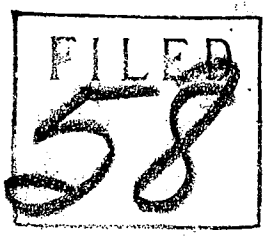
SCHOOLS:
SCHOOL DISTRICTS: Where consolidated school district has voted bond issue with no specific location for construction of buildings having been submitted to voters and subsequently becomes part of enlarged district, board of enlarged district may locate site for construction of buildings anywhere within enlarged district.



December 13, 1955

Honorable Leon McAnally
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Mr. McAnally:

This is in response to your request for opinion dated October 31, 1955, which reads as follows:

> "I would like the opinion of your office based on set of facts following, and on which we have previously exchanged correspondence:
>
> "As I understand it the Hornersville Consolidated School District voted a $125,000.00 bond issue for erection of gymnasium and classroom facilities. The bonds have been sold. No specific location for same was ever mentioned nor none selected. At this time there is under consideration a proposal to re-organize the school districts in south end of the county whereby, if approved by the voters, the present Hornersville School District would no longer exist as is, but would become a part of a Re-organized School District along with three other school districts.
>
> "The opinion of your office is desired on the question as to whether the Re-organized District through its board, of course, could take this bond money and build the said gymnasium and classroom facilities anywhere in the new Reorganized District, even though it might be located beyond the limits of the present Hornersville School District."

It has been held by the Supreme Court on numerous occasions that in the submission of a bond issue for the construction of a school building it is not necessary to specify the place at which the building is to be built. Parenthetically, we might state that if the site of the proposed building is included in the proposition voted upon it becomes part of the purpose of the loan and must be complied with (See opinion of Attorney General to Albert L. Hencke, September 30, 1954, copy enclosed).

Here, however, no specific location for the proposed construction of the gymnasium and classroom facilities was mentioned. In a similar situation the Supreme Court said, in Hart et al. v. Board of Education of Nevada et al., 299 Mo. 36, 252 SW 441, 442:

> "Under the statutes of this state (sections 11127, 11134, and 11135, R.S. 1919), the school boards, and they alone, are intrusted with the duty of providing and maintaining school facilities, including sites, schoolhouses, and furnishings. The methods and means to be employed in the discharge of these functions are committed wholly to their judgment and discretion. It is unnecessary therefore for them to submit to the electorate the question as to whether, under a given situation, they shall increase the housing facilities of the school district by erecting one new building, or more than one, or the question as to where such building or buildings shall be located. The only thing that they are required to go to the taxpayer for is authority to borrow money (or to increase the tax rate). * * *"

Again, in State ex rel. Whitehead et al. v. Wenom, 326 Mo. 352, 32 SW2d 59, 62, the court said:

> "As to the location of the school site, there can be no question but that it is left to the discretion of the school board in consolidated districts. In common school districts it is to be determined by the voters. Section 11210, Rev. St. 1919. Consolidated school districts are governed by the laws applicable to the government of town and city districts (section 11257, Rev. St. 1919), and it has been correctly held by this

> court that in town and city districts the statute vests in the directors 'full and complete discretion as to the location of the school houses.' State ex rel. v. Jones, 155 Mo. 570, 576, 56 S.W. 307, 309. See also Hart et al. v. Board of Education of Nevada Sch. Dist., 299 Mo. 36, 252 S.W. 441; Velton v. School Dist., 222 Mo. App. 997, 6 S.W. (2d) 652. * * *"

The conclusion, then, from these cases is that at the present time the Board of Directors of Hornersville Consolidated School District has the authority to determine the location of the building for which the $125,000 bond issue was voted.

Section 165.690, RSMo 1949, provides that where a plan of reorganization is adopted and the board of directors organized, the treasurer of a six-director district which becomes part of an enlarged district shall turn over all funds belonging to such former component district to the treasurer of the enlarged district. That section reads as follows:

> "The terms of office of all school directors and officers of the various school districts comprising the territory incorporated in such enlarged school districts shall cease upon the adoption of the plan of reorganization and the organization of the board of directors, and such officers shall deliver to the board of directors of the enlarged school district all property, records, books and papers belonging to such component districts. All funds in the hands of the county or township treasurer to the credit of the various districts composing such enlarged district, shall be immediately transferred to the credit of the treasurer of such enlarged district. If any former six-director district shall be merged in any enlarged district, as provided herein, the treasurer of such former six-director district shall immediately turn over to the treasurer of such enlarged district, all funds belonging to such former six-director district, and shall make settlement therefor as provided by section 165.350; provided,

> that the directors of such enlarged district shall faithfully perform all existing contracts and legal obligations of the component districts."

Upon completion of the reorganization and the formation of the enlarged district, Hornersville Consolidated District would cease to exist and the property and funds formerly belonging to it and the other component districts would thereupon become the property of the enlarged district. By the same token, its obligations, including this $125,000 bond issue, would become the obligation of the new enlarged district (See opinion of Attorney General to William F. Brown, April 27, 1950, copy enclosed).

It is further provided in Section 165.687, RSMo 1949, that the directors of an enlarged district shall be governed by the laws applicable to six-director districts. This, of course, includes Section 165.317, RSMo 1949, vesting the government and control of the district in the board, and Section 165.370, RSMo 1949, authorizing the board to select the site for school buildings. In Velton et al. v. School Dist. of Slater, 222 Mo. App. 997, 6 SW2d 652, 654, the Kansas City Court of Appeals said:

> " * * * The statute, section 11241, R.S. 1919, permits the directors of a school district such as the one involved here, to locate and change the location of school and schoolhouses in said district and gives them authority to sell school property no longer intended for the use of the district. When the bonds were voted the voters knew of the right of the board to change the location of schools in the district and were not deceived."

See also Gladney v. Gibson, 208 Mo. App. 70, 233 SW 271; Crow v. Consolidated School Dist. No. 7, 36 SW2d 676 (Springfield Court of Appeals); State ex rel. Miller v. Board of Education of Consolidated School Dist. No. 1 of Holt County, 224 Mo. App. 120, 21 SW2d 645 (Kansas City Court of Appeals); State ex rel. Gehrig v. Medley, 28 SW2d 1040 (Springfield Court of Appeals).

Since upon the adoption of this plan of reorganization the Hornersville District would cease to exist as such and the area now comprising such district would become a part of the enlarged

district, and since the enlarged district upon its formation would become obligated for this bond issue, we are of the opinion that the board of directors of the enlarged district would have control of these funds the same as if the bond issue had originally been voted by the enlarged district and could locate the site for the construction of the proposed gymnasium and classrooms anywhere within the enlarged district.

CONCLUSION

It is the opinion of this office that if Hornersville Consolidated School District, wherein a bond issue of $125,000 has been voted for the purpose of construction of a gymnasium and classroom facilities with no specific location for the construction of such buildings having been mentioned in the submission of the issue to the voters, should by the adoption of a plan of reorganization become part of an enlarged district, the board of directors of the enlarged district would have the authority in the exercise of its discretion to select a site for the construction of such gymnasium and classrooms anywhere within the area of the enlarged district.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. Inglish.

Yours very truly,

JOHN M. DALTON
Attorney General

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