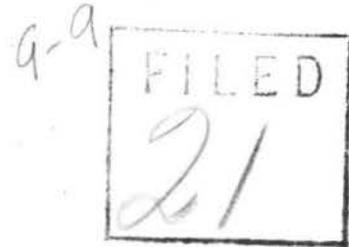


SCHOOLS: What constitutes a quorum of the School Board. What notice of meeting necessary.

September 4, 1937.

Honorable Donald B. Dawson  
Prosecuting Attorney  
Bates County  
Butler, Missouri



Dear Sir:

We have your request for an opinion dated August 21st, which reads as follows:

"A legal problem has been put before me that is unique in that there is, apparently, no settled law pertaining thereto. I would like to submit the proposition to your office for an opinion.

"The Amoret High School, Consolidated District No. 9, has a board of directors of six men. About a month ago the president of the board decided to call a special meeting of the board for the purpose of electing a superintendent and a janitor of the school building. The president called or notified all of the members but one. That one member was in Kansas City and wasn't expected back until midnight the day of the meeting. So the president did not call him. At the meeting five on the six board members were present and the board elected the superintendent and janitor. The sole legal question presented is: Can the president of the board of directors of a consolidated school district legally call a special meeting of the board without notifying all of the members?

"The statute states a majority of the board may transact business. The statute I read does not specify how the members are to be notified, but merely says the president shall notify each member of the special meeting, the place, the time, and the purpose of it. In this case over a majority were present and transacted business. In this case the president called the wife of the absent member and when told the member was out of town the president did not tell the wife to notify the member of the pending meeting.

"If the meeting was not legally called and was not a sufficient compliance with the statute, then the employment of the superintendent and janitor is void. But how about the bills that were paid that meeting?

"I have tried to give a complete picture of the situation in order to show you all the facts. You can readily comprehend the difficulties the board may have gotten itself into if the meeting was not a legal one.

" Since this board must know whether or not it has a superintendent and janitor so that the coming school year may be planned for, I would sincerely appreciate your taking care of this matter as soon as possible. I talked with Mr. Sawyers today, thinking the matter might have been passed on prior to this, but Mr. Sawyers was fairly certain the question had not been presented before."

Section 9209, Laws of Missouri, 1933, p. 387 provide:

"The board shall have power, at a regular or special meeting called after the annual school meeting, to contract with and employ legally qualified teachers for and in the name of the district; all special meetings shall be called by the president and each member notified of the time, place and purpose of the meeting. The contract shall be made by order of the board; shall specify the number of months the school is to be taught and the wages per month to be paid; shall be signed by the teacher and the president of the board, and attested by the clerk of the district when the teacher's certificate is filed with said clerk, who shall return the certificate to the teacher at the expiration of the term. The certificate must be in force for the full time for which the contract is made. The board shall not employ one of its members as teacher, nor shall the teacher serve as clerk of the district. All transactions of the board under this section must be recorded by and filed with the district clerk. Provided, that the board of Education of any first class high school may employ a superintendent either before or after the annual school election."

Section 9329, Laws of Missouri 1931, p. 333, provide:

"Within four days after the annual meeting, the board shall meet, the newly elected members be qualified

and the board organized by the election of a president and vice-president, and the board shall, on or before the fifteenth day of July of each year, elect a secretary and a treasurer, who shall enter upon their respective duties on the fifteenth day of July; said secretary and treasurer may be or may not be members of the board. No compensation shall be granted to either the secretary or the treasurer until his report and settlement shall have been made and filed or published as the law directs. A majority of the board shall constitute a quorum for the transaction of business, but no contract shall be let, teacher employed, bill approved or warrant ordered unless a majority of the whole board shall vote therefor. When there is an equal division of the whole board upon any question, the county superintendent of schools, if requested by at least three members of the board, shall cast the deciding vote upon such question, and for the determination of such question shall be considered as a member of such board. The president and secretary, except as herein specified, shall perform the same duties and be subject to the same liabilities as the presidents and clerks of the school boards of other districts."

