

SCHOOLS: Petition for annexation of one school district to another void when districts did not adjoin at time of filing petition. County board of education acquires jurisdiction by submitting plan of reorganization subsequently.

January 28, 1960



Honorable Harry J. Mitchell  
Prosecuting Attorney  
Marion County  
Palmyra, Missouri

Dear Mr. Mitchell:

This is in response to your request for opinion dated November 14, 1959, which reads as follows:

"At the request of the County Superintendent of Schools of Marion County, Missouri, I am transmitting to you for opinion the legal problem as follows:

On the 15th day of September, 1959, twenty-three petitioners filed with the District Clerk of Davis School District of Marion County, Missouri, a petition as follows: 'Petition to the Board of Directors of the Davis School District of Marion County, Missouri.'

'We, the undersigned, being qualified voters of the above named school district, hereby petition you, as the governing board of said school, to order a special election to determine by the voters of said school district whether they shall annex said school district to the re-organized Monroe City School District now designated as R--I in Monroe County, Missouri, if either Pee Dee or White Franklin School Districts become annexed to R--I during the present school year of 1959-1960.'

Honorable Harry J. Mitchell

"At the time of the filing of the Davis School District Petition, the Davis School District was not contiguous to the Monroe County R--I School District. The Pee Dee District voted annexation to the Monroe City R--I School District on the 3rd day of October, 1959, and the annexation was accepted by the Monroe County R--I Board of Education on the 5th day of October, 1959, and thereupon the Davis School District was contiguous with the Monroe County R--I District.

"On the 8th day of October, 1959, the Marion County Board of Education filed a reorganization plan for Marion County School District R--II with the State Board of Education, and in this plan approximately fifty per cent of the Davis School District was included in the proposed reorganization of Marion County District R--II.

"The plan of the Marion County Board of Education for reorganization of Marion County District R--II was not approved by the State Board of Education, because of uncertainty as to priorities regarding the Davis School District petition, and the Marion County Board of Education reorganization plan.

"The question is whether or not the State Board of Education may approve and the Marion County Board of Education proceed with the reorganization plan for Marion County School District R--II, including a portion of the Davis School District, and with the Davis School District petition pending, or is it necessary that the Marion County Board of Education either await the results of the Davis School District petition, or eliminate the portion of the Davis School District from the plan before proceeding?"

Honorable Harry J. Mitchell

The answer to your question must be preceded by a determination of whether jurisdiction of the area in question was first acquired by the filing of the petition for annexation or by the submission of the plan of reorganization to the State Board of Education. As was said in Willard Reorganized Sch. Dist. v. Springfield Reorganized Sch. Dist., 241 Mo. App. 934, 248 SW2d 435, 1.c. 443:

" \* \* \* in a dispute between two political subdivisions as to which may annex a given territory, the one which first took a valid step toward effecting the annexation assumes jurisdiction which it retains throughout, regardless of which one first takes the steps which finally complete the annexation."

As far as the time element is concerned, there is no question but that the petition for annexation preceded the preparation and submission of the plan of reorganization so that the only question is whether the petition for annexation was a valid one.

This question was raised in the Willard case, supra. The court quoted Section 165.300, RSMo, C.S. 1957, which reads, in part, as follows:

"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 seven 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."

Honorable Harry J. Mitchell:

The court then said, Mo. App. 1.c. 946:

"Under the admitted facts Ritter District did not adjoin Willard District at the time of the filing of the petition, October 18th. Schuyler School District was between the two districts and was not adjoined to Willard District until November 3rd, at which time Willard District did become an adjoining district to appellant district but appellant contends that under the law it was not necessary to be an adjoining district when the petition was filed to have the proposition submitted to the voters but that when the vote was taken, to-wit: November 6th, and the voters approved the annexation, that was all that was necessary to make the annexation legal and binding.

"The judgment of the trial court on this proposition is as follows: (X)

'That the proceedings seeking to annex the former Ritter District 62 to plaintiff, begun by filing a petition with the Ritter School Board on October 18, 1950, and approved by the voters of Ritter District on November 6, 1950, were void and of no effect because said Ritter District 62 did not join plaintiff district when said proceedings were begun.'

"We heartily concur in the finding of the trial court. We think that the statute above quoted contains plain language requiring that said district be an adjoining district when proceedings were started for the purposes of annexation.

\* \* \* \* \*

" \* \* \* To emasculate the plain meaning of the statute requiring that school districts be adjoining districts before proceedings can be had to annex the same would be performing the acts of the legislature in repealing the law as it is and it is not the duty of the court to write laws but to interpret them.

Honorable Harry J. Mitchell

"State ex rel. Gentry v. Sullivan, Mo. Sup., 320 Mo. 362, 8 S.W.2d 616, 618, the court states the rule of law thus.

' \* \* \* Prefatory to a discussion of the legality of that proceeding, mere irregularities will be disregarded. By this we mean such acts of omission or commission in the process of organization which do not run counter to the evidently mandatory requirements of the Constitution or the statute, nor deprive the voters of an opportunity to exercise their will in the formation of the consolidated district. \* \* \*'

"We hold that the statutory requirement involved in this case, that the school districts be adjoining before proceedings can be taken to annex the same, is mandatory."

(We have quoted from the official report because of an error appearing in the S.W. reporter at the place marked (X) above.)

We are aware of the slight difference between the facts presented in your letter and those of the Willard case, in that in your situation the districts did become contiguous before the reorganization plan was presented to the State Board of Education. However, we do not think that this would alter the conclusion because the fact remains that they were not adjoining at the time the petition was filed, which the Willard case says is mandatory.

This being so, the petition to annex the Davis District to R-I of Monroe County was a nullity and of no effect. Therefore, the county board of education acquired jurisdiction when it submitted its plan of reorganization to the State Board of Education and it may proceed as if the annexation petition had never been filed.

#### CONCLUSION

It is the opinion of this office that the petition for annexation of Davis School District of Marion County to R-I of Monroe County, filed September 15, 1959, at a time when the Davis District did not adjoin the R-I District, is void and of

Honorable Harry J. Mitchell

no effect. It is the further opinion of this office that the Marion County Board of Education has acquired jurisdiction over that part of the Davis District included within its plan of reorganization filed with the State Board of Education on October 8, 1959, and may proceed as if the annexation petition had never been filed.

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

Yours very truly,

JOHN M. DALTON  
Attorney General

JWI:ml