

SCHOOLS: Reorganization plan submitted by Greene County Board of Education and approved by the State Board of Education to combine Ritter and Springfield School Districts is valid.

February 1, 1951

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Honorable Milton B. Kirby  
Prosecuting Attorney  
Greene County  
Springfield, Missouri

Dear Mr. Kirby:

This will acknowledge receipt of your request for an official opinion which reads:

"A controversy has arisen in regard to the disposition of school funds of Ritter School District No. 62, in Greene County, Missouri. The facts leading up to the controversy are as follows:

"In November, 1949, the Greene County Board of Education placed Ritter School and other rural school districts in a proposed elementary district, which proposed reorganization was defeated at a duly called election.

"On October 18, 1950, the following petition, signed by thirteen residents of the Ritter School District, was received by the Ritter School Board and which petition is set out verbatim below:

"We, the undersigned qualified voters of Ritter School District No. 62, hereby petition the School Board to call a special election for the purpose of determining the vote on annexing our school (Ritter 62) with Willard School!

"On October 19, 1950, the Ritter School Board received a petition of more than ten residents of the Ritter School District, which petition requested annexation to the adjacent Springfield School District and which petition was filed on Section 10484, R. S. of Missouri, 1939, as amended. Up to this time the Ritter School Board has taken no action of any kind on this latter petition.

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"On October 20, 1950, the Greene County Board of Education approved another reorganization plan which proposed to combine the Springfield School District and the Ritter School District into a reorganized district under Laws of Missouri, 1947, Vol. II, page 370; which plan was forwarded to the State Board of Education on October 23, 1950, and which plan was approved by the State Board of Education on December 15, 1950.

"On October 21, 1950, the Ritter School Board called an election by posting notices, a copy of such notice being set out verbatim below:

"Notice is hereby given to the qualified voters of Ritter School District No. 62, County of Greene, State of Missouri, that in conformity with the petition of thirteen resident voters of said district, a special school meeting will be held at Ritter School House in said district on the 6th day of November, 1950, commencing at 8:00 P.M. for the following purposes: To determine by vote the desire of the qualified voters of the Ritter School District in regard to annexing the Ritter School District No. 62 with the Willard District.

"By Order of the Board, this 21st day of October, 1950.

"Len V. McGinnis  
M. J. Lefors  
C. H. Grace  
John D. Schaeffer, District Clerk."

"Such election was held on November 6, 1950, as scheduled, and a majority of votes cast favored annexation to the Willard School District. Before that date, however, on November 2, 1950, a declaratory judgment suit was filed in the Circuit Court of Greene County by certain residents of the Ritter School District who opposed annexation to the Willard District, in which suit they prayed the court to declare the petition filed on October 18, 1950, to be held invalid and that the notices of said election posted, on October 21, 1950, be held invalid, alleging that both the petition and notices were insufficient in law and

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alleging the further ground that the Ritter School District, at the time the petition was signed and filed and at the time the election was ordered, was not adjacent to the Willard School District since the Schuyler School District lay between the Willard District and Ritter District at such time, as shown by a school district map which is mailed to you under separate cover in connection herewith. The above named suit for declaratory judgment is still pending in the Greene County Court; no final action being taken thereon.

"The Schuyler School District Board ordered an election to be held on November 2, 1950, at which election a majority of the votes cast in said Schuyler election favored annexation to the Willard School District and on November 3, 1950, the Willard Board of Education accepted the annexation of Schuyler School District to the Willard School District.

"On December 18, 1950, the Ritter School Board accepted another petition asking for another election for the annexation to the Willard School District because of the legal attack which had been made against the election of November 6, 1950, and notices were posted this same day for an election to be held January 4, 1951. This election ordered on December 18, 1950, was held on January 4, 1951, at which time a majority of the votes cast favored annexation to the Willard School District, which it now adjoined because of the annexation of the Schuyler District to the Willard School District.

"On December 18, 1950, the same day that the Ritter School Board ordered the second election, the Greene County Board of Education at a meeting, ordered an election to be held on January 16, 1951, for the purpose of voting on the proposition of whether or not the Ritter School District should be annexed to the Springfield School District, and notices for the election to be held on January 16, 1951, were properly posted prior to December 28, 1950.

"The election ordered on January 16, 1951, was held as scheduled and a majority of votes

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avored the annexation of Ritter School District to the Springfield School District.