In the case of Bauer, v. School District, 78 Mo. Ap. 442, that court said at l. c. 445:

"In our opinion a failure on the part of the directors to fill the

the vacancy as they are required to do by this statute, does not invalidate any official action taken by the board. The command of the statute is addressed to the remaining members of the board and no intention seems to be disclosed to make void any act done while the vacancy exists. If such had been the intention of the lawmakers on a matter so important, they would undoubtedly have expressed the intention in direct terms. The directors should obey the statute before performing any other official act. It may be that they could, by proper proceedings, taken in time, be compelled to do so. But if the board engages in its duties while the vacancy exists, the business transacted, if otherwise regularly done, will not be voided."

The above case differs from your facts, in that there was a three man school board, in which one member had resigned and the remaining two members transacted the business of the board.

In the case of *State ex inf. v. Bird*, 295 Mo. 344, l. c. 352, the Court said:

"This court has held, however, in construing the intent and purpose of school laws that they were designed as a workable method to be employed by plain, honest and worthy citizens, not especially learned in the law; and that no strict and technical construction should be given to them."

The law of Illinois should be the law of Missouri. In *School Directors v. Sprague*, 78 Ill. App. 390, l. c. 391, that Court said:

"John Buss, D. M. Roberts and W. H. McCaskill, were the directors for the district in 1896. Buss was president and Roberts was clerk. Appellee had taught the district. Buss and Roberts were in favor of re-employing her for a term of seven months, to begin in October of that year. McCaskill was opposed to her, and in conversation with the others had stated his ground of objection. Nothing definite was determined upon until the 7th of October, a few days before the time for the school to begin. Early in the morning of that day Buss sent his boy to McCaskill's house to notify him that there would be a meeting of the directors, at one o'clock of that day, at the house of Roberts, for the purpose of employing a teacher. When the boy reached McCaskill's he had gone from home and did not receive the notice until his return on that evening, after the hour for the meeting had passed. After waiting some time for McCaskill the other directors held a meeting at which it was decided to employ appellee. She was not regularly employed then, however, but the meeting was adjourned over until the following Monday, to enable her to secure a certificate extending over the full

term, at which time she was employed. She entered upon her term of seven months that day and taught to its conclusion. At the annual election in 1897, Finis P. Clark was elected in the place of Buss, whereupon he and McCaskill met and decided to dismiss appellee, and to discontinue the school. Clark so notified appellee, but she replied that she would complete the term, and did so with the knowledge of McCaskill and Clark. This suit was for the last month's wages.

"Appellants contend the contract of employment was void because it was not made at a meeting of the board as the law requires.

"The meeting on the 7th of October was legally called, and the only question for determination is whether, under the circumstances, the two directors present could make the employment in the absence of McCaskill. Had McCaskill received the notice, and declined to attend, it is clear the other two, constituting a quorum, could have made the contract. Trustees of Schools v. Allen, 21 Ill. 124; Scofield v. Watkins, 22 Ill. 72; Adkins v. Mitchell, 67 Ill. 511.

"We are clearly of the opinion that where an honest and reasonable effort has been made to notify the absent director, though unavailing, the other two directors may legally act.

"In this case we think such effort was made.

"The president, on account of sickness and death in McCaskill's family, and on account of his absence from home, had delayed calling a meeting until a few days within time for school to open. Early action was necessary, and we can not regard the calling and holding of the meeting as hasty. McCaskill's position in the employment of appellee was understood and his presence would have made no difference."

#### CONCLUSION.

We are of the opinion that where the law provides for a six director school board in Missouri, when any four of them, at a regular called meeting agree to let a contract, employ a teacher, approve a bill or order a warrant, their action shall be legal and valid.

In a six director board, a quorum to do business is reasonably interpreted as a two-third majority of the whole membership, or four, present at the meeting and voting. Such a meeting is a legally constituted meeting, where the facts show no fraud or collusion, and that reasonable effort was made to notify all members, but that two of the members were out of the district and could not reasonably be personally notified or present. In your case there were five members present and one member absent, and we believe a reasonable effort was made to notify him of the meeting.

September 4, 1937.

The Legislature intended a workable method of conducting the business of School Districts, and when the Legislature required things to be done to get a meeting called, such as requiring that all members be notified, and nowhere prescribes the results that shall follow if they were not done, the statutes to that extent is merely directory.

Should the statutes be interpreted to require notice to be mandatory instead of directory, then any one member could disrupt the whole meeting by hiding from service of the notice of the meeting, while at the same time his power after notice served and presence at the the meeting would not change the two-thirds majority vote one iota, affecting any proposition passed in his absence.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney Genera.

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General.

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