

SCHOOLS:
COUNTY BOARDS OF EDUCATION:
DISQUALIFICATION OF MEMBERS:

A portion of Section 165.667 RSMo 1949, disqualifying member of county board of education who changes his residence to same municipal township or school district in

which another board member resides, strictly construed. It has no application to board member who has not changed residence, but because of reorganization of smaller pre-existing school districts to form larger district with extended boundaries, member's residence is located in same school district as that of another member, former member not disqualified and will continue to serve remainder of term.

February 19, 1960



Honorable Roy W. McGhee, Jr.
Prosecuting Attorney
Wayne County
Greenville, Missouri

Dear Mr. McGhee:

This is to acknowledge receipt of your request for our legal opinion, which reads as follows:

"Section 165.667 RSMo 1949, relative to the County School Board provides in part as follows:

" - - - Any member - - - who changes his residence to a - - - school district in which another member of the Board resides, shall be disqualified as a member of the Board. - - -"

"Where, after the election of members of the County Board of Education, two or more school districts in the county are legally joined together, by reorganization or otherwise, to form a new and larger district which includes several smaller pre-existing districts, can the members of the then County Board of Education continue to serve as such until the next election, or are they disqualified by the fact of reorganization placing them in the same (new) school district?"

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"We would appreciate your prompt opinion on this matter as it may become a question of substantial local importance here in the immediate future."

In considering this inquiry we call your attention to Section 165.657, RSMo Cum. Supp. 1957, regarding county boards of education, meetings, election of officers and members. We are especially concerned with the disqualification, election and term of office of each individual member of the board, and quote the applicable portion of the section as follows:

"2. Each member 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 the board shall reside in any county court district and not more than one member of the board shall be chosen from the same municipal township or school district, except that if there are less than three municipal townships or school districts in any county court district, the district shall have as many members of the board as it contains municipal townships or school districts and the remainder of the board shall be elected at large but shall reside in the county court district."

We are also concerned with the proposition as to when members of the county board of education may become disqualified as provided by Section 165.667, RSMo 1949, and we quote the applicable portion of that section, which reads as follows:

"Four members of the board shall constitute a quorum. Any member who is absent from board meetings two or more consecutive times without majority approval of the board, or who changes his residence to another county court district, or any member, except those elected at large, who changes his residence to a municipal township or school district in which

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another member of the board resides,
shall be disqualified as a member of the
board. * * *

For purposes of our discussion it will be assumed that the members of the county board of education referred to in the opinion request were legally qualified at the time they took office. The question now arises as to whether or not some of them have become disqualified under provisions of Section 165.667, supra, because two or more board members now reside in the same school district.

From said statutory requirement it appears that in the event a county school board member were to voluntarily change his residence to another municipal township or school district of the county in which another member of the same board resides then the former would become disqualified and be subject to ouster from office.

A somewhat different situation is presented in the opinion request than that to which the section refers and which we understand to be that a legally qualified member of the board at the time of his election who has not changed his residence, and through no fault of his own, his residence is now located in the same school district as that of another board member, because of the merger of some smaller pre-existing school districts to form a new and larger district. The disqualifying provisions of the statute are very limited and do not cover circumstances of the kind referred to above unless it is the legislative intent that the scope of the expressed disqualifications of board members is to be extended by necessary implication to include circumstances such as those referred to in the opinion request.

In attempting to determine the scope of the disqualifications as intended by the legislature, we find it helpful to refer to the general rule as to how statutory disqualifications of public officers are to be construed. We find such a general rule given in C.J.S., Volume 11, page 126, Section 11, "Officers" which reads as follows:

"Provisions in statutes and constitutions imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice

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in the selection of officers, and in favor of those seeking to hold office; and ambiguities should be resolved in favor of eligibility to office. It does not follow, however, that the courts should give words an unreasonable construction in order to uphold the right of one to hold office. Disqualifications provided by the legislature are construed strictly and will not be extended to cases not clearly within their scope, although it has been held that a statute making an officer ineligible for the same or a similar position for a specified time in case of his removal from office for specified causes should be liberally construed to effectuate its object. * **"

In the case of State ex rel. Mitchell v. Heath, 345 Mo. 226, l.c. 230 approved such general rule and said:

"[3] Section 9287, Revised Statutes 1929, provides that common school districts shall be governed by a board of three directors, 'who shall be citizens of the United States, resident taxpayers of the district (21 years of age), and who shall have paid a state and county tax within one year next preceding his, her or their election, and who shall have resided in this state for one year next preceding, his, her or their election.' The decisive question here is whether or not respondent, under the admitted facts, has complied with the above italicized part of the section prescribing qualifications essential to his eligibility to the office of school director. [Sec. 9328, R. S. 1909, prescribes this same qualification for directors of City, Town and Consolidated schools; see also Secs. 9517 and 9572, R. S. 1929, for qualifications in larger cities where strangely this requirement is relaxed or abolished.] It should also be noted that substantially the same provision is made concerning qualifications of members of both houses of the General Assembly. [Const., Art. 4, Secs. 4 and 6.] The evident purpose of this requirement is to have such officers,

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who impose taxes on others and determine how they shall be spent, chosen from among those citizens who have been paying, and will likely continue to pay, taxes. It is said, however that such 'statutes imposing qualification should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers.' [46 C.J. 937, sec. 32.] The Missouri decisions have given a liberal construction to this and similar sections prescribing requirements of eligibility to elective offices. * * *"
(Underscoring supplied).

It is believed the legislature was fully aware of the above-mentioned general rule at the time they enacted Section 165.667, supra. Only two grounds for disqualification of board members are mentioned in the section, and we are concerned only with the second one.

The second one does not provide for the disqualification of a board member who has not changed his residence, but because of the reorganization of some smaller school districts of the county, his residence is located within the geographical boundaries of a municipal township or school district in which the residence of another school board member is located.

If the lawmakers had intended to include such a provision in the section then it is believed they would surely have done so. In the absence of such statutory provisions, and in view of the fact that such expressed disqualifications are to be strictly construed, we cannot by implication, construe such provision, and particularly the second one, to include circumstances such as those referred to in the opinion request, and thereby broaden the scope of said provisions beyond the intent of the lawmakers.

CONCLUSION

Therefore, it is the opinion of this office that a portion of Section 165.667 RSMo 1949, which provides that a member of a county board of education who changes his residence to a municipal township or other school district of the county in which another

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member of the board resides, shall be disqualified as a board member, shall be strictly construed. Such disqualification has no application to a legally qualified board member who has not changed his residence, but because of the reorganization of some smaller pre-existing school districts of the county to form a new and larger district with extended boundaries, said board member's residence is then located in the same school district in which another board member resides. Such board member will continue to serve for the remainder of his term.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

PNC:vlw