"There is no question raised as to the validity or sufficiency of any of the petitions or notices in any of the above elections except the one ordered by the Ritter School Board on October 21, 1950, and held on November 6, 1950.

"The Willard School Board accepted the annexation of the Ritter School District on January 9, 1951, on the basis of both elections; that is, the one held on November 6, 1950, and the one held on January 4, 1951. This was the first and only action taken by the Willard Board for the annexation of the Ritter School District.

"The County Treasurer of Greene County received the following warrants which have been paid from the Ritter School funds:

"January 8, 1951	
\$ 1045.00	Willard Consolidated School, which represents tuition for 12 students of the Ritter School District.
347.20	Beckley Cardy Company, for books.
1050.00	Mrs. Mary Lantz, teacher's salary to July 31, 1951.

"The following questions are submitted:

"(1) Was the election held on November 6, 1950, a valid election within the meaning of 10484, as amended?

"(2) If the November 6, 1950, election was invalid, then is the January 4, 1951, election valid in view of the pending proposal of the Greene County Board of Education and in view of the fact that a petition to annex to the Springfield District was then filed with the Ritter School Board, which board had taken no action on such petition?

"(3) Which district is entitled to the school funds held by the County Treasurer's office for the Ritter School District?

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"(4) Are the warrants named above valid warrants?"

We have quoted your complete request for the reason it is rather complicated in view of the fact that there were so many petitions and elections held at very close intervals which are so conflicting, the purposes of which are to annex the several school districts in different ways.

We shall try to consider these elections and proposals for consolidation of the various school districts in the order stated in your request.

First, the petition filed by some 13 residents of Ritter School District on October 18, 1950, to call an election for the purpose of annexing said school district with the Willard School District must be declared void for the reason the very act under which authority is given to file such petition, namely, Section 165.300, RSMo 1949, specifically provides that whenever a certain school district which adjoins another school district desires to be attached thereto, they may do so by following a certain procedure and continues by setting forth the precise steps to follow. Said section reads in part:

"1. 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 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."

Therefore, it is quite apparent that one of the prerequisites in the annexation of said school districts under the foregoing statute is that the districts to be annexed must be adjoining.

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While the courts have held that certain requirements are mandatory in the organization of certain school districts and if not met, the consolidation will be declared void, they have also held that where infringement is not of a substantial nature and does not violate the purpose of the statute, the requirement is not mandatory in the sense that it will be declared void. See *State v. Pretended Consolidated School District No. 1*, 223 S.W. (2d) 484, 1.c. 490, 491 (12). The reason for this requirement in the statute that said district shall be adjoining is apparent and we think it is highly important that said prerequisite be fully complied with or said election must be declared void. It would not be logical or practical in many instances to attach school districts for school purposes that were not in close proximity with each other and to do so would certainly violate the purpose of the statute.

Our examination of the decisions defining "adjoining" discloses that it means attached to or contiguous to each other.

In *Bullock v. Cooley*, 171 N.Y.S. 105, 106, 183 App. Div. 529, in construing an education law authorizing the school commissioner to dissolve and merge adjoining school districts, it was held that it did not authorize him to dissolve the district and annex it to one from which it is separated by more than one-half mile of water and hence not adjoining, and further held that adjoining means "touching or being contiguous."

In *Glen v. Wagner*, 90 P. (2d) 734, 736, 199 Wash. 160, the court held that plaintiffs and defendants were not adjoining proprietors where lots of plaintiffs and defendants did not touch each other, but were separated by a river.

Also in *Melder v. Great American Insurance Co.*, 9 So. (2d) 243, 244, the court held that a fire insurance policy on a dwelling house and additions thereto directly and immediately adjoining and communicating did not cover a garage building located about 18 feet from the house and entirely detached therefrom.

In *Rose v. Smiley*, 296 S.W. 815, 817, the court held that a city within a county, even if located on the edge of the county, does not adjoin the next county within Laws of Missouri, 1951, page 208, authorizing a county court of the county adjoining a city of 500,000 to establish sewer districts.

So, in view of Section 165.300, supra, and the foregoing

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decisions, we must conclude that the election held on the petition filed by the 13 residents of Ritter School District to call an election for the purpose of annexing Ritter and Willard School Districts is void for failure of the two districts to be adjoining at the time of the filing of said petition. The petitioners that filed the above petition must have arrived at the same conclusion or another similar petition would not have been filed on October 21, 1950, with the same purpose in mind to annex Ritter and Willard School Districts, since under Section 165.300, supra, it prohibits the holding of another election within a period of two years thereafter. So, apparently the petitioners also considered the first election void.

Thereafter, a petition was filed on October 19, 1950, by 10 residents of Ritter School District with the Ritter School Board for the purpose of calling an election to annex said district with the Springfield School District; however, no action has been taken on it since the filing of said petition. We can only assume that the reason for no action being taken is that the proponents who filed said petition are of the opinion that nothing further can be gained, that is to say, that the same result occurs if the reorganization plan approved on October 20, 1950, by the Greene County Board of Education to combine the Springfield School District and Ritter School District and which plan was approved by the State Board of Education on December 15, 1950, is valid and in full force and effect. At any rate, since no action has been taken since the filing of said petition, we are of the opinion the petitioners and the Ritter School District have abandoned it. In a very recent decision, *Mullins v. Eveland*, 234 S.W. (2d) 639, 1.c. 642, 643, the Kansas City Court of Appeals held that where a petition was filed to consolidate three common school districts with the superintendent of schools in June 1, 1947, and in December, 1948, no action had been taken thereon by the petitioners or the superintendent of schools, that it was abandoned; that the school laws contemplate prompt action and that no action having been taken over such a period would justify the conclusion that the three districts and superintendent of schools had abandoned the plan. While in the instant case the failure to take any action is not for such a long period, Section 165.300, supra, provides that the Board upon reception of said petition to annex the districts shall order a special meeting or special election for said purpose by giving notice, etc. This was not done in this instance, so as stated, we shall consider that plan for annexation as presented by the filing of a petition to annex Ritter School District with the Springfield School District as abandoned.

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The next action taken was on October 20, 1950, when the Greene County Board of Education approved a plan of reorganization which combines the Springfield School District with the Ritter School District, which plan was approved by the State Board of Education on December 15, 1950. Thereafter, on December 18, 1950, the Greene County Board of Education ordered an election to be held on January 16, 1951, for the purpose of voting on a reorganization plan to combine Ritter and Springfield School Districts. A majority of votes cast at said election favored the plan. We are of the opinion that this procedure, so far as it has gone, followed the statute in every respect, namely, Sections 165.657, 165.673, 165.677 and 165.680, RSMo 1949. All that is now left to be done to complete the reorganization plan is to have an election for directors under Section 165.687, RSMo 1949, and transfer of records and funds under Section 165.690, RSMo 1949.

In view of the foregoing plan, we are of the opinion that it takes priority over all other petitions and actions taken referred to in your request for annexation or consolidation of said school districts as it is the first action fully acted upon to date in compliance with the statutes as to the presenting and approval of such plans.

In support of this conclusion, we cite State ex rel. Fry v. Lee, 314 Mo. 486, l.c. 506, 507, wherein the court held that where a petition for formation of consolidated districts was filed with the county superintendent of schools and he followed the proper procedural statutes to complete the consolidation, that the superintendent of the county to whom notices and plats were presented and who refused to sign them, could not thwart the act of the superintendent who had initiated the movement by later posting notices and plats based upon a later petition for a consolidated school district. In so holding, the court said:

" \* \* \* In matters calling for the exercise of a judicial function or duty by two or more tribunals of co-ordinate jurisdiction, it is a well-settled principle of law that the tribunal which first acquires jurisdiction of the subject-matter retains jurisdiction until the determination of the matter in controversy, and no tribunal of co-ordinate power will be permitted to interfere with, or thwart, its action. (15 C.J. 1134.) This rule or principle rests upon comity and is a reasonable and necessary one, because any other rule would lead to confusion and perpetual collision, and would be productive

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of calamitous results and oftentimes a gross miscarriage of justice. The rule has been recognized and applied by this court, in Banc, in State ex rel. v. Reynolds, 209 Mo. 161, and State ex rel. v. Holtcamp, 266 Mo. 347.

"Under the admitted facts, as disclosed by the pleadings herein, the requisite petition for the formation of a consolidated school district was filed with the Superintendent of Public Schools of Camden County on May 23, 1925, a majority of the petitioners residing in Camden County. Under the statute, it thereupon became the duty of the Superintendent of Public Schools of that county to visit the community, investigate its needs, and to determine and so locate the boundary lines of the proposed district as would in his judgment form the best possible consolidated district, having due regard to the welfare of adjoining districts. Immediately upon the filing of the petition, jurisdiction over the subject-matter of the proceeding was acquired by, and vested in, the Superintendent of Public Schools of Camden County, and such jurisdiction remained in him until the question of the formation of the proposed consolidated district was determined by the qualified voters of the proposed district at the special meeting called by him for the consideration of that question. The jurisdiction of the subject-matter, first acquired by the Superintendent of Public Schools of Camden County on May 23, 1925, could not be thwarted by the subsequent refusal, on June 2, 1925, of the Superintendent of Public Schools of Laclede County to sign and approve the notices and plats calling for the special meeting of qualified voters to consider the question under consideration, in view of the admitted fact that the matter was immediately appealed to the State Superintendent (respondent herein) by the County Superintendent of Camden County and the decision of the State Superintendent was in favor of the appellant, as evidenced by the State Superintendent's action in

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signing and approving the plats and notices for and on behalf of the County Superintendent of Laclede County. It matters not that the County Superintendent of Laclede County in the forenoon of June 3, 1925 (a few hours before, but on the same day, the notices and plats calling the special meeting for consideration of the question were posted by the County Superintendent of Camden County), posted notices and plats calling for the submission of another and different consolidated district lying wholly within Laclede County. Such action on the part of the County Superintendent of Laclede County was an attempted usurpation of jurisdiction over the subject-matter previously acquired under the statute by the County Superintendent of Camden County and amounted to a positive violation of the statute prescribing the procedural steps to be taken in such proceedings."

To hold otherwise would cause unlimited confusion in annexing and consolidating school districts in this state. As stated in the foregoing decision, it has always been held that courts having coordinate jurisdiction could not assume jurisdiction over a court already having assumed jurisdiction.

In view of what has been said about the validity of the reorganization plan submitted by the Greene County Board of Education for combining the Springfield School District and the Ritter School District, we think this eliminates the necessity of further discussion as to petitions and elections filed and held subsequent to October 20, 1950.

The second petition filed by residents of Ritter School District for annexation with Willard School District would possibly be valid since the first election was void and in the meantime the Schuyler School District, lying between the Ritter and Willard School Districts, had annexed to the Willard School District, thereafter making Ritter and Willard School Districts adjoining, if it had not been for the action taken prior thereto by the Greene County School Board in submitting a reorganization plan to combine Springfield and Ritter School Districts. In view of that reorganization plan and approval by the State Board of Education, the latter petition to annex Ritter and Willard School Districts comes too late.

Furthermore, the declaratory judgment suit still pending

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in the Circuit Court of Greene County, Missouri, attacking the validity of the first petition filed to annex the Ritter School District with the Willard School District will not affect the reorganization plan unless said court should finally rule that the original petition filed on October 18, 1950, by the residents of Ritter School District to annex the Ritter and Willard School Districts is within the law.

Therefore, the school district formed by the reorganization plan submitted by the Greene County School Board to combine Ritter and Springfield School Districts will be credited with the funds now held in the County Treasurer's Office for the Ritter School District when the directors of the new district are elected. (See Sections 165.687 and 165.690, RSMo 1949.)

In State ex rel. Consolidated School District No. 8 of Pemiscot County v. Smith, 121 S.W. (2d) 160, 343 Mo. 288, the court held that the subsisting school district will be entitled to all the property and is answerable for all the liabilities of the component districts. Also see Gray v. School District No. 73 of Clay County, Missouri, 28 S.W. (2d) 683, 224 Mo. App. 905 (cause transferred from the Supreme Court, 20 S.W. (2d) 657).

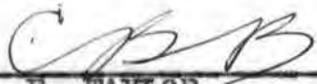
#### CONCLUSION

Our answer to your first question is in the negative. To the second question, it is also negative. To the third question, the school district formed by the reorganization plan of the Greene County School Board to combine the Springfield and Ritter School Districts will be credited with the school funds held by the County Treasurer's Office for the Ritter School District upon election of directors of the newly formed school district under the adopted plan of reorganization. To the fourth question, our answer is in the affirmative for the reason that said warrants are proper obligations of the Ritter School District as of January 8, 1951.

Respectfully submitted,

APPROVED:

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

  
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J. E. TAYLOR  
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ARH:VLM