider the advisability of receiving the school district which has voted to annex to the receiving district, and only the members of the board vote on the annexation. No election is required to be held whereby the resident voters of the receiving school district would vote on the proposition of annexing the territory of the other school district.

If a majority of the members of the board of directors of the receiving school district vote in favor of the annexation the boundary lines of said school district are from that date changed

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so as to include the new territory, and the clerk of the school district which has been annexed is notified of the action taken by the board of directors of the receiving school district.

In the case of State ex inf. Killam ex rel. Clare v. Consolidated School District No. 1 of Lincoln County, 209 S.W. 938, 277 Mo. 458, the annexation of a common school district to a consolidated school district was being attacked. In ruling upon one of the grounds upon which the annexation was being questioned the court held that the election of the board of directors of the receiving school district was proper, even though only four members were present where all six had been notified. Thus, at S.W. l.c. 940, 941, the court said:

"It is claimed by appellant that the meeting of the board of directors of consolidated school district No. 1 on March 23d, was not valid because only four of the six members of the board were present. There is evidence, however, tending to show that all members of the board were notified. The certificate from the clerk of the district, No. 37, was present, showing the election had been carried, also the statement signed by a number of the relators, voters of No. 37, designated as 'Exhibit No. 5,' requesting the annexation. Upon this information the board, consolidated school district No. 1, voted and accepted the territory comprising the district, and 37 as formally annexed.

"That proceeding of the board of consolidated district No. 1 was regular in every respect, and settled the matter so far as action of that board was concerned."

In the above case the court went on to rule that the annexation was proper.

CONCLUSION

It is therefore the opinion of this department that in an election to vote upon the proposition of forming an enlarged school district, as contained in a plan of reorganization previously approved by the State Board of Education, the County Board of Education calling said election has authority to designate the voting place or places for said election, and may limit the number of voting places to one in the proposed enlarged district.

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It is further the opinion of this department that when the voters of a school district have voted to become annexed to an adjoining district that said annexation is completed when a majority of the members of the board of directors of the adjoining or receiving school district vote in favor of the annexation and notify the clerk of the annexing district of the action taken by the board of directors of the receiving district. No election is required to be held in the receiving school district for the voters thereof to vote on the proposition of annexing the territory of the other district.

Respectfully submitted,

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APPROVED:


J. B. TAYLOR
Attorney General

